

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1502
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF ENTRY OF JUDGMENT

Please print or type required information

☒ Original Filing ☐ Supplemental Filing ☐ Corrected Filing

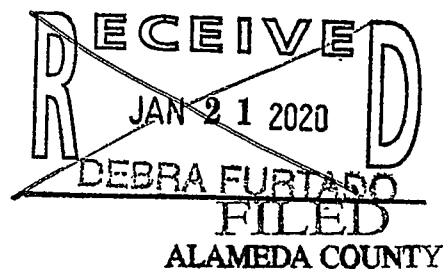
PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV Inc.			
	DEFENDANT(S) INVOLVED IN JUDGMENT Summer Infant, Inc.			
CASE INFO	COURT DOCKET NUMBER RG18918801		COURT NAME SUPERIOR COURT OF CA, Alameda Co	
	SHORT CASE NAME Shefa LMV, Inc. v. Summer Infant, Inc.			
REPORT INFO	INJUNCTIVE RELIEF COMPLIANT PRODUCTS AND WARNINGS			
	PAYMENT: CIVIL PENALTY \$4,000		PAYMENT: ATTORNEYS FEES \$20,000	
			PAYMENT: OTHER 0	
	DATE SUBMITTED TO COURT 1 / 21 / 2020		IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 1 / 21 / 2020	
	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
	COPY OF JUDGMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum, Esq.			
	ORGANIZATION Law Office of Daniel N. Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698	
	CITY Van Nuys	STATE CA	ZIP 91406-0000	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the judgment to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.



20528992

LAW OFFICE OF DANIEL N. GREENBAUM
 Daniel N. Greenbaum, Esq. (SBN 268104)
 The Hathaway Building
 7120 Hayvenhurst Avenue, Suite 320
 Van Nuys, CA 91406
 Telephone: (818) 809-2199
 Facsimile: (424) 243-7689
 Email: dgreenbaum@greenbaumlawfirm.com



Attorney for Plaintiff SHEFA LMV, INC.

MAR 05 2020

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CLERK OF THE SUPERIOR COURT
 By *[Signature]* Deputy

COUNTY OF ALAMEDA

SHEFA LMV, INC.,

Plaintiff,

vs.

SUMMER INFANT, INC.; and DOES 1
 through 100, Inclusive,

Defendant.

Case No. RG18918801 -

~~[PROPOSED]~~ CONSENT JUDGMENT
 AS TO SUMMER INFANT, INC.

Action Filed: August 30, 2018

Filed By Fax

~~[PROPOSED]~~ CONSENT JUDGMENT AS TO DEFENDANT
 SUMMER INFANT, INC.

1. INTRODUCTION

1.1 Parties

This consent judgment ("**Consent Judgment**") is entered into by and between plaintiff Shefa LMV, Inc. ("**Shefa**" or "**Plaintiff**") and Summer Infant, Inc. ("**Defendant**," with Shefa and **Defendant** individually referred to as a "**Party**" and collectively as the "**Parties.**")

1.2 Plaintiff

Shefa is a public benefit, non-profit corporation that seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Settling Defendant

Defendant employs ten (10) or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code §25249.6 *et seq.* ("**Proposition 65**").

1.4 Products Covered

The products covered by this Consent Judgment are plastic bag packaging, such as those for child seat insert products, including, but not limited to, Snuzzler; #17061941; ID: 400166668753; UPC: 012914776803, that are manufactured, sold, or distributed for sale in California by Defendant that contain Diisononyl Phthalate ("**DINP**") (collectively, the "**Covered Products**").

1.5 General Allegations

Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state of California, the Covered Products without first providing a clear and reasonable warning required by Proposition 65. DINP (CAS # 28553-12-0) is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer.

1.6 Notice of Violation

On December 21, 2017, Shefa served Defendant and the requisite public enforcement agencies with a Sixty Day Notice of Violation (the "**Notice**") alleging that Defendant violated Proposition 65 when it failed to warn its customers and consumers in California that the Covered

1 Products expose users to DINP. To the best of the Parties' knowledge, no public enforcer has
2 commenced and is diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On August 30, 2018, Shefa filed the instant complaint in the Superior Court in and for the
5 County of Alameda against Defendant and DOES 1-100, alleging violations of California Health &
6 Safety Code § 25249.6, based on exposures to DINP contained in the Covered Products sold in the
7 State of California (the "Complaint").

8 **1.8 No Admission**

9 Defendant denies the material, factual, and legal allegations contained in the Notice and
10 Complaint and maintains that all the products it has manufactured, sold, or distributed for sale in
11 California, including the Covered Products, have been, and are, in compliance with all laws.
12 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
13 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
14 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion
15 of law, issue of law, or violation of law, the same being specifically denied by Defendant. This
16 section shall not, however, diminish or otherwise affect Defendant's obligations, responsibilities,
17 and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
21 County of Alameda, the Defendant agrees that they employs or have employed ten or more persons
22 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
23 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
26 Consent Judgment is approved and entered by the Court.
27
28

1 **2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS**

2 **2.1 Reformulation Standards**

3 As of the Effective Date, Defendant shall not manufacture for sale in California any Covered
4 Products unless such Covered Products contain DINP in concentrations less than or equal to 1000
5 parts per million ("ppm") when analyzed pursuant to U.S. Environmental Protection Agency testing
6 methodologies 3580A and 8270C or any other scientifically reliable methodology for determining
7 the concentration of DINP in the Covered Products.

8 **2.2 Warning Standards**

9 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent they
10 ship or sell Covered Products that do not meet the reformulation standards set forth above in
11 Section 2.1, Defendant will provide warnings on such Covered Products that comply with
12 Proposition 65. The warnings shall be provided in a conspicuous and prominent manner such that
13 they will be likely to be read or seen by the consumer prior to or at the time of the sale or purchase.
14 The Parties agree that the warning set forth below shall constitute compliance with Proposition 65
15 with respect to any Covered Products that are not reformulated:

16 (a) the text, **"WARNING This product can expose you to chemicals, including**
17 **DINP, which is known to the State of California to cause cancer. For more**
18 **information go to www.P65Warnings.ca.gov."** accompanied by and placed to the right of
19 a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold
20 black outline sized to be no smaller than the word, "WARNING" as provided by regulations
21 adopted on or about August 30, 2016; or

22 (b) the text, **"WARNIN Cancer - www.P65Warnings.ca.gov."** accompanied by
23 and placed to the right of a symbol consisting of a black exclamation point in a yellow
24 equilateral triangle with a bold black outline sized to be no smaller than the word,
25 "WARNING" as provided by regulations adopted on or about August 30, 2016.

26 The triangular warning symbol specified in Section 2.2(a) and 2.2(b) shall be in yellow with
27
28

1 a black exclamation mark; *provided however*, the symbol may be printed in black and white if the
2 Covered Product label is not printed against a yellow background.

3 **2.3 Covered Products in the Stream of Commerce.**

4 Any Covered Products that have been distributed, shipped, or sold by Defendant prior to the
5 Effective Date, shall not be subject to the requirements of Section 2.1.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
8 Defendant shall make the Total Settlement Payment of \$24,000.00.

9 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
10 separate checks made payable and allocated as follows:

11 **3.2.1 Civil Penalty.** Defendant shall pay \$4,000.00 as a civil penalty
12 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
13 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
14 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
15 OEHHA portion of the civil penalty payment in the amount of \$3,000.00 shall be made payable to
16 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
17 delivered as follows:

18 For United States Postal Service Delivery:

19 Attn: Mike Gyurics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

24 Attn: Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

27 The Shefa portion of the civil penalty payment in the amount of \$1,000.00 shall be made
28

payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3.2.2 Attorney's Fees and Costs. A reimbursement of Shefa's attorney's fees and costs in the amount of \$20,000.00 payable to the "Law Office of Daniel N. Greenbaum," and associated with taxpayer identification number 46-4580172. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

4. CLAIMS COVERED AND RELEASED

4.1 Public Release

This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7, against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Ross Stores, Inc., ("**Releasees**"), based on failure to warn of alleged exposures to DINP from Covered Products manufactured, sold, or distributed for sale in California by Defendant prior to the Effective Date. The release in this Section 4.1 applies to all Covered Products that Defendant manufactured, distributed, or sold prior to the Effective Date, regardless of the date any other Releasee distributes or sells the Covered Products.

Compliance with the terms of this Consent Judgment shall constitute compliance with Proposition 65 by Defendant and the Releasees with respect to DINP in Covered Products manufactured, sold, or distributed on and after the Effective Date.

4.2 Shefa's Individual Release of Claims

In further consideration of the promises and agreements herein contained, Shefa, on its own

1 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
2 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
3 legal action, and releases all claims that it may have against Defendant and Releasees, including,
4 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
5 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
6 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DINP from
7 Covered Products manufactured, sold, or distributed for sale by Defendant prior to the Effective
8 Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not releases on
9 behalf of the public.

10 **4.3 Defendant's Release of Shefa**

11 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
12 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
13 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
14 by Shefa and its attorneys and other representatives in the course of investigating the claims set
15 forth in the Complaint or otherwise seeking to enforce Proposition 65 against it in this matter.

16 **4.4 Release of Unknown Claims**

17 It is possible that other claims not known to the Parties arising out of the facts contained in
18 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
19 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment
20 is expressly intended to cover and include all such claims through and including the Effective Date,
21 including all rights of action therefor. Shefa acknowledges that the claims released in Sections 4.1
22 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in
23 doing so waives California Civil Code § 1542, which reads as follows:

24 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
25 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
26 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
27 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
28 **WITH THE DEBTOR.**

1 Shefa understands and acknowledges that the significance and consequence of this waiver of
2 California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting
3 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not
4 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
5 Shefa will not be able to make any claim for those damages against Defendant or any of the
6 Releasees.

7 **5. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court.

9 **6. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of California
11 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
12 rendered inapplicable by reason of law generally, or as to the Covered Products, then Defendant
13 may provide written notice to Shefa of any asserted change in the law, and with the exception of
14 Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with
15 respect to, and to the extent that, the Covered Products are so affected. None of the terms of this
16 Consent Judgment shall have any application to Covered Products sold outside of the State of
17 California.

18 **7. NOTICE**

19 Unless specified herein, all correspondence and notices required to be provided pursuant to
20 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
21 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any
22 Party by the other at the following addresses:

23 To Defendant:

24 William F. Tarantino, Esq.
25 Morrison & Foerster LLP
26 425 Market St., Suite 3300
San Francisco California 94105

To Shefa:

27 Daniel N. Greenbaum
28 Law Office of Daniel N. Greenbaum
7120 Hayvenhurst Ave., Suite 320
Van Nuys, CA 91406

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Plaintiff agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

10. POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to submit this Consent Judgment to the Court with a motion seeking Court approval.

11. MODIFICATION

This Consent Judgment may only be modified by a written instrument executed by the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion to modify shall be served on all Parties and the Office of the Attorney General.

12. DISPUTE RESOLUTION

If Shefa determines at a future date that a violation of this Consent Judgment has occurred, Shefa shall provide notice to Defendant. Prior to bringing any action to enforce any requirement of this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the other party with written notice of the grounds for such allegation together with all supporting information as well as a complete demand for the relief sought. The Parties shall then meet and confer regarding the basis for the allegation to resolve the matter informally, including providing the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such attempt at informal resolution fail, the party alleging a violation

1 may file its lawsuit seeking the proposed relief.

2 **13. AUTHORIZATION**

3 The undersigned are authorized to execute this Consent Judgment on behalf of their
4 respective Parties and have read, understood, and agree to all of the terms and conditions of this
5 Consent Judgment.

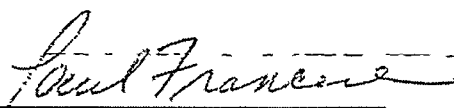
6
7 AGREED TO:

8 AGREED TO:

9 Date: 01/06/2020

10 Date: Jan 6, 2020

11
12 By: 
13 SHEFA LMV, INC.

14 By: 
15 DEFENDANT SUMMER INFANT, INC.

PROPOSED JUDGMENT

Please note that on 3/4, ²⁰²⁰~~2019~~ at 9:00 am/pm, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Summer Infant, Inc. came for hearing before this Court in Department 25, the Honorable ^{James}~~Ronni~~ ^{Reilly}~~MacLaren~~ presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

After full consideration of the points and authorities and related pleadings submitted, the Court GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following findings pursuant to Health & Safety Code § 25249.7(f)(4):

a. The injunctive relief required by the Settlement Agreement complies with Health & Safety Code § 25249.7;

b. The reimbursement of fees and costs to be paid pursuant to the Settlement Agreement is reasonable under California law; and

c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.

IT IS SO ORDERED, ADJUDGED AND DECREED

3/5/20
Date


Judge of the Superior Court

CLERK'S CERTIFICATE OF SERVICE BY MAIL
CCP 1013a(3)

CASE NAME: SHEFA LMV, INC. vs. SUMMER INFANT, INC.; and DOES 1 THROUGH
100, INCLUSIVE
ACTION NO.: RG18918801

I certify that, I am not a party to the within action. I served the foregoing **Consent Judgment
as to Summer Infant, Inc.** by depositing a true copy thereof in the United States mail in
Oakland, California in a sealed envelope with postage fully prepaid thereon addressed to:

Daniel N. Greenbaum
LAW OFFICE OF DANIEL N. GREENDAUM
The Hathaway Building
7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406

William F. Tarantino
MORRISON & FOERSTER LLP
425 Market Street, Suite 3300
San Francisco, CA 94105-2482

I declare under penalty of perjury that the following is true and correct

Executed on March 06, 2020 at Oakland, California.

Chad Finke,
Executive Officer/Clerk

by Aquetta Scoggins
Deputy Clerk