

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

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

PARTIES TO THE ACTION	PLAINTIFF(S)			
	DEFENDANT(S) INVOLVED IN JUDGMENT			
CASE INFO	COURT DOCKET NUMBER		COURT NAME	
	SHORT CASE NAME			
REPORT INFO	INJUNCTIVE RELIEF			
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER
	DATE SUBMITTED TO COURT / /	IS JUDGMENT PURSUANT TO SETTLEMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL / /	
	COPY OF JUDGMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT			
	ORGANIZATION			TELEPHONE NUMBER ()
	ADDRESS			FAX NUMBER ()
	CITY	STATE	ZIP	E-MAIL ADDRESS

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.

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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.

FILED
Superior Court of California
County of Los Angeles

06/14/2019

Sherri R. Carter, Executive Officer / Clerk of Court

By: Shantal Luqueno Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

GRISI HNOS., S.A. DE C.V.,

Defendant.

) Case No. 19STCV05039

) ~~PROPOSED~~ CONSENT JUDGMENT
) AS TO GRISI HNOS., S.A. DE C.V

) Action Filed: February 14, 2019

[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT
GRISI HNOS., S.A. DE C.V.



1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This consent judgment (“Consent Judgment”) is entered into by and between plaintiff Shefa
4 LMV, Inc. (“Shefa” or “Plaintiff”) and GRISI HNOS., S.A. DE C.V (“Defendant”) (Plaintiff and
5 Defendant individually referred to as a “Party” and collectively as the “Parties.”)

6 **1.2 Plaintiff**

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

10 **1.3 Settling Defendant**

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

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are lotion products, including, but not
16 limited to, Aloe Vera Savila Face & Body Lotion UPC037836000386, that are manufactured, sold,
17 or distributed for sale in California by Defendant that contain Diethanolamine (“DEA”) (the
18 “**Covered Products**”).

19 **1.5 General Allegations**

20 Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state
21 of California, the Covered Products without first providing a clear and reasonable warning required
22 by Proposition 65. DEA (CAS # 111-42-2) is a chemical listed under Proposition 65 as a chemical
23 known to the state to cause cancer or reproductive toxicity. Defendant denies the claims of alleged
24 violations asserted against it by Shefa and denies that it has any liability under Proposition 65.

25 **1.6 Notice of Violation**

26 On March 16, 2018, Shefa served Defendant and the requisite public enforcement agencies

1 with a 60-Day Notice of Violation (the “**Notice**”) alleging that Defendant violated Proposition 65
2 when it failed to warn its customers and consumers in California that the Covered Products expose
3 users to DEA. To the best of the Parties’ knowledge, no public enforcer has commenced and is
4 diligently prosecuting the allegations set forth in the Notice.

5 **1.7 Complaint**


6 On February 14, 2019, Shefa filed the instant complaint in the Superior Court in and for the
7 County of Los Angeles against Defendant, alleging violations of California Health & Safety Code
8 § 25249.6, based on exposures to DEA contained in the Covered Products sold in the State of
9 California (the “**Complaint**”).

10 **1.8 No Admission**

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

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate: a) this Court has
22 jurisdiction over Defendant as to the allegations in the Complaint; b) venue is proper in the County
23 of Los Angeles; c) the Defendant employs or has employed ten or more persons during time periods
24 relevant to the Complaint; and d) this Court has jurisdiction over the Parties to enter and enforce the
25 provisions of this Consent Judgment pursuant to Proposition 65.



1
2 The Shefa portion of the civil penalty payment in the amount of \$1,000.00 shall be made
3 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002. This
4 payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave,
5 Suite 320, Van Nuys, CA 91406.

6 **3.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's
7 fees and costs in the amount of \$18,000.00 payable to the "Law Office of Daniel N. Greenbaum,"
8 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
9 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Public Release**

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

25 Compliance by Defendant with the terms of this Consent Judgment shall constitute
26 compliance with Proposition 65 by Defendant and the Releasees with respect to DEA in Covered



1 Products manufactured, sold, or distributed on and after the Effective Date.

2 **4.2 Shefa's Individual Release of Claims**

3 In further consideration of the promises and agreements herein contained, Shefa, on its own
4 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
5 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
6 legal action, and releases all claims that it may have against Defendant and Releasees, including,
7 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
8 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
9 fees, and attorneys' fees (collectively, "Claims") arising under Proposition 65 or any other statutory
10 or common law for unwarned exposures to DEA from Covered Products manufactured, sold, or
11 distributed for sale by Defendant and the Releasees prior to the Effective Date. The releases in
12 Section 4.2 are provided in Shefa's individual capacity and are not releases on behalf of the public.

13 **4.3 Defendant's Release of Shefa**

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

19 **4.4 Release of Unknown Claims**

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



1 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
2 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
3 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE**
4 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
5 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
6 **PARTY.**

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

13 **4.5** Nothing in Section 4 affects any Party's right to enforce the terms of this Consent
14 Judgment.

15 **5. COURT APPROVAL**

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

17 **6. GOVERNING LAW**

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

26 **7. NOTICE**

27 Unless specified herein, all correspondence and notices required to be provided pursuant to
28 this Consent Judgment shall be in writing and sent by email or if requested by Defendant, the

1 following service methods are allowed: (i) personal delivery; (ii) first-class, registered or certified
2 mail, return receipt requested; or (iii) a recognized overnight courier on any Party by the other at the
3 following addresses:

4 To Defendant:

5 Sarah Esmaili, Esq.
6 Arnold & Porter
7 Three Embarcadero Center, 10th Floor
8 San Francisco, CA 94111

To Shefa:

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

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

11 **8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

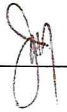
16 Plaintiff agrees to comply with the reporting form requirements referenced in California
17 Health & Safety Code § 25249.7(f).

18 **10. POST EXECUTION ACTIVITIES**

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

23 **11. MODIFICATION**

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



1 **12. DISPUTE RESOLUTION**

2 If either Party determines at a future date that a violation of this Consent Judgment has
3 occurred, that Party shall provide notice to the other Party. Prior to bringing any action to enforce
4 any requirement of this Consent Judgment, the Party alleging a violation of this Consent Judgment
5 shall provide the other Party with written notice of the grounds for such allegation together with all
6 supporting information as well as a complete demand for the relief sought. The Parties shall then
7 meet and confer regarding the basis for the allegation to resolve the matter informally, including
8 providing the Party alleged to be in violation with a reasonable opportunity of at least thirty (30)
9 days to cure any alleged violation. Should such attempt at informal resolution fail, the Party
10 alleging a violation may institute a proceeding or lawsuit seeking the proposed relief. In any such
11 judicial proceeding or lawsuit, the prevailing Party shall be entitled to its reasonable attorneys' fees
12 and costs. For purposes of this Section 12, the prevailing Party refers to the Party that was
13 successful in obtaining relief more favorable to it than the relief that the other Party was amenable
14 to providing during the Parties' good faith attempt to resolve the dispute.

15 **13. AUTHORIZATION**


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

19
20 AGREED TO:

AGREED TO:

21
22 Date: 3/15/2019

Date: March 13, 2019

23
24 By: 

By: 

25 SHEFA LMV, INC.

GRISI HNOS., S.A. DE C.V.

PROPOSED JUDGMENT

Please note that on 06/14/2019, 2019 at 11:00 AM, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant GRISI HNOS., S.A. DE C.V. came for hearing before this Court in Department HG, the Honorable Judge @ 11:00 AM 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.

06/14/2019

Date



Judge of the Superior Court
Daniel S. Murphy / Judge