

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 1501
(03-01)

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

REPORT OF SETTLEMENT

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 SETTLEMENT Singer Sewing Company; Dyno LLC				
CASE INFO	COURT DOCKET NUMBER BC668992		COURT NAME Los Angeles County Superior Court		
	SHORT CASE NAME Shefa v. Singer Sewing Co.				
REPORT INFO	INJUNCTIVE RELIEF Reformulation or Warning label				
	PAYMENT: CIVIL PENALTY \$2,000		PAYMENT: ATTORNEYS FEES \$13,000		For Internal Use Only
	PAYMENT: OTHER 0.00		DATE SETTLEMENT SIGNED 8 / 8 / 2017		
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
COPY OF SETTLEMENT MUST BE ATTACHED					
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum				
	ORGANIZATION Law Office of Daniel Greenbaum			TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320			FAX NUMBER (424) 243-7698	
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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 settlement 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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Attorneys for Defendants SINGER SEWING COMPANY
and DYNO LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHEFA LMV, INC.,
Plaintiff,

vs.

SINGER SEWING COMPANY; DYNO LLC;
and DOES 1 through 100, Inclusive,
Defendants.

Case No. BC668992

[PROPOSED] CONSENT JUDGMENT

Action Filed: July 18, 2017

Case No. BC668992

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff
4 Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”), Singer Sewing Company (“**SINGER**”), and Dyno LLC
5 (“**DYNO**”), with Shefa, SINGER, and DYNO individually referred to as a “**Party**” and collectively
6 as the “**Parties.**”

7 **1.2 Plaintiff**

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

11 **1.3 Settling Defendants**

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

15 **1.4 Products Covered**

16 The products covered by this Consent Judgment are plastic sewing kit products that contain
17 Di-[2-Ethylhexyl]Phthalate) (“**DEHP**”) without first providing a clear and reasonable warning as
18 required by Proposition 65 that are manufactured, sold, or distributed for sale in California by
19 SINGER including, but not limited to: Singer Beginner’s Sew Kit; UPC: 075691015183
20 (collectively, the “**Covered Products**”).

21 **1.5 General Allegations**

22 Shefa alleges that SINGER and DYNO manufacture, import, sell, or distributes, for sale in
23 the state of California, plastic sewing kits that contain DEHP without first providing a clear and
24 reasonable warning required by Proposition 65. DEHP (CAS # 117-81-7) is a chemical listed under
25 Proposition 65 as a chemical “known to the state to cause cancer and/or reproductive toxicity” as
26 Proposition 65 defines that term. 27 CCR 25000. Defendants deny these allegations.

27 **1.6 Notice of Violation**

28 On November 3, 2016, Shefa served SINGER, others, and the requisite public enforcement

1 agencies with a 60-Day Notice of Violation (“Notice”) alleging that SINGER violated Proposition
2 65 when it failed to warn its customers and consumers in California that the Covered Products
3 expose users to DEHP. On May 8, 2017, Shefa served DYNO, others, and the requisite public
4 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that DYNO violated
5 Proposition 65 when it failed to warn its customers and consumers in California that the Covered
6 Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has
7 commenced and is diligently prosecuting the allegations set forth in the Notice.

8 **1.7 Complaint**

9 On July 18, 2017, Shefa filed the instant complaint in the Superior Court in and for the
10 County of Los Angeles against SINGER, DYNO, and DOES 1-100, alleging violations of
11 California Health & Safety Code § 25249.6, based on exposures to DEHP contained in the covered
12 products sold in the State of California (the “Complaint”).

13 **1.8 No Admission**

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

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Defendants as to the allegations in the Complaint, that venue is proper in the
26 County of Los Angeles, the Defendants agree that they employ or have employed ten or more
27 persons during time periods relevant to the Complaint and that this Court has jurisdiction over the
28 Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the
3 Notice of Entry of Judgment is served by Shefa on Defendants. Notice of Entry of Judgment may
4 be validly served via email to counsel for Defendants.

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

6 **2.1 Reformulation Standards**

7 “Compliant Products” are defined as those Products containing the Listed Chemical in
8 concentrations less than or equal to 1,000 parts per million (“ppm”) (0.1%) when analyzed pursuant
9 to a scientifically reliable application of U.S. Environmental Protection Agency testing
10 methodologies 3580A and 8270C or any other scientifically reliable methodology for determining
11 the Listed Chemical content in a substance of the form of the Covered Products herein.

12
13 Defendants agree, promise, and represent that, within six months of the Effective Date, to
14 the extent they ship or sell any Covered Products in inventory that have not been reformulated, they
15 will provide warnings on such Covered Products that comply with Proposition 65.

16 The warnings shall be provided in such a conspicuously and prominent manner that will
17 assure the message is made available and likely to be read, seen, or heard by the consumer prior to
18 or at the time of the sale or purchase.

19 The Parties agree that product labeling or packaging stating either
20

21 **"WARNING:** This product contains a chemical known to the State of California to
22 cause birth defects and other reproductive harm"

23 or

24 **"WARNING:** This product contains a chemical known to the State of California to
25 cause cancer and birth defects or other reproductive harm"

26 shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered
27 Products for any Covered Products. Optionally, Defendants may also use a warning method that is
28 compliant with Article 6 of Title 27 of the California Code of Regulations, including revisions

becoming effective post-Effective Date. See Cal. Code Reg., tit. 27, §§ 25600 et seq.

2.2 Reformulation

Commencing six months from the Effective Date, and continuing thereafter, SINGER and DYNO shall not manufacture, or cause to be manufactured, for sale in California, or order for distribution or sale in California, Covered Products unless they are compliant with Section 2.1 above.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Defendants agree to an assessment of \$2,000.00 as a civil penalty. Such penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Shefa. The civil payment shall be due within 5 business days of the Effective Date and shall be allocated as follows: (a) \$1,500.00 payable to OEHHA; and (b) \$500.00 payable to Shefa.

3.2 Reimbursement of Attorney Fees and Costs

The Parties reached an accord on the compensation due to Shefa and its counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within 5 business days of the Effective Date, \$13,000.00 shall be payable by Defendants to the Law Office of Daniel N. Greenbaum for all fees and costs through execution of this Consent Judgment, including fees and costs incurred investigating, bringing this matter to the attention of Defendants’ management, and negotiation of this settlement.

4. CLAIMS COVERED AND RELEASED

4.1 Shefa’s Public Release of SINGER

This Consent Judgment is a full, final, and binding resolution between Shefa and Defendants 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 Cal. Health & Safety Code § 25249.7, against Defendants, their parents, subsidiaries, affiliated entities under common

1 ownership, manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors,
2 successors, or assigns of each of them, and each entity to whom Defendants directly or indirectly
3 distribute or sell the Covered Products, including, without limitation Target Corporation,
4 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and
5 licensees (“**Releasees**”), based on failure to warn of alleged exposures to DEHP from Covered
6 Products manufactured, sold or distributed for sale in California by Defendants prior to the
7 Effective Date. The release in this Section 4.1 applies to all Covered Products that Defendants
8 manufactured, distributed, or sold prior to the Effective Date, regardless of the date any other
9 Releasee distributes or sells the Covered Products.

10 Upon entry of this Consent Judgment by the Court, going forward, SINGER’s and DYN0’s
11 compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with
12 Proposition 65 by Defendants or any other Releasee with respect to DEHP in Covered Products
13 manufactured, sold, or distributed for sale in California by Defendants on and after the Effective
14 Date.

15 **4.2 Shefa’s Individual Release of Claims**

16 In further consideration of the promises and agreements herein contained, Shefa, on its own
17 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
18 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
19 legal action, and releases all claims that it may have against Defendants and Releasees, including,
20 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
21 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
22 fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP from
23 Covered Products manufactured, sold, or distributed for sale in California by Defendants prior to
24 the Effective Date. The releases in Section 4.2 are provided in Shefa’s individual capacity and are
25 not releases on behalf of the public.

26 **4.3 Defendants’ Release of Shefa**

27 Defendants, on their own behalf and on behalf of their past and current agents,
28 representatives, attorneys, successors, and assignees, hereby waive any and all claims that they may

1 have against Shefa and its attorneys and other representatives, for any and all actions taken or
2 statements made by Shefa and its attorneys and other representatives, whether in the course of
3 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
4 respect to the Covered Products.

5 **5. COURT APPROVAL**

6 This Consent Judgment is not effective until it is approved and entered by the Court and
7 shall be null and void if, for any reason, it is not approved and entered by the Court within 90 days
8 after it has been fully executed by the Parties, or by such additional time as the Parties may agree in
9 writing.

10 **6. SEVERABILITY**

11 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
12 Judgment is held by a court to be void or unenforceable, or the Parties agree to modify any terms
13 due to comments from the Office of the Attorney General or after a hearing before the Court in
14 connection with Shefa's Motion to Approve, or for other good cause, each Party to be bound by any
15 such modified terms must re-execute the modified Consent Judgment and such modified Consent
16 Judgment then shall be presented by Shefa to the Court for approval; provided, however, that if a
17 provision of this Consent Judgment declared void or unenforceable is material to the Party for
18 whom such term provided a benefit or protection, that Party can seek other remedies, including,
19 without limitation, rescission or reformation, based on the provision being declared void or
20 unenforceable.

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within the State of California. DEHP is listed pursuant to Proposition 65 as a chemical
24 that is known to the State of California to cause cancer and/or reproductive toxicity. In the event
25 that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or
26 as to the Covered Products, including without limitation the delisting of DEHP, then Defendants
27 may provide written notice to Shefa of any asserted change in the law, and with the exception of
28 Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with

1 respect to, and to the extent that, the Covered Products are so affected. None of the terms of this
2 Consent Judgment shall have any application to Covered Products sold outside of the State of
3 California.

4 **8. NOTICE**

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

9 To SINGER and DYNO:
10 Greg Sperla, Esq.
11 GREENBERG TRAURIG LLP
12 1201 K Street, Suite 1100
13 Sacramento CA 95814

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

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

16 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

20 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

23 **11. POST EXECUTION ACTIVITIES**

24 **11.1** The Parties acknowledge that, pursuant to California Health & Safety Code
25 § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent
26 Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to
27 submit this Consent Judgment to the Court with a motion seeking Court approval.
28

1 **12. MODIFICATION**

2 **12.1** In the event OEHHA establishes a safe harbor No-Significant Risk Level (“NSRL”)
3 for DEHP, which Defendants assert would allow for the Covered Products to contain levels of
4 DEHP in amounts greater than those set forth above in Section 2.1, then Defendants may provide
5 written notice to Shefa of any such assertion and the Parties shall confer within 30 days to attempt
6 to agree upon modification of this Consent Judgment. Should such attempt at informal resolution of
7 a modification fail, and in the event Defendants still intend to change its reformulation obligations,
8 Defendants will provide written notice to Shefa of their intent to adopt a modified compliance
9 standard. Upon receipt of Defendants’ notice, Shefa shall have the right to enforce the terms and
10 conditions contained in the Consent Judgment by motion or any other available remedy at law, with
11 the sole issue to be adjudicated being the technical question of whether the NSRL would allow for a
12 higher DEHP content in the Covered Products than that set forth in Section 2.1.

13 **12.2** This Consent Judgment may only be modified by a written instrument executed by
14 the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion.
15 Any motion to modify shall be served on all Parties and the Office of the Attorney General.

16 **13. DISPUTE RESOLUTION**

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


26 **14. AUTHORIZATION**

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

1 Consent Judgment.

2
3 AGREED TO:

4
5 Date: 7/25/2017

6
7 By: 
8 Sheela LMV, Inc.

AGREED TO:

9 Date: 8/8/2017

10
11 By: 
12 Singer Sewing Company

13 AGREED TO:

14 Date: 8/1/17

15
16 By: 
17 Dyno LLC

[PROPOSED] JUDGMENT

Please note that on _____, 2017 at _____, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Singer Sewing Company and Dyno LLC came for hearing before this Court in Department 69, the Honorable William F. Fahey 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.

The Settlement Agreement is hereby approved, and the clerk is directed to ENTER JUDGMENT in accordance with the terms of the Settlement Agreement above.

Date

Judge of the Superior Court