

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 Southern Telecom, Inc.				
CASE INFO	COURT DOCKET NUMBER BC664842		COURT NAME Los Angeles County Superior Court		
	SHORT CASE NAME Shefa v. Southern Telecom				
REPORT INFO	INJUNCTIVE RELIEF Reformulation and/or Warning label				
	PAYMENT: CIVIL PENALTY \$6,000		PAYMENT: ATTORNEYS FEES \$27,750		For Internal Use Only
	PAYMENT: OTHER 0.00		DATE SETTLEMENT SIGNED 8 / 3 / 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	
	CITY Van Nuys		STATE ZIP CA 91406		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 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.

LAW OFFICE OF DANIEL N. GREENBAUM
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Attorneys for Defendant SOUTHERN TELECOM, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,)	Case No. BC 664842
)	Dept. 12
Plaintiff,)	Hon. Barbara A. Meiers
vs.)	
SOUTHERN TELECOM, INC.; and DOES 1)	[PROPOSED] CONSENT JUDGMENT
through 100, Inclusive,)	AS TO SOUTHERN TELECOM, INC.
Defendants.)	

Action Filed: June 12, 2017

1. INTRODUCTION

1.1 Parties

This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”) and Southern Telecom, 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 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 headphones, including but not limited to Art & Sound Bluetooth Wireless Headphones AR500-BK, with a product identifier of UPC: 680079350024, and “**Limited Too™ Glitterbomb Headphones with Mic**” with a product identifier of UPC: 680079065003, and Emerson Ultra Bass Headphones with a product identifier of UPC: 680079805203; that are manufactured, sold, or distributed for sale in California by Defendant that contain Di-[2-Ethylhexyl] Phthalate (“DEHP”) (collectively, the “**Covered Products**”) without first providing a clear and reasonable warning as required by Proposition 65.

1.5 General Allegations

Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state of California, headphones that contain DEHP without first providing a clear and reasonable warning required by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer or reproductive toxicity as Proposition 65 defines that term. 27 CCR §25000. Defendant denies these allegations.

1 **1.6 Notice of Violation**

2 On March 2, 2017, May 8, 2017, and May 26, 2017, Shefa served Defendant and the
3 requisite public enforcement agencies with 60-Day Notices of Violation alleging that Defendant
4 violated Proposition 65 when it failed to warn its customers and consumers in California that the
5 Covered Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer
6 has commenced and is diligently prosecuting the allegations set forth in the Notices.

7 **1.7 Complaint**

8 On June 12, 2017, Shefa filed the instant complaint in the Superior Court in and for the
9 County of Los Angeles against Defendant and DOES 1-100, alleging violations of California
10 Health & Safety Code § 25249.6, based on exposures to DEHP contained in the Covered Products
11 sold in the State of California (the "**Complaint**").

12 **1.8 No Admission**

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

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate this Court has jurisdiction
24 over Defendant as to the allegations in the Complaint, that venue is proper in the County of Los
25 Angeles, the Defendant agrees that it employs or has employed ten or more persons during time
26 periods relevant to the Complaint, and that this Court has jurisdiction over the Parties to enter and
27 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 Consent Judgment is approved and entered by the Court.

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


5 **2.1 Reformulation Standards.** As of the Effective Date, Defendant shall
6 manufacture, distribute, or sell Compliant Products in California. “Compliant Products” are defined
7 as those Products containing DEHP in concentrations less than or equal to 1000 parts per million
8 (“ppm”) (0.1%) when analyzed pursuant to a scientifically reliable application of U.S.
9 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
10 scientifically reliable methodology for determining DEHP content in a substance of the form of the
11 Covered Products herein.

12 **2.2 Warning Standards.** Defendant agrees, promises, and represents that, as of
13 ninety (90) days after the Effective Date, to the extent it ships or sells Products for sale to California
14 customers from its Existing Inventory that does not comply with Section 2.1, it will provide
15 warnings as set forth in Section 2.3 on such Products and that such warnings will comply with
16 Proposition 65. “Existing Inventory” excludes products shipped, sold, and/or otherwise distributed
17 on or prior to the Effective Date, even if sold or distributed by Downstream Releasees (as described
18 in Paragraph 4.1 below) after the Effective Date.

19 **2.3 Warning Language.** The warnings shall be provided in such a conspicuously
20 and prominent manner that will assure the message is made available and likely to be read, seen, or
21 heard by the consumer prior to or at the time of the sale or purchase. The Parties agree that product
22 labeling stating one of the following shall constitute compliance with Proposition 65 with respect to
23 any Covered Products not reformulated:

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

26 Or

27 “  **WARNING:** This product can expose you to chemicals including Di-[2-

Ethylhexyl] Phthalate (DEHP) which are known to the State of California to cause cancer, birth defects, or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

3. MONETARY SETTLEMENT TERMS

3.1 Payment from Defendant. Defendant shall make the Total Settlement Payment of \$33,750.00 according to Section 3.2 on the payment schedule as defined in Section 3.3.

3.2 Allocation of Payments. The Total Settlement Payment shall be paid and allocated as follows:

3.2.1 Civil Penalty. Defendant shall pay \$6,000.00 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)). Accordingly, the OEHHA portion of the civil penalty payment in the amount of \$4,500.00 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

The Shefa portion of the civil penalty payment in the amount of \$1,500.00 shall be made 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 \$27,750.00 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.

3.3 Timing of Payments. Within ten (10) business days of the Effective Date, Defendant shall make the first of four (4) Settlement payments of \$8,437.50 with three (3) subsequent \$8,437.00 payments to be due on or before thirty (30) days after of the proceeding payment thereafter until the full \$33,750.00 has been paid.

3.3.1 The first batch of Settlement checks should be made as follows: 1) \$4,500.00 made payable to OEHHA per 3.2.1 above; 2) \$1,500.00 made payable to Shefa LMV, Inc. per 3.2.1 above; and 3) \$2,437.50 made payable to the Law Office of Daniel Greenbaum per Section 3.2.2 above.

3.3.2 The subsequent three (3) Settlement payments of \$8,437.50 should be made payable to Law Office of Daniel Greenbaum per Section 3.2.2 above.

4. CLAIMS COVERED AND RELEASED

4.1 Shefa's Public Release of Defendant and its Downstream Releasees

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 under common ownership, manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of each of them ("Releasees"), and each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered Products, including, without limitation, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees,

1 including but not limited to PLR IP Holdings, LLC, and Polaroid Corp., (including any parent
2 corporations, subsidiaries and affiliates) Burlington Stores Inc., (including any parent
3 corporations, subsidiaries and affiliates), J. C. Penney Company, Inc., (including any parent
4 corporations, subsidiaries and affiliates), Family Dollar, Inc. (including any parent corporations,
5 subsidiaries and affiliates), 99 Cents Only Stores, Inc., (including any parent corporations,
6 subsidiaries and affiliates) and AIT, Inc. (including any parent corporations, subsidiaries and
7 affiliates) (“Downstream **Releasees**”), based on failure to warn of alleged exposures to DEHP from
8 Covered Products manufactured, sold, exported or distributed for sale in California by Defendant
9 prior to the Effective Date. The release in this Section 4.1 applies to all Covered Products that
10 Defendant manufactured, exported, distributed, or sold prior to the Effective Date, regardless of the
11 date any other Releasee distributes or sells the Covered Products.

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

16 **4.2 Shefa’s Individual Release of Claims**

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

1 **4.3 Defendant's Release of Shefa**

2 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
4 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
5 by Shefa and its attorneys and other representatives, whether in the course of investigating claims,
6 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered
7 Products.

8 **4.4 Release of Unknown Claims**

9 It is possible that other claims not known to the Parties arising out of the facts contained in
10 the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
11 discovered or developed. Shefa, on behalf of itself only, on the one hand, and Defendant, on the
12 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all
13 such claims through and including the Effective Date, including all rights of action therefor. Shefa
14 and Defendant acknowledge that the claims released in Section 4 may include unknown claims, and
15 nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542,
16 which reads as follows:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
18 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
19 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
20 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
21 **WITH THE DEBTOR.**

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

27 **5. COURT APPROVAL**

28 This Consent Judgment is not effective until it is approved and entered by the Court and
shall be null and void if, for any reason, it is not approved and entered by the Court within ninety

(180) days after it has been fully executed by the Parties, or by such additional time as the Parties may agree in writing.

6. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any provision of this Consent Judgment is held by a court to be void or unenforceable, or the Parties agree to modify any terms due to comments from the Office of the Attorney General or after a hearing before the Court in connection with Shefa's Motion to Approve, or for other good cause, each Party to be bound by any such modified terms must re-execute the modified Consent Judgment and such modified Consent Judgment then shall be presented by Shefa to the Court for approval; provided.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. If Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, including without limitation the delisting of DEHP, then Defendant may provide written notice to Shefa of any asserted change in the law, and with the exception of Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered Products are so affected. None of the terms of this Consent Judgment shall have any application to Covered Products sold outside of the State of California.

8. NOTICE

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

To Defendant:

LGE LAW
Lazar Grunsfeld Elnadav, Esq.
1795 Coney Island Avenue
Brooklyn NY 11230

To Shefa:

Daniel N. Greenbaum
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.

9. 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.

10. 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).

11. 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.

12. 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.

13. 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 in an attempt 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 attempts at informal resolution fail, the party

alleging a violation may file its lawsuit seeking the proposed relief.

14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 8/3/2017

Date: 8/3/17

By: 

SHEFA LMV, INC.

By:  C.O.O.

SOUTHERN TELECOM, INC.

1 **[PROPOSED] JUDGMENT**

2
3 Please note that on _____, 2017 at _____, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for
4 Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Southern
5 Telecom, Inc. came for hearing before this Court in Department 12, the Honorable Barbara A. Meiers
6 presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

7 After full consideration of the points and authorities and related pleadings submitted, the Court
8 GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code
9 §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following
10 findings pursuant to Health & Safety Code § 25249.7(f)(4):

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

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

15 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.
16

17 The Settlement Agreement is hereby approved, and the clerk is directed to ENTER
18 JUDGMENT in accordance with the terms of the Settlement Agreement above.
19
20

21 _____
22 Date

Judge of the Superior Court