

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)				
	DEFENDANT(S) INVOLVED IN SETTLEMENT				
CASE INFO	COURT DOCKET NUMBER			COURT NAME	
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED / /	
	COPY OF SETTLEMENT MUST BE ATTACHED				For Internal Use Only
FILER INFO	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER ()	
	ADDRESS			FAX NUMBER ()	
	CITY	STATE	ZIP 91406	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 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
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.

BICK LAW LLP
Kimberly Bick, Esq. (SBN 15143)
Caroline Plant, Esq. (SBN 247358)
520 Newport Center Drive Suite 750
Newport Beach, CA 92660
Direct: (949) 432-3505
Cell: (310) 422-0220
Email: cplant@bicklawllp.com

Attorneys for Defendants PETCO ANIMAL SUPPLIES, INC. and
CENTRAL GARDEN AND PET COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

PETCO ANIMAL SUPPLIES, INC.;
CENTRAL GARDEN & PET COMPANY; and
DOES 1 through 100, Inclusive,

Defendants.

Case No. BC668588

**[PROPOSED] CONSENT JUDGMENT
AS TO PETCO ANIMAL SUPPLIES,
INC. AND CENTRAL GARDEN & PET
COMPANY**

Action Filed: July 13, 2017

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

3
4
5
6
7

8

901

2

3
4
5

6

7
8
9
0
1
2
3
4
5

1

2

7

8

3

4

8

9

1 and duties under this Consent Judgment.

2 **1.9 Consent to Jurisdiction**

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

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the
10 Consent Judgment is approved and entered by the Court.

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


12 **2.1 Reformulation Standards.** As of the Effective Date, Defendants and their
13 suppliers of Covered Products, shall only manufacture Compliant Products for distribution or sale in
14 California. “Compliant Products” are defined as those Products containing the Listed Chemical in
15 concentrations less than or equal to 1000 parts per million (“ppm”) (0.1%) when analyzed pursuant
16 to a scientifically reliable application of U.S. Environmental Protection Agency testing
17 methodologies 3580A and 8270C or any other scientifically reliable methodology for determining
18 the Listed Chemical content in a substance of the form of the Covered Products herein.

19 **2.2 Warning Standards.** Each Defendant agrees, promises, and represents that, for
20 all Covered Products manufactured after the Effective Date, that are not Compliant Products,
21 Defendant will provide warnings on such Covered Products that comply with Proposition 65. The
22 warning requirements contained in this section do not apply to Covered Product manufactured or in
23 the stream of commerce prior to the Effective Date. The warnings shall be provided in such a
24 conspicuously and prominent manner that will assure the message is made available and likely to be
25 read, seen, or heard by the consumer prior to or at the time of the sale or purchase. The Parties
26
27
28

1 agree that product labeling stating one of the following shall constitute compliance with Proposition
2 65 with respect to any Covered Products not reformulated:

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

5 Or

6 “ **WARNING:** This product can expose you to chemicals including Di-[2-
7 Ethylhexyl] Phthalate (DEHP) which are known to the State of California to cause
8 cancer, birth defects or reproductive harm. For more information go to
9 www.P65Warnings.ca.gov.”

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Payment from Defendants.** Within ten (10) business days of the Effective Date,
12 Defendants shall make the Total Settlement Payment of **\$36,500.00**.

13 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
14 separate checks made payable and allocated as follows:

15 **3.2.1 Civil Penalty.** Defendants shall pay \$7,500.00 as a civil penalty
16 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
17 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
18 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the
19 OEHHA portion of the civil penalty payment in the amount of \$5,625.00 shall be made payable to
20 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
21 delivered as follows:

22 For United States Postal Service Delivery:

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

1 For Non-United States Postal Service Delivery:

2 Attn: Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street, MS #19B
6 Sacramento, CA 95814

7 The Shefa portion of the civil penalty payment in the amount of \$1,875.00 shall be made
8 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
9 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
10 Ave, Suite 320, Van Nuys, CA 91406.

11 **3.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's
12 fees and costs in the amount of \$29,000.00 payable to the "Law Office of Daniel N. Greenbaum,"
13 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
14 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

15 **4. CLAIMS COVERED AND RELEASED**

16 **4.1 Shefa's Public Release of Defendants and their Downstream Releasees**

17 This Consent Judgment is a full, final, and binding resolution between Shefa and each
18 Defendant of any violation of Proposition 65 that was or could have been asserted by Shefa, acting
19 on behalf of itself and in a representative capacity in the public interest under Health & Safety Code
20 § 25249.7, against Defendants, including their parents, subsidiaries, affiliated entities under
21 common ownership, manufacturers, suppliers, directors, officers, employees, attorneys, and the
22 predecessors, successors, or assigns of each of them, and each entity to whom Defendants directly
23 or indirectly exports, distributes or sells the Covered Products, including, without limitation,
24 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and
25 licensees ("**Releasees**"), based on failure to warn of alleged exposures to DEHP from Covered
26 Products manufactured, sold, exported or distributed for sale in California by Defendants prior to
27 the Effective Date. The release in this Section 4.1 applies to all Covered Products that Defendants
28 manufactured, exported, distributed, or sold prior to the Effective Date, regardless of the date of sale

1 by Defendant or any Releasee. Petco is specifically included as a Releasee of Central Garden.

2 Upon entry of this Consent Judgment by the Court, going forward, Defendants' compliance
3 with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition
4 65 by Defendants or any other Releasee with respect to DEHP in Covered Products manufactured,
5 sold, or distributed for sale in California by Defendants on and after the Effective Date.

6 **4.2 Shefa's Individual Release of Claims**

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

17 **4.3 Defendants' Release of Shefa**

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

24 **4.4 Release of Unknown Claims**

25 It is possible that other claims not known to the Parties arising out of the facts contained in
26 the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
27

1 discovered or developed. Shefa, on behalf of itself only, on the one hand, and Defendants, on the
2 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all
3 such claims through and including the Effective Date, including all rights of action therefor. Shefa
4 and Defendants acknowledge that the claims released in Section 4 may include unknown claims,
5 and nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542,
6 which reads as follows:

7 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
8 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
9 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
10 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
11 **WITH THE DEBTOR.**

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

17 **5. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved and entered by the Court within ninety
20 (90) days after it has been fully executed by the Parties, or by such additional time as the Parties
21 may agree in writing.

22 **6. SEVERABILITY**

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

1 provision of this Consent Judgment declared void or unenforceable is material to the Party for
2 whom such term provided a benefit or protection, that Party can seek other remedies, including,
3 without limitation, rescission or reformation, based on the provision being declared void or
4 unenforceable.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. DEHP is listed pursuant to Proposition 65 as a chemical
8 that is known to the State of California to cause cancer and/or reproductive toxicity. In the event
9 that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or
10 as to the Covered Products, including without limitation the delisting of DEHP, then Defendants
11 may provide written notice to Shefa of any asserted change in the law, and with the exception of
12 Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with
13 respect to, and to the extent, the Covered Products are so affected. None of the terms of this
14 Consent Judgment shall apply to Covered Products sold outside of the State of California.

15 **8. NOTICE**

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

20 To Settling Defendants:

To Shefa:

21 Caroline L. Plant, Esq.
22 BICK LAW LLP
23 520 Newport Center Dr., Suite 750
Newport Beach CA 92660

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

24
25 Any Party may, from time to time, specify in writing to the other Party a change of address to which
26 all notices and other communications shall be sent.
27

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4

5

6
7

8

9
0
1
2

3

4
5
6
7
8
9
0
1
2
3
4

5
6

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 Defendants. 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 attempt 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: 8/8/2017

Date: _____

By: 

SHEFA LMV, INC.

By: _____

PETCO ANIMAL SUPPLIES, INC.

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 Defendants. 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 attempt 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: _____

Date: 8/8/2017

By: _____

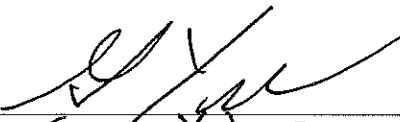
By: 

SHEFA LMV, INC.

PETCO ANIMAL SUPPLIES, INC.

1 AGREED TO:

2
3 Date: 8/8/2017

4
5
6 By: 
7 CENTRAL GARDEN & PET COMPANY

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7

8
9
0

1
2

- 3
4
5
6
7

90

2

3
4
5