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

FORM JUS 1501 (03-01)

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612 PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

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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.

1 2 3 4 5	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 Attorney for Plaintiff SHEFA LMV, INC.	
6 7 8	BICK LAW LLP Kimberly Bick, Esq. (SBN 15143) Caroline Plant, Esq. (SBN 247358)	
9 10 11	520 Newport Center Drive Suite 750 Newport Beach, CA 92660 Direct: (949) 432-3505 Cell: (310) 422-0220 Email: cplant@bicklawllp.com	
12 13	Attorneys for Defendants PETCO ANIMAL SU CENTRAL GARDEN AND PET COMPANY	PPLIES, INC. and
14	SUPERIOR COURT OF T	HE STATE OF CALIFORNIA
15	COUNTY OF	LOS ANGELES
16 17	SHEFA LMV, INC.,) Case No. BC668588
	Plaintiff,) [PROPOSED] CONSENT JUDGMENT
18 19	vs.	 AS TO PETCO ANIMAL SUPPLIES, INC. AND CENTRAL GARDEN & PET COMPANY
19 20	,	 AS TO PETCO ANIMAL SUPPLIES, INC. AND CENTRAL GARDEN & PET COMPANY
19 20 21	vs. PETCO ANIMAL SUPPLIES, INC.; CENTRAL GARDEN & PET COMPANY; and	AS TO PETCO ANIMAL SUPPLIES, INC. AND CENTRAL GARDEN & PET COMPANY ii
19 20	vs. PETCO ANIMAL SUPPLIES, INC.; CENTRAL GARDEN & PET COMPANY; and DOES 1 through 100, Inclusive,	AS TO PETCO ANIMAL SUPPLIES, INC. AND CENTRAL GARDEN & PET COMPANY ii
19 20 21 22	vs. PETCO ANIMAL SUPPLIES, INC.; CENTRAL GARDEN & PET COMPANY; and DOES 1 through 100, Inclusive,	AS TO PETCO ANIMAL SUPPLIES, INC. AND CENTRAL GARDEN & PET COMPANY ii
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1. INTRODUCTION

1.1 Parties

This consent judgment ("Consent Judgment") is entered into by and between plaintiff
Shefa LMV, Inc. ("Shefa" or "Plaintiff") and Petco Animal Supplies, Inc. ("Petco") and Central
Garden & Pet Company and affiliates ("Central Garden"), with Petco and Central Garden
collectively referred to as "Defendants." Shefa, Petco and Central Garden are 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 Defendants

Petco and Central Garden each employ ten or more persons and each 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 handled pet stake products, including but not limited to You & Me Well Grounded Stake, with a product identifier of UPC: 800443980910, and plastic aquarium accessories, including but not limited to Imagitarium™ Fine Mesh Net For Shrimp, SKU2580993; UPC: 800443224663, Imagitarium™ Aquarium Nets (SKU2581005, SKU2581013, SKU2581021, SKU2581030) and the Aqueon Siphon Vacuum Gravel Cleaner, Mini 5"; Item #06226; UPC: 015905062268, that are manufactured, sold, or distributed for sale in California by Defendants 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 Defendants manufacture, import, sell, or distribute, for sale in the state of California, the Covered Products 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. Defendants deny these allegations.

1.6 Notice of Violation

On March 2, 2017 and April 6, 2017, Shefa served Defendants and the requisite public enforcement agencies with a 60-Day Notice of Violation alleging Defendants violated Proposition 65 when they failed to warn their customers and consumers in California that the Covered Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On July 13, 2017, Shefa filed the instant complaint in the Superior Court in and for the County of Los Angeles against Petco, Central Garden and DOES 1-100, alleging violations of California Health & Safety Code § 25249.6, based on exposures to DEHP contained in the covered products sold in the State of California (the "Complaint").

1.8 No Admission

Defendants deny the material, factual, and legal allegations contained in the Notice and Complaint and maintain that all the products they have manufactured, sold, or distributed for sale in California, including the Covered Products, have been, and are, in compliance with all laws.

Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendants of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendants. This section shall not, however, diminish or otherwise affect Defendants' obligations, responsibilities,

and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

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

1.10 Effective Date

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

2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

- 2.1 Reformulation Standards. As of the Effective Date, Defendants and their suppliers of Covered Products, shall only manufacture Compliant Products for distribution or sale in California. "Compliant Products" are defined as those Products containing the Listed Chemical in concentrations less than or equal to 1000 parts per million ("ppm") (0.1%) when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology for determining the Listed Chemical content in a substance of the form of the Covered Products herein.
- 2.2 Warning Standards. Each Defendant agrees, promises, and represents that, for all Covered Products manufactured after the Effective Date, that are not Compliant Products, Defendant will provide warnings on such Covered Products that comply with Proposition 65. The warning requirements contained in this section do not apply to Covered Product manufactured or in the stream of commerce prior to the Effective Date. The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase. The Parties

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	Oŗ
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 Fiscal Operations Branch Chief
24	Office of Environmental Health Hazard Assessment
25	P.O. Box 4010, MS #19B Sacramento, CA 95812-4010
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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 \$1,875.00 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 \$29,000.00 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 Shefa's Public Release of Defendants and their Downstream Releasees

This Consent Judgment is a full, final, and binding resolution between Shefa and each 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 Defendants, including their parents, subsidiaries, affiliated entities under common ownership, manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and each entity to whom Defendants directly or indirectly exports, distributes or sells the Covered Products, including, without limitation, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on failure to warn of alleged exposures to DEHP from Covered Products manufactured, sold, exported or distributed for sale in California by Defendants prior to the Effective Date. The release in this Section 4.1 applies to all Covered Products that Defendants manufactured, exported, distributed, or sold prior to the Effective Date, regardless of the date of sale

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

Upon entry of this Consent Judgment by the Court, going forward, Defendants' compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65 by Defendants or any other Releasee with respect to DEHP in Covered Products manufactured, sold, or distributed for sale in California by Defendants 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 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that it may have against Defendants and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP from Covered Products manufactured, sold, or distributed for sale in California by Defendants and Releasees prior to the Effective Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not releases on behalf of the public.

4.3 Defendants' Release of Shefa

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

4.4 Release of Unknown Claims

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

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

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

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

5. COURT APPROVAL

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 (90) 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, however, that if a

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

GOVERNING LAW 7.

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer and/or reproductive toxicity. In the event that 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 Defendants 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, the Covered Products are so affected. None of the terms of this Consent Judgment shall apply 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 Settling Defendants:

Caroline L. Plant, Esq.

To Shefa:

BICK LAW LLP

Daniel N. Greenbaum

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Law Office of Daniel N. Greenbaum 7120 Hayvenhurst Ave., Suite 320

Newport Beach CA 92660

520 Newport Center Dr., Suite 750

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.

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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

- 12.1 In the event OEHHA establishes a No-Significant Risk Level ("NSRL") for DEHP, which Defendants assert would allow for the Covered Products to contain levels of DEHP in amounts greater than those set forth above in Section 2.1, then Defendants may provide written notice to Shefa of any such assertion and the Parties shall confer within 30 days to attempt to agree upon modification of this Consent Judgment. Should such attempt at informal resolution of a modification fail, and in the event either Defendant still intends to change its reformulation obligations, such Defendant will provide written notice to Shefa of its intent to adopt a modified compliance standard. Upon receipt of Defendant's notice, Shefa shall have the right to enforce the terms and conditions contained in the Consent Judgment by motion or any other available remedy at law, with the sole issue to be adjudicated being the technical question of whether the NSRL would allow for a higher DEHP content in the Covered Products than that set forth in Section 2.1.
- 12.2 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.

1	Any motion to modify shall be served on all Parties and the Office of the Attorney General.
2	13. DISPUTE RESOLUTION
3	If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
4	Shefa shall provide notice to Defendants. Prior to bringing any action to enforce any requirement of
5	this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the
6	other party with written notice of the grounds for such allegation together with all supporting
7	information as well as a complete demand for the relief sought. The Parties shall then meet and
8	confer regarding the basis for the allegation in an attempt to resolve the matter informally, including
9	providing the party alleged to be in violation with a reasonable opportunity of at least thirty (30)
10	days to cure any alleged violation. Should such attempt at informal resolution fail, the party
11	alleging a violation may file its lawsuit seeking the proposed relief.
12	14. AUTHORIZATION
13	The undersigned are authorized to execute this Consent Judgment on behalf of their
14	respective Parties and have read, understood and agree to all of the terms and conditions of this
15	Consent Judgment.
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17	AGREED TO: AGREED TO:
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19	Date:8/8/2017 Date:
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22	By:
23	SHEFA LMV, INC. PETCO ANIMAL SUPPLIES, INC.
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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:SHEFA LMV, INC.	By: PETCO ANIMAL SUPPLIES, INC.

1	AGREED TO:
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3	Date: 8/8/2017
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6	By: Gerry Junes
7	CENTRAL GARDEN & PET COMPANY
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[PROPOSED] CONSENT JUDGMENT AS TO PETCO ANIMAL SUPPLIES, INC.
AND CENTRAL GARDEN & PET COMPANY

1	ORDER AND JUDGMENT
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3	Please note that on, 2017 at, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion
4	for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Petco
5	Animal Supplies, Inc., and Central Garden & Pet Company came for hearing before this Court in
6	Department 36, the Honorable Gregory Alarcon presiding. Counsel for Plaintiff did [not] appear;
7	counsel for Defendant did [not] appear.
8	After full consideration of the points and authorities and related pleadings submitted, the
9	Court GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code
10	§25249.7(f)(4).
11	The Court reviewed the above Settlement Agreement and makes the following findings
12	pursuant to Health & Safety Code § 25249.7(f)(4):
13	a. The injunctive relief required by the Settlement Agreement complies with Health &
14	Safety Code § 25249.7;
15	b. The reimbursement of fees and costs to be paid pursuant to the Settlement Agreement is
16	reasonable under California law; and
17	c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.
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19	The Settlement Agreement is hereby approved, and the clerk is directed to enter judgment in
20	accordance with the terms of the Settlement Agreement above.
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22	Dated:
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25	Judge of the Superior Court
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