

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 / /	For Internal Use Only
	COPY OF SETTLEMENT MUST BE ATTACHED				
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.

1 LAW OFFICE OF DANIEL N. GREENBAUM
2 Daniel N. Greenbaum, Esq. (SBN 268104)
3 The Hathaway Building
4 7120 Hayvenhurst Avenue, Suite 320
5 Van Nuys, CA 91406
6 Telephone: (818) 809-2199
7 Facsimile:(424) 243-7689
8 Email:dgreenbaum@greenbaumlawfirm.com

9 Attorney for Plaintiff SHEFA LMV, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 SHEFA LMV, INC.,) Case No. BC674333
13 Plaintiff,)
14 vs.) **[PROPOSED] CONSENT JUDGMENT**
15 EARTH THERAPEUTICS, INC.; and DOES 1) **AS TO SUNNY MARKETING**
16 through 100, Inclusive,) **SYSTEMS, INC. DBA EARTH**
17 Defendants.) **THERAPEUTICS LTD.,**
18) **ERRONEOUSLY SUED HEREIN AS**
19) **EARTH THERAPEUTICS, INC.**
20)
21)
22)
23)
24)
25)
26)
27)
28) Action Filed: September 1, 2017

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Shefa LMV, Inc.
4 (“Shefa”) on the one hand, and Sunny Marketing Systems, Inc. dba Earth Therapeutics Ltd.,
5 erroneously sued herein as Earth Therapeutics, Inc. (“Defendant”) on the other hand, with Shefa
6 and Defendant individually referred to as a “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Defendant 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
14 Code Section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Shefa alleges that Defendant manufactures, imports, sells, or distributes for sale to
17 consumers in the State of California plastic handled cuticle nipper products containing Di(2-
18 ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning
19 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is
20 known to the State of California to cause cancer and birth defects and other reproductive harm.
21 DEHP shall be referred to hereafter as the “Listed Chemical.”

22 **1.5 Product Description**

23 The products covered by this Consent Judgment are plastic handled cuticle nipper
24 products containing DEHP that are manufactured, sold, and/or distributed for authorized sale to
25 consumers in California by Defendant, including, but not limited to, Soft Touch Cuticle Nipper;
26 UPC: 073377522154 (“Products”).

1 **1.6 Notice of Violation**

2 On or about April 6, 2017, Shefa served Defendant and certain requisite public
3 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed
4 the recipients of Shefa’s allegation that Defendant violated Proposition 65 by failing to warn its
5 customers and consumers in California that the Products expose users to DEHP.

6 **1.7 Complaint**

7 After the 60-day notice period was exhausted without an authorized public prosecutor of
8 Proposition 65 having asserted such claims, Shefa filed the instant action against Defendant
9 (“Complaint”) for the alleged violations of Health & Safety Code § 25249.6 that are the subjects
10 of the Notice.

11 **1.8 No Admission**

12 Defendant denies the material, factual, and legal allegations contained in the Notice and
13 maintains that all of the products it has manufactured, sold, or distributed for authorized sale in
14 California, including the Products, have been, and are, in compliance with all laws, including
15 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by
16 Defendant of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall
17 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
18 of any fact, finding, conclusion of law, issue of law, or violation of law, the same being
19 specifically denied by Defendant. This section shall not, however, diminish or otherwise affect
20 Defendant’s obligations, responsibilities, and duties under this Consent Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in Los
24 Angeles County, and that this Court has jurisdiction to enter, enforce, and modify the provisions
25 of this Consent Judgment.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on which Shefa serves notice on the Defendant and the Office of the California Attorney General that the Court has approved and entered this Consent Judgment.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standard

“Compliant Products” are defined as those Products containing the Listed Chemical in concentrations less than or equal to 1,000 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.

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

2.2 Product Warnings

For all Products that contain a Listed Phthalate in an amount exceeding the Reformulation Standard set forth in Section 2.1 above, and which are manufactured, sold, or packaged for shipment to California following the Compliance Date, Defendant shall provide the following Proposition 65 warning:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

or

WARNING: This product contains phthalate chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

or



WARNING: This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The above warning statement shall be placed or affixed on the Product or its package so as to be able to be read and understood by an ordinary individual prior to purchase or use or it may be displayed at the point of purchase prior to final consummation of the sales transaction by which the product is acquired by someone in California.

3. STATUTORY PENALTY PAYMENTS

3.1 Civil Penalty

Defendant shall pay \$5,000.00 in civil penalties pursuant to California Health & Safety Code § 25249.7(b) in accordance with this Section. This penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(l) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Shefa. More specifically, within ten (10) business days of the Effective Date, Defendant shall issue two separate checks for the civil penalty payment to (a) “OEHHA” in the amount of \$3,750.00 and with the memo line on the check indicating “Prop 65 Penalties—Shefa LMV, Inc. v. Earth Therapeutics” (Defendant may reference OEHHA’s Tax Identification Number of 68-0284486 for this check); and (b) “Law Office of Daniel N. Greenbaum in Trust for Shefa” in the amount of \$1,250.00 (for which Shefa shall provide Defendant a completed IRS Form W-9 with a tax identification number within two days following the Effective Date, if not beforehand). These checks shall be delivered to the addresses listed in Section 3.2 below.

1 **3.2 Payment Delivery**

2 (a) Payment to Shefa shall be delivered to the following address:

3 Daniel N. Greenbaum, Esq.
4 Law Office of Daniel N. Greenbaum
5 The Hathaway Building
6 7120 Hayvenhurst Avenue, Suite 320
7 Van Nuys, CA 91406

8 (b) Payment to OEHHA shall be delivered to one of the following addresses:

9 For United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA 95812-4010

15 Or

16 For Non-United States Postal Service Delivery:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 1001 I Street
21 Sacramento, CA 95814

22 **4. REIMBURSEMENT OF FEES AND COSTS**

23 Defendant shall pay Shefa \$27,000.00 for fees and costs incurred as a result of
24 investigating, bringing this matter to Defendant’s attention, and negotiating a settlement in the
25 public interest. Defendant shall make its checks payable to “Law Office of Daniel N.
26 Greenbaum” and shall deliver payment to the address listed in Section 3(a) above within ten (10)
27 business days of the Effective Date. To facilitate timely payment, Shefa shall provide Defendant
28 with a completed IRS Form W-9 with the Law Office of Daniel N. Greenbaum’s tax
 identification number within two (2) days following the Effective Date if not beforehand.

5. CLAIMS COVERED AND RELEASED

5.1 Shefa’s Public Release of Proposition 65 Claims

 Shefa, acting on its own behalf and in the public interest, releases Defendant, and its
 parents, subsidiaries, affiliated entities, directors, officers, employees, and attorneys, and the
 predecessors, successors, or assigns of each of them as well as each entity from whom they

1 acquire the Products or the Products' components, and each entity to whom they directly or
2 indirectly distribute or sell Products, including, but not limited to, distributors, wholesalers,
3 dealers, customers, retailers (including, but not limited to, Home Goods and affiliated entities),
4 franchisees, cooperative members, licensors, and licensees, from all claims for violations of
5 Proposition 65 based on exposures to DEHP from Products manufactured, sold, or packaged by
6 Defendant prior to the Effective Date.¹

7 **5.2 Shefa's Private Releases of Claims**

8 Shefa, in its individual capacity and on its own behalf and on behalf of its past and
9 current agents, representatives, attorneys, successors, and/or assignees, also provides a release
10 herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions,
11 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities
12 and demands of any nature, character, or kind, whether known or unknown, direct or indirect,
13 suspected or unsuspected, arising out of alleged or actual exposures to any of the chemicals listed
14 under Proposition 65 (including but not limited to the Listed Phthalates) in the Products. In this
15 regard, Shefa hereby acknowledges that it is familiar with Section 1542 of the California Civil
16 Code, which provides 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 AT THE
19 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
20 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

21 **5.3 Defendant's Release of Shefa**

22 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
23 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
24 Shefa and its attorneys and other representatives for any and all actions taken or statements made
25 (or those that could have been taken or made) by Shefa and its attorneys and other
26

27 ¹ Following the Effective Date, compliance with the terms of this Consent Judgment shall be deemed compliance
28 with Proposition 65 with respect to exposures to DEHP from the Products.

1 representatives, whether in the course of investigating claims, otherwise seeking to enforce
2 Proposition 65 against Defendant in this matter, or with respect to the Products.

3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one (1)
6 year after it has been fully executed by all Parties, unless the Parties mutually agree to extend that
7 time period due to what they mutually agree are reasonably unforeseeable circumstances.

8 **7. SEVERABILITY**

9 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
10 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not
11 be adversely affected.

12 **8. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California and apply within the State of California. In the event that Proposition 65 is repealed or
15 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
16 Defendant may provide written notice to Shefa of any asserted change in the law and have no
17 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
18 Products are so affected.

19 **9. NOTICES**

20 Unless specified herein, all correspondence and notices required to be provided pursuant
21 to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class
22 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
23 Party by the other Party to the following addresses:

24 For Defendant:

25 Christine M. Wallace, Esq.
26 Law Offices of Anthony S. Cannatella
27 53 Orchard Street
28 Manhasset, NY 11030

1 For Shefa:

2 Daniel N. Greenbaum, Esq.
3 Law Office of Daniel N. Greenbaum
4 The Hathaway Building
5 7120 Hayvenhurst Avenue, Suite 320
6 Van Nuys, CA 91406

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

9 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **11. POST EXECUTION ACTIVITIES**

14 Shefa agrees to comply with the reporting form requirements referenced in Health &
15 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety
16 Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement
17 manifested in this Consent Judgment. In furtherance of obtaining such approval, Shefa shall file
18 and serve a noticed motion for approval of this Consent Judgment within sixty (60) days of its
19 execution by all Parties and assure that the Office of the California Attorney General is served
20 with said motion and all supporting papers at least forty-five (45) days prior to the scheduled
21 hearing thereon. Defendant agrees to support the entry of this Consent Judgment once such
22 motion has been filed.

23 **12. ENFORCEMENT**

24 The Court shall retain jurisdiction to oversee, enforce, and/or modify the terms of this
25 Consent Judgment. Any Party may, after meeting and conferring, by motion or application for an
26 order to show cause before this Court, enforce the terms and conditions contained in this Consent
27 Judgment. However, before filing such a motion or an application for an order to show cause,
28 Shefa shall provide Defendant with 30 (thirty) days written notice of any alleged violations of the
terms of Injunctive Relief contained in Section 2 herein. As long as Defendant cures any such

1 alleged violations within 30 (thirty) days of receipt of the written notice by ceasing the sale of the
2 Covered Product in California until such time as warnings are provided for it pursuant to Section
3 2.2 above or testing reveals that the reformulation standard has been met for it pursuant to Section
4 2.1 above, then there shall be deemed no good cause for enforcement or actionable violation.

5 **13. INTEGRATION**

6 This Consent Judgment contains the sole and entire agreement of the Parties. Any and all
7 prior negotiations and understandings related hereto shall be deemed to have been merged within
8 it. No representations or terms of agreement other than those contained herein exist or have been
9 made by any Party with respect to the other Party or the subject matter hereof.

10 **14. MODIFICATION**

11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
12 and upon entry, following at least twenty-one (21) days' notice to the Office of the Attorney
13 General, of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
14 application of any Party, which shall also be served on the Office of the California Attorney
15 General with at least twenty-one (21) days' notice, and the entry of a modified consent judgment
16 by the Court. Any Party seeking to modify this Consent Judgment shall attempt in good faith to
17 meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

18 **15. AUTHORIZATION**

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

22
23 **AGREED TO:**

24 Date: 10/25/2017

25 By: 
26 Shefa LMV, Inc.

23 **AGREED TO:**

24 Date: 10/24/17

25 By: 

26 Sunny Marketing Systems, Inc. dba Earth
27 Therapeutics Ltd. erroneously sued herein
28 as Earth Therapeutics, Inc.

1 **ORDER AND JUDGMENT**

2 Please note that on _____, 2017 at _____, Plaintiff Shefa LMV Inc.’s
3 (“Plaintiff”) Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment
4 as to Defendant Sunny Marketing Systems, Inc. dba Earth Therapeutics Ltd., erroneously sued
5 herein as Earth Therapeutics, Inc., came on for hearing before this Court in Department 37, the
6 Honorable Mark Marmaro presiding. Counsel for Plaintiff did [not] appear; counsel for
7 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). The Court reviewed the above Settlement Agreement and makes the following
11 findings pursuant to Health & Safety Code § 25249.7(f)(4):

- 12 a. The injunctive relief required by the Settlement Agreement complies with Health &
13 Safety Code § 25249.7;
- 14 b. The reimbursement of fees and costs to be paid pursuant to the Settlement Agreement
15 is reasonable under California law; and
- 16 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.

17 The Settlement Agreement is hereby approved, and the clerk is directed to enter judgment
18 in accordance with the terms of the Settlement Agreement above.

19
20 Dated: _____

21
22 _____
23 Judge of the Superior Court
24
25
26
27
28