

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

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN SETTLEMENT				
<b>CASE INFO</b>	COURT DOCKET NUMBER		COURT NAME		
	SHORT CASE NAME				
<b>REPORT INFO</b>	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
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>				
<b>FILER INFO</b>	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.

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5 Email: dgreenbaum@greenbaumlawfirm.com

6 Attorney for Plaintiff SHEFA LMV, INC.  
7

8 FOLEY & LARDNER LLP  
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12 Attorneys for DEFENDANT ARLINGTON  
13 SPECIALTIES, INC.  
14

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF ALAMEDA

18 SHEFA LMV, INC., ) Case No.: RG18891148  
19 Plaintiff, ) Dept.: 21  
20 vs. ) Hon. Winifred Smith  
21 ARLINGTON SPECIALTIES, INC.; and ) **[PROPOSED] CONSENT JUDGMENT**  
DOES 1 through 100, Inclusive, ) **AS TO ARLINGTON SPECIALTIES,**  
22 Defendants. ) **INC.**  
23 )  
24 ) Action Filed: January 30, 2018  
25 )  
26 )  
27 )  
28 )

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**”) and Arlington Specialties, Inc. d/b/a Pinch Provisions  
5 (“**Defendant**,” with Shefa and **Defendant** individually referred to as a “**Party**” and collectively as  
6 the “**Parties.**”)

7 **1.2 Plaintiff**

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

11 **1.3 Settling Defendant**

12 Defendant employs ten (10) or more persons and is a person in the course of doing business  
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety  
14 Code §25249.6 *et seq.* (“**Proposition 65**”).

15 **1.4 Products Covered**

16 The products covered by this Consent Judgment are resealable plastic bags containing  
17 personal care items, including, but not limited to, Mani Kit - Totally Nailed It; Beach Kit - Beach,  
18 Please; Brunch Kit - Brunch So Hard; Coffee Kit - Love You A Latte; Coffee Kit - Pumpkin Spice  
19 Everything; Girls Night Kit - Champagne Campaign; Eyewear Kit - Always Sunny; Fest Aid Kit -  
20 Wristband Warrior; Hair Kit - Hair Goals; Hangover Kit - I Regret Nothing; Hangover Kit - Rosé  
21 All Day; Hangover Kit - Sip Sip Hooray; Pool Party Kit - I'm On A Float; Shoe Kit - Blister Sister;  
22 and Snow Bunny Kit - Sleigh All Day, that are manufactured, sold, or distributed for sale in  
23 California by Defendant that contain Di-[2-Ethylhexyl] Phthalate (“**DEHP**”) (collectively, the  
24 “**Covered Products**”).

25 **1.5 General Allegations**

26 Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state  
27 of California, the Covered Products without first providing a clear and reasonable warning required  
28 by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical listed under Proposition 65 as a

1 chemical known to the state to cause cancer or reproductive toxicity.

2 **1.6 Notice of Violation**

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

8 **1.7 Complaint**

9 On January 30, 2018, Shefa filed a complaint in the Superior Court in and for the County of  
10 Alameda against Defendant and DOES 1-100, alleging violations of California Health & Safety  
11 Code § 25249.6, based on exposures to DEHP contained in the Covered Products sold in the State  
12 of California (the “**Complaint**”).

13 **1.8 No Admission**

14 Defendant denies the material, factual, and legal allegations contained in the Notice and  
15 Complaint and maintains that all the products it has manufactured, sold, or distributed for sale in  
16 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 Defendant of any fact,  
18 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent  
19 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion  
20 of law, issue of law, or violation of law, the same being specifically denied by Defendant. This  
21 section shall not, however, diminish or otherwise affect Defendant’s obligations, responsibilities,  
22 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 Defendant as to the allegations in the Complaint, that venue is proper in the  
26 County of Alameda, the Defendant agrees that it employs or has employed ten or more persons  
27 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to  
28 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           Consent Judgment is approved and entered by the Court.

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


5           **2.1       Reformulation Standards**

6           Beginning ninety (90) days after the Effective Date, Defendant shall not manufacture for  
7           sale in California any Covered Products unless such Covered Products contain DEHP in  
8           concentrations less than or equal to 1000 parts per million (“ppm”) when analyzed pursuant to U.S.  
9           Environmental Protection Agency testing methodologies 3580A and 8270C or any other  
10          scientifically reliable methodology for determining the concentration of DEHP in the Covered  
11          Products.

12          **2.2       Warning Standards**

13          Defendant agrees, promises, and represents that, within ninety (90) days after the Effective  
14          Date, to the extent it ships or sells Covered Products that do not meet the reformulation standards  
15          set forth above in Section 2.1, Defendant will provide warnings on such Covered Products that  
16          comply with Proposition 65. The warnings shall be provided as an alternative to the reformulation  
17          set forth in Section 2.1.

18          The warnings shall be provided in a conspicuous and prominent manner such that they will  
19          be likely to be read or seen by the consumer prior to or at the time of the sale or purchase. The  
20          Parties agree that the warning set forth below shall constitute compliance with Proposition 65 with  
21          respect to any Covered Products that are not reformulated:

22               “  **WARNING:** This product can expose you to chemicals, including Di-[2-  
23               Ethylhexyl] Phthalate (DEHP), which is known to the State of California to cause birth  
24               defects or other reproductive harm. For more information go to  
25               www.P65Warnings.ca.gov.”

26          **2.3       Covered Products in the Stream of Commerce.**

27          Any Covered Products that have been distributed, shipped, or sold by Defendant prior to the  
28          Effective Date, shall not be subject to the requirements of Section 2.1 or 2.2.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,  
3 Defendant shall make the Total Settlement Payment of **\$17,500.00**.

4 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)  
5 separate checks made payable and allocated as follows:

6 **3.2.1 Civil Penalty.** Defendant shall pay \$2,000.00 as a civil penalty  
7 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in  
8 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of  
9 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the  
10 OEHHA portion of the civil penalty payment in the amount of \$1,500.00 shall be made payable to  
11 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be  
12 delivered as follows:

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

20 Attn: Mike Gyurics  
21 Fiscal Operations Branch Chief  
22 Office of Environmental Health Hazard Assessment  
23 1001 I Street, MS #19B  
24 Sacramento, CA 95814

25 The Shefa portion of the civil penalty payment in the amount of \$500.00 shall be made  
26 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.  
27 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst  
28 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 \$15,500.00 payable to the “Law Office of Daniel N. Greenbaum,”

1 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to  
2 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Public Release**

5 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant  
6 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of  
7 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,  
8 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,  
9 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and  
10 each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered  
11 Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees,  
12 cooperative members, and licensees, including but not limited to Urban Outfitters, Inc. and its  
13 affiliated and related entities (“**Releasees**”), based on failure to warn of alleged exposures to DEHP  
14 from Covered Products manufactured, sold, or distributed for sale in California by Defendant prior  
15 to the Effective Date. The release in this Section 4.1 applies to all Covered Products that Defendant  
16 manufactured, distributed, or sold prior to ninety (90) days after the Effective Date, regardless of  
17 the date any other Releasee distributes or sells the Covered Products.

18 Compliance with the terms of this Consent Judgment shall constitute compliance with  
19 Proposition 65 by Defendant and the Releasees with respect to DEHP in Covered Products  
20 manufactured, sold, or distributed on and after the Effective Date.

21 **4.2 Shefa’s Individual Release of Claims**

22 In further consideration of the promises and agreements herein contained, Shefa, on its own  
23 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or  
24 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
25 legal action, and releases all claims that it may have against Defendant and Releasees, including,  
26 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,  
27 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert  
28 fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP from

1 Covered Products manufactured, sold, or distributed for sale by Defendant prior to the Effective  
2 Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not releases on  
3 behalf of the public.

4 **4.3 Defendant's Release of Shefa**

5 Defendant, on its own behalf and on behalf of its past and current agents, representatives,  
6 attorneys, successors, and assignees, hereby waive any and all claims that it may have against Shefa  
7 and its attorneys and other representatives, for any and all actions taken or statements made by  
8 Shefa and its attorneys and other representatives in the course of investigating the claims set forth in  
9 the Complaint or otherwise seeking to enforce Proposition 65 against it in this matter.

10 **4.4 Release of Unknown Claims**

11 It is possible that other claims not known to the Parties arising out of the facts contained in  
12 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be  
13 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment  
14 is expressly intended to cover and include all such claims through and including ninety (90) days  
15 after the Effective Date, including all rights of action therefor. Shefa acknowledges that the claims  
16 released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless Shefa intends to  
17 release such claims, and in doing so waives California Civil Code § 1542, which reads as follows:

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

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



1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court.

3 **6. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of California  
5 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
6 rendered inapplicable by reason of law generally, or as to the Covered Products, then Defendant  
7 may provide written notice to Shefa of any asserted change in the law, and with the exception of  
8 Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with  
9 respect to, and to the extent that, the Covered Products are so affected. None of the terms of this  
10 Consent Judgment shall have any application to Covered Products sold outside of the State of  
11 California.

12 **7. NOTICE**

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

17 To Defendant:

18 FOLEY & LARDNER LLP  
19 Michael E. Delehunt, Esq.  
20 Megan O. Curran, Esq.  
21 555 California Street, Suite 1700  
22 San Francisco CA 94104

To Shefa:

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

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

25 **8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

1 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

4 **10. POST-EXECUTION ACTIVITIES**

5 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),  
6 Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.  
7 Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to submit this  
8 Consent Judgment to the Court with a motion seeking Court approval.

9 **11. MODIFICATION**

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

13 **12. DISPUTE RESOLUTION**

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

23 **13. AUTHORIZATION**

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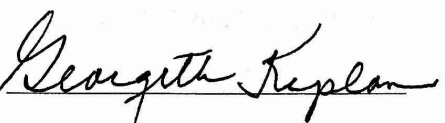
AGREED TO:

AGREED TO:

Date: 4/20/2018

Date: 4/20/18

By:   
SHEFA LMV, INC.

By:   
DEFENDANT ARLINGTON  
SPECIALTIES, INC.

1 **[PROPOSED] JUDGMENT**

2 Please note that on \_\_\_\_\_, 2018 at \_\_\_\_\_, Plaintiff Shefa LMV Inc.'s ("Plaintiff")  
3 Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant  
4 Arlington Specialties, Inc. came for hearing before this Court in Department 21, the Honorable  
5 Winifred Smith presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

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

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

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

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

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

19 \_\_\_\_\_  
20 Date

\_\_\_\_\_ Judge of the Superior Court