

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.

Attorney for Plaintiff SHEFA LMV, INC.

COUNTY OF ALAMEDA

Defendant.

)

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 Allstar Products Group ("**Defendant**," with Shefa
5 and **Defendant** individually referred to as a "**Party**" and collectively as the "**Parties.**")

6 **1.2 Plaintiff**

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

10 **1.3 Settling Defendant**

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

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are plastic handled tool products
16 manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for
17 Defendant, including, but not limited to, Multi-Cut 3-in-1 Cutting Tool, Item #MC011112, UPC:
18 740275048436, that are manufactured, sold, or distributed for sale in California by Defendant that
19 contain Di-[2-Ethylhexyl] Phthalate ("**DEHP**") (collectively, the "**Covered Products**").

20 **1.5 General Allegations**

21 Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state
22 of California, the Covered Products without first providing a clear and reasonable warning required
23 by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical listed under Proposition 65 as a
24 chemical known to the state to cause cancer or reproductive toxicity.

25 **1.6 Notice of Violation**

26 On October 4, 2017, Shefa served Defendant and the requisite public enforcement agencies
27 with a Sixty Day Notice of Violation (the "**Notice**") alleging that Defendant violated Proposition 65
28

1 when it failed to warn its customers and consumers in California that the Covered Products expose
2 users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is
3 diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On August 6, 2018, Shefa filed the instant complaint in the Superior Court in and for the
6 County of Alameda against Defendant and DOES 1-100, alleging violations of California Health &
7 Safety Code § 25249.6, based on exposures to DEHP contained in the Covered Products sold in the
8 State of California (the "**Complaint**").

9 **1.8 No Admission**

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

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
22 County of Alameda, the Defendant agrees that they employs or have employed ten or more persons
23 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
24 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "**Effective Date**" shall mean 30 days after
27 the date the Consent Judgment is approved and entered by the Court.
28

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

2 **2.1 Reformulation Standards**

3 As of the Effective Date, Defendant shall not manufacture for sale in California any Covered
4 Products unless such Covered Products contain DEHP in concentrations less than or equal to 1000
5 parts per million ("ppm") when analyzed pursuant to U.S. Environmental Protection Agency testing
6 methodologies 3580A and 8270C or any other scientifically reliable methodology for determining
7 the concentration of DEHP in the Covered Products.

8 **2.2 Warning Standards**

9 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent they
10 ship or sell Covered Products that do not meet the reformulation standards set forth above in
11 Section 2.1, Defendant will provide warnings on such Covered Products that comply with
12 Proposition 65. The warnings shall be provided in a conspicuous and prominent manner such that
13 they will be likely to be read or seen by the consumer prior to or at the time of the sale or purchase.
14 The Parties agree that the warning set forth below shall constitute compliance with Proposition 65
15 with respect to any Covered Products that are not reformulated:

16 (a) the text, **"WARNING This product can expose you to chemicals, including**
17 **DEHP, which is known to the State of California to cause birth defects or other**
18 **reproductive harm. For more information go to www.P65Warnings.ca.gov."**
19 accompanied by and placed to the right of a symbol consisting of a black exclamation point
20 in a yellow equilateral triangle with a bold black outline sized to be no smaller than the
21 word, "WARNING" as provided by regulations adopted on or about August 30, 2016; or

22 (b) the text, **"WARNING Cancer and Reproductive Harm -**
23 **www.P65Warnings.ca.gov."** accompanied by and placed to the right of a symbol consisting
24 of a black exclamation point in a yellow equilateral triangle with a bold black outline sized
25 to be no smaller than the word, "WARNING" as provided by regulations adopted on or
26 about August 30, 2016; or
27
28

1 (c) Any warning that substantially and materially complies with the requirements
2 of Proposition 65, including 27 CCR Section 25600 et. seq. as may be amended from time to
3 time

4 The triangular warning symbol specified in Section 3.3(a) and 3.3(b) shall be in yellow with
5 a black exclamation mark; *provided however*, the symbol may be printed in black and white if the
6 Covered Product label is not printed against a yellow background

7 **2.3 Covered Products in the Stream of Commerce.**

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

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
12 Defendant shall make the Total Settlement Payment of \$20,000.00.

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.** Defendant shall pay \$2,500.00 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 \$1,875.00 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
28

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 \$625.00 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 \$17,500.00 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 Public Release**

17 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant
18 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
19 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
20 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,
21 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and
22 each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered
23 Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees,
24 cooperative members, and licensees, including but not limited to Sears Holdings Corporation and
25 Ronan Tools, Inc., ("**Releasees**"), based on failure to warn of alleged exposures to DEHP from
26 Covered Products manufactured, sold, or distributed for sale in California by Defendant prior to the
27 Effective Date. The release in this Section 4.1 applies to all Covered Products that Defendant
28 manufactured, distributed, or sold prior to the Effective Date, regardless of the date any other
 Releasee distributes or sells the Covered Products.

1 Compliance with the terms of this Consent Judgment shall constitute compliance with
2 Proposition 65 by Defendant and the Releasees with respect to DEHP in Covered Products
3 manufactured, sold, or distributed for sale in California on and after the Effective Date.

4 **4.2 Shefa's Individual Release of Claims**

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

15 **4.3 Defendant's Release of Shefa**

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

21 **4.4 Release of Unknown Claims**

22 It is possible that other claims not known to the Parties arising out of the facts contained in
23 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
24 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment
25 is expressly intended to cover and include all such claims through and including the Effective Date,
26 including all rights of action therefor. Shefa acknowledges that the claims released in Sections 4.1
27 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in
28

1 doing so waives California Civil Code § 1542, which reads as follows:

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

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

13 **5. COURT APPROVAL**

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

15 **6. GOVERNING LAW**

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

24 **7. NOTICE**

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

1 To Defendant:

2 Peter J. Farnese
3 Beshada Farnese LLP
4 11601 Wilshire Blvd., Suite 500
Los Angeles, CA 90025

To Shefa:

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

5
6 Any Party may, from time to time, specify in writing to the other Party a change of address to which
7 all notices and other communications shall be sent.

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

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

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

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

15 **10. POST EXECUTION ACTIVITIES**

16 10.1 The Parties acknowledge that, pursuant to California Health & Safety Code
17 § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent
18 Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to
19 submit this Consent Judgment to the Court with a motion seeking Court approval.

20 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
21 Court and shall be null and void if, for any reason, it is not approved by the Court. In such a case,
22 the Parties agreed to meet and confer on how to proceed and if such agreement is not reached within
23 30 days, the case shall proceed as normal course.

24 10.3 If the Court approves this consent judgment and is reversed or vacated by the
25 appellate court, the parties shall meet for as to whether to modify the terms of this consent
26 judgment. If the parties do not jointly agree on a course of action to take, the case shall proceed in
27 its normal course on the trial court's calendar.
28

1 **11. MODIFICATION**

2 11.1 In the event that the OEHHA re-establishes the safe harbor No Significant Risk
3 Level (NSRL”) for DEHP, which Defendant assert would allow for the Covered Products to contain
4 levels of the Listed Chemicals in amounts greater than those set forth above in Section 2.1, then
5 Defendant may provide written notice to Shefa of any such assertion and the party shall confirm
6 within 30 days to attempt to agree upon modification of this consent judgment. Should such
7 attempts at informal resolution of a modification fail, in the event Defendant still intends to change
8 its reformulation obligations, Defendant will provide written notice to Shefa of its intent to adopt a
9 modified compliance standard. Upon receipt of Defendant’s notice, Shefa have the right to enforce
10 the terms and conditions contained in is the Consent Judgment by motion or any other available
11 remedy at law, with the sole issue to be adjudicated being a technical question of whether the NSLR
12 would allow for a higher DEHP content any covered products than that set forth in section 2.1.

13 11.2 This Consent Judgment may only be modified by a written instrument executed by
14 the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion.
15 Any motion to modify shall be served on all Parties and the Office of the Attorney General.

16 **12. DISPUTE RESOLUTION**

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

26 **13. AUTHORIZATION**

27 The undersigned are authorized to execute this Consent Judgment on behalf of their
28

1 respective Parties and have read, understood, and agree to all of the terms and conditions of this
2 Consent Judgment.


3
4 AGREED TO: .

AGREED TO:

5
6 Date: 6/28/2019

Date: 6/27/19

7
8
9 By: 
10 SHEFA LMV, INC.

By: 
DEFENDANT ALLSTAR PRODUCTS
GROUP

[PROPOSED] JUDGMENT

Please note that on _____, 2019 at _____, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Allstar Products Group came for hearing before this Court in Department 518, the Honorable Dennis Hayashi presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

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

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

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

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

IT IS SO ORDERED, ADJUDGED AND DECREED

Date

Judge of the Superior Court