

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.

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9 Attorney for Plaintiff SHEFA LMV, INC.

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 SHEFA LMV, INC.,

14 Plaintiff,

15 vs.

16 OLIVIA GARDEN, INC.,

17 Defendant.

) Case No.: 18STCV04992

)
)
)
) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO OLIVIA GARDEN, INC.**

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) Action Filed: November 13, 2018
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[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT
OLIVIA GARDEN, INC.

1. INTRODUCTION

1.1 Parties

This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”) and Olivia Garden, Inc. (“**Defendant**,” with Shefa and **Defendant** 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 Defendant

Defendant employs ten (10) or more persons and 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

For the purposes of this Consent Judgment, covered products are plastic case products, including, but not limited to, “Anti Bacterial Protection”; “Made in Belgium” Multi-Colored Rollers in Zipper Case; UPC: 752110171070, that are manufactured, sold, or distributed for sale in California by Defendant that contain Di-[2-Ethylhexyl] Phthalate (“DEHP”) and/or other regulated phthalates (collectively, the “**Covered Products**”).

1.5 General Allegations

Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state of California, the Covered Products without first providing a clear and reasonable warning required by Proposition 65. DEHP is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer and reproductive harm.

1.6 Notice of Violation

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

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 November 13, 2018, Shefa filed the instant complaint in the Superior Court in and for
6 the County of Los Angeles against Defendant and DOES 1-100, alleging violations of California
7 Health & Safety Code § 25249.6, based on exposures to DEHP contained in the Covered Products
8 sold in the 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 Los Angeles, the Defendant agrees that they employs or have employed ten or more
23 persons during time periods relevant to the Complaint and that this Court has jurisdiction over the
24 Parties to 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 the date the
27 Consent Judgment is approved and entered by the Court.

2.1 Reformulation Standards

2.1 Reformulation Standards

2.2 Warning Standards

2.2 Warning Standards

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

2.3 Covered Products in the Stream of Commerce.

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

3. MONETARY SETTLEMENT TERMS

3.1 Payment from Defendant. Within ten (10) business days of the Effective Date, Defendant shall make the Total Settlement Payment of \$21,000.00.

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

3.2.1 Civil Penalty. Defendant shall pay \$3,000.00 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)). Accordingly, the OEHHA portion of the civil penalty payment in the amount of \$2,250.00 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

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 \$750.00 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 \$18,000.00 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 Public Release

This Consent Judgment is a full, final, and binding resolution between Shefa and 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 Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Sally Beauty Holdings, Inc., (“**Releasees**”), based on failure to warn of alleged exposures to DEHP from Covered Products manufactured, sold, or distributed for sale in California by Defendant prior to the Effective Date. The release in this Section 4.1 applies to all Covered Products that Defendant manufactured, distributed, or sold prior to the Effective Date, regardless of the date any other Releasee distributes or sells the Covered Products.

Compliance with the terms of this Consent Judgment shall constitute compliance with Proposition 65 by Defendant and the Releasees with respect to DEHP in Covered Products manufactured, sold, or distributed 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 Defendant 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

1 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP from
2 Covered Products manufactured, sold, or distributed for sale by Defendant prior to the Effective
3 Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not releases on
4 behalf of the public.

5 **4.3 Defendant's Release of Shefa**

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

11 **4.4 Release of Unknown Claims**

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

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

26 Shefa understands and acknowledges that the significance and consequence of this waiver of
27 California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting
28 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not

1 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
2 Shefa will not be able to make any claim for those damages against Defendant or any of the
3 Releasees.

4 **5. COURT APPROVAL**

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

6 **6. GOVERNING LAW**

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

15 **7. 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 Defendant:

21 Tim Swickard
22 Greenberg Tuarig, LLP
23 1201 K. Street, Suite 1100
24 Sacramento, CA 95814

To Shefa:

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

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

28 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.

9. 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).

10. 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.

11. MODIFICATION

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. Any motion to modify shall be served on all Parties and the Office of the Attorney General.

12. DISPUTE RESOLUTION

If Shefa determines at a future date that a violation of this Consent Judgment has occurred, Shefa shall provide notice to Defendant. 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 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.

13. 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

1 Consent Judgment.

2
3 AGREED TO:

AGREED TO:

4
5 Date: 2/22/2019

Date: 2-7-2019

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8 By: 
9 SHEFA LMV, INC.

By: 
DEFENDANT OLIVIA GARDEN, INC.

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[PROPOSED] JUDGMENT

Please note that on _____, 2019 at _____ am/pm, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Olivia Garden, Inc. came for hearing before this Court in Department 4, the Honorable Christopher K. Lui 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.

Date

Judge of the Superior Court