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)
Shefa LMV Inc.

DEFENDANT(S) INVOLVED IN SETTLEMENT
The NCC NY LLC

CASE INFO

COURT DOCKET NUMBER: BC705904

COURT NAME: SUPERIOR COURT OF CA, COUNTY OF LA

SHORT CASE NAME: SHEFA LMV, INC. VS. The NCC NY LLC

REPORT INFO

INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

PAYMENT: CIVIL PENALTY: 3000

PAYMENT: ATTORNEYS FEES: 16000

PAYMENT: OTHER: 0

WILL SETTLEMENT BE SUBMITTED TO COURT? ☒ Yes ☐ No

IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL

DATE SETTLEMENT SIGNED: 11 / 19 / 2018

COPY OF SETTLEMENT MUST BE ATTACHED

For Internal Use Only

FILER INFO

NAME OF CONTACT: Daniel N. Greenbaum

ORGANIZATION: Law Office of Daniel Greenbaum

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STATE: CA

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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.

Clear Form

LAW OFFICE OF DANIEL N. GREENBAUM
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Attorney for Plaintiff SHEFA LMV, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC., Plaintiff, vs. THE NCC NY LLC; and DOES 1 through 100, Inclusive, Defendant.	Case No. BC705904 *Hon. Michael L. Stern* Dep. 62 **[PROPOSED] CONSENT JUDGMENT AS TO THE NCC NY LLC** Action Filed: May 15, 2018

1. INTRODUCTION

1.1 Parties

This consent judgment ("**Consent Judgment**") is entered into by and between plaintiff Shefa LMV, Inc. ("**Shefa**" or "**Plaintiff**") and The NCC NY LLC ("**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

The product covered by this Consent Judgment is a plastic cable product, including, but not limited to, Westinghouse 6Ft Couch Cord; Model UCU104F; Item#91311; ID: 400164830138; UPC686140913112, that is manufactured, sold, or distributed for sale in California by Defendant that contain Di-[2-Ethylhexyl] Phthalate ("DEHP") (collectively, the "**Covered Product**").

1.5 General Allegations

Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state of California, the Covered Product 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.

1.6 Notice of Violation

On December 21, 2017, Shefa served Defendant and the requisite public enforcement agencies with a 60-Day Notice of Violation (the "**Notice**") alleging that Defendant violated

Proposition 65 when it failed to warn its customers and consumers in California that the Covered Product 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 May 15, 2018, Shefa filed the instant complaint in the Superior Court in and for the County of Alameda against Defendant 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

Defendant denies the material, factual, and legal allegations contained in the Notice and Complaint and maintains that all the products it has manufactured, sold, or distributed for sale in California, including the Covered Product, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Defendant 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 Defendant of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendant. This section shall not, however, diminish or otherwise affect Defendant's 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 Defendant as to the allegations in the Complaint, that venue is proper in the County of Alameda, the Defendant agrees that they employs 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.

INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

1.11 Reformulation Standards

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

1.12 Warning Standards

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

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

In the alternative, the following language can be used and shall constitute compliance with Proposition 65 with respect to any Covered Products that are not reformulated:

> "⚠ **WARNING**: Reproductive Harm. For more information go to www.P65Warnings.ca.gov."

1.13 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.

2. MONETARY SETTLEMENT TERMS

2.1 Payment from Defendant. Within ten (10) business days of the Effective Date, Defendant shall make the Total Settlement Payment of **$16,000.00.**

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

2.2.1 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 $2,2500.00 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.

2.2.2 Attorney's Fees and Costs. A reimbursement of Shefa's attorney's fees and costs in the amount of $13,000.00 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.

3. CLAIMS COVERED AND RELEASED

3.1 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 Product, including, without limitation, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Ross Stores, Inc., ("**Releasees**"), based on failure to warn of alleged exposures to DEHP from Covered Product 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 Product 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 Product manufactured, sold, or distributed on and after the Effective Date.

3.2 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

fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP from Covered Product manufactured, sold, or distributed for sale by Defendant 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.

3.3 Defendant's Release of Shefa

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 in the course of investigating the claims set forth in the Complaint or otherwise seeking to enforce Proposition 65 against it in this matter.

3.4 Release of Unknown Claims

It is possible that other claims not known to the Parties arising out of the facts contained in the Notice, or alleged in the Complaint, relating to the Covered Product, will hereafter be discovered or developed. Shefa, on behalf of itself only, acknowledges 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 acknowledges that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in doing so waives 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 Product, including but not limited to any exposure to, or failure to warn with respect to exposure to, the Covered Product, Shefa will not be able to make any claim for those damages against Defendant or any of the Releasees.

4. COURT APPROVAL

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

5. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then Defendant 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 that, the Covered Products are so affected. None of the terms of this Consent Judgment shall have any application to Covered Product sold outside of the State of California.

6. 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 Defendant:

Brenda K. Radmacher, Esq.
GORDON & REES
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071

To Shefa:

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

7. 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.

8. 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).

9. 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.

10. 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.

11. 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.

12. 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:

Date: 11/6/2018

By: _____

SHEFA LMV, INC.

AGREED TO:

Date: 11/19/2018

By: _____ president

DEFENDANT THE NCC NY LLC

[PROPOSED] JUDGMENT

Please note that on _____ at _____, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant The NCC NY LLC, came for hearing before this Court in Department 62, the Honorable Michael L. Stern 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