

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				
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
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2 The Hathaway Building
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Van Nuys, CA 91406
4 Telephone: (818) 809-2199
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5 Email: dgreenbaum@greenbaumlawfirm.com

6 Attorney for Plaintiff SHEFA LMV, INC.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10 SHEFA LMV, INC.,) Case No. RG18928124
11) Dept. 22
Plaintiff,)
12)
13 vs.)
14 GCE INTERNATIONAL, INC.; and DOES 1) **[PROPOSED] CONSENT JUDGMENT**
through 100, Inclusive,) **AS TO GCE INTERNATIONAL, INC.**
15 Defendant.)
16) Action Filed: November 9, 2018
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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 GCE International, Inc. (“**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 organizers including, but not
16 limited to, EZ-DO® 24-Pocket Hanging Organizer, Style EZ 18444; UPC020753184444 and
17 plastic garment bags including, but not limited to Real Simple Solutions Garment Bag; UPC:
18 444444096999 that are manufactured, sold, or distributed for sale in California by Defendant and
19 each entity to whom GCE (as defined in Section 4.1, below) directly or indirectly exports,
20 distributes or sells the products that contain Di-[2-Ethylhexyl] Phthalate (“**DEHP**”) and/or
21 Diisononyl Phthalate (“**DINP**”) (collectively, the “**Covered Products**”).

22 **1.5 General Allegations**

23 Shefa alleges that GCE (as defined in Section 4.1, below) manufactures, imports, sells, or
24 distributes, for sale in the state of California, the Covered Products without first providing a clear
25 and reasonable warning required by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical
26 listed under Proposition 65 as a chemical known to the state to cause cancer or reproductive
27 toxicity.

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1.6 Notice of Violation

On December 21, 2017 and November 15, 2018, Shefa served Defendant and the requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notices”) alleging that Defendant violated Proposition 65 when it failed to warn its customers and consumers in California that the Covered Products expose users to DEHP and DINP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.7 Complaint

On November 9, 2018 Shefa filed the instant complaint in the Superior Court in and for the County of Alameda against Defendant, 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”). On February 26, 2019, Shefa filed a first amended complaint in the Superior Court in and for the County of Alameda against Defendant, alleging violations of California Health & Safety Code § 25249.6, based on exposures to DINP contained in the Covered Products sold in the State of California (the “First Amended 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 Products, 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

1 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
2 County of Alameda, the Defendant agrees that they it employs or has employed ten or more persons
3 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
4 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

5 **1.10 Effective Date**

6 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the
7 Consent Judgment is approved and entered by the Court.


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

9 **2.1 Reformulation Standards**

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

15 **2.2 Warning Standards**

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

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

27 or, where appropriate, the short-form warning:



WARNING:

Cancer and Reproductive Harm –
www.P65Warnings.ca.gov.”

2.3 Covered Products in the Stream of Commerce.

Any Covered Products that have been distributed, shipped, or sold by GCE (as defined in Section 4.1, below) or each entity to whom GCE directly or indirectly exports, distributes or sells the Covered Products 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 **\$25,500.00**.

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 \$4,000.00 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 \$3,000.00 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

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 \$1,000.00 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 \$21,500.00 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 on the one
18 hand and (a) Defendant, its parents, subsidiaries, affiliated entities, divisions (including, but not
19 limited to, E-Z Do., Co.), manufacturers, suppliers, directors, officers, employees, attorneys, and the
20 predecessors, successors, or assigns of each of them (collectively "GCE"), and (b) each entity to
21 whom GCE directly or indirectly exports, distributes or sells the Covered Products, including,
22 without limitation, distributors, wholesalers, customers, retailers, franchisees, cooperative members,
23 and licensees, including but not limited to Bed Bath & Beyond, Inc. and J. C. Penney Corporation,
24 Inc. and each of their parents, affiliates, subsidiaries, officers, directors or employees (collectively,
25 "Releasees"), on the other hand, of any violation or claimed violation of Proposition 65 or any
26 statutory or common law claim that was or could have been asserted by Shefa, acting on behalf of
27 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
28 against Releasees based on the manufacturing, sale, or distribution for sale of Covered Products in
 California prior to the Effective Date. The release in this Section 4.1 applies to all Covered

1 Products that Defendant manufactured, distributed, or sold prior to the Effective Date, regardless of
2 the date any other Releasee distributes or sells such Covered Products.

3 This Consent Judgment shall have preclusive effect such that no other person or entity,
4 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
5 pursue and/or take any action with respect to any violation of Proposition 65 that was, or could have
6 been alleged in the Complaint, or that could have been brought against any of the Releasees, with
7 respect to the Covered Products. Compliance with the terms of this Consent Judgment shall
8 constitute compliance with Proposition 65 by Defendant and the Releasees with respect to the
9 Covered Products manufactured, sold, or distributed on and after the Effective Date.

10 **4.2 Shefa's Individual Release of Claims**

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

22 **4.3 Defendant's Release of Shefa**

23 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
24 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
25 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
26 by Shefa and its attorneys and other representatives in the course of investigating the claims set
27 forth in the Complaint or otherwise seeking to enforce Proposition 65 against it in this matter.
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1 respect to, and to the extent that, the Covered Products are so affected. None of the terms of this
2 Consent Judgment shall have any application to Covered Products sold outside of the State of
3 California.

4 **7. NOTICE**

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

9 To Defendant:

10 Andrew V. Jablon, Esq.
11 RESCH POLSTER & BERGER LLP
12 1840 Century Park East, 17th Floor
Los Angeles, CA 90067

To Shefa:

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

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

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

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

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

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

22 **10. POST EXECUTION ACTIVITIES**

23 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),
24 Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.
25 Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to submit this
26 Consent Judgment to the Court with a motion seeking Court approval.
27

1 **11. MODIFICATION**

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

5 **12. DISPUTE RESOLUTION**

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

15 **13. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment on behalf of their
17 respective Parties and have read, understood, and agree to all of the terms and conditions of this
18 Consent Judgment.


19
20 AGREED TO:

AGREED TO:

21
22 Date: 3/11/2019

Date: 3/9/2019

23
24
25 By: 

By: 

26 SHEFA LMV, INC.

DEFENDANT GCE INTERNATIONAL,

27

INC

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[PROPOSED] JUDGMENT

Please note that on _____, 2019 at _____ am, Plaintiff Shefa LMV Inc.’s (“Plaintiff”) Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant GCE International, Inc. came for hearing before this Court in Department 22, the Honorable Robert McGuinness 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