

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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6 Telephone: (818) 809-2199
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9 Attorney for Plaintiff SHEFA LMV, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 SHEFA LMV, INC.,) Case No. RG18928119
13 Plaintiff,)
14 vs.)
15 PONTE VEDRA GIFTS & ACCESSORIES) **[PROPOSED] CONSENT JUDGMENT**
16 COMPANY, LLC; and DOES 1 through 100,) **AS TO PONTE VEDRA GIFTS &**
17 Inclusive,) **ACCESSORIES COMPANY, LLC.**
18 Defendants.)
19)
20) Action Filed: November 9, 2018
21)
22)
23)
24)
25)
26)
27)
28)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Shefa LMV, Inc.
4 (“Shefa”) on the one hand, and Ponte Vedra Gifts & Accessories Company, LLC (“Defendant”)
5 on the other hand, with Shefa and Defendant individually referred to as a “Party” and collectively
6 as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Shefa alleges that Defendant manufactures, imports, sells, or distributes for sale to
17 consumers in the State of California plastic steering wheel cover product containing Di(2-
18 ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning
19 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is
20 known to the State of California to cause cancer and birth defects and other reproductive harm.
21 DEHP shall be referred to hereafter as the “Listed Chemical.”

22 **1.5 Product Description**

23 The product covered by this Consent Judgment is the plastic steering wheel cover product
24 manufactured by or for Defendant, imported by or for Defendant, distributed or sold by or for
25 Defendant to others, or sold or offered for sale in or into California by retailers who obtained such
26 products directly or indirectly from Defendant, including, but not limited to, Grease Monkey
27 Automotive Steering Wheel Cover Ponte Verda Gifts & Accessories Co. #70701GMGS--001;
28

1 UP814190020508 (the “Covered Product” or “Product”).

2
3 **1.6 Notice of Violation**

4 On or about February 06, 2018, Shefa served Defendant and certain requisite public
5 enforcement agencies with a “Sixty Day Notice of Violation” (“Notice”), a document that
6 informed the recipients of Shefa’s allegation that Defendant violated Proposition 65 by failing to
7 warn its customers and consumers in California that the Product expose users to DEHP.

8 **1.7 Complaint**

9 After the 60-day notice period was exhausted without an authorized public prosecutor of
10 Proposition 65 having asserted such claims, Shefa filed the instant action against Defendant
11 (“Complaint”) for the alleged violations of Health & Safety Code § 25249.6 that are the subjects
12 of the Notice.

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 of the products it has manufactured, sold, or distributed for
16 authorized sale in California, including the Product, have been, and are, in compliance with all
17 laws, including Proposition 65. Nothing in this Consent Judgment shall be construed as an
18 admission by Defendant of any fact, finding, conclusion of law, issue of law, or violation of law;
19 nor shall compliance with this Consent Judgment constitute or be construed as an admission by
20 Defendant of any fact, finding, conclusion of law, issue of law, or violation of law, the same
21 being specifically denied by Defendant. This section shall not, however, diminish or otherwise
22 affect Defendant’s obligations, responsibilities, 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
26 Alameda County, and that this Court has jurisdiction to enter, enforce, and modify the provisions
27 of this Consent Judgment.
28

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
3 which Shefa serves notice on the Defendant and the Office of the California Attorney General
4 that the Court has approved and entered this Consent Judgment.

5 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

6 **2.1 Reformulation Standard**

7 “Compliant Product” are defined as those Products containing the Listed Chemical in
8 concentrations less than or equal to 1,000 parts per million (“ppm”) (0.1%) when analyzed
9 pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing
10 methodologies 3580A and 8270C or any other scientifically reliable methodology for determining
11 the Listed Chemical content in a substance of the form of the Covered Product herein.

12 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent
13 they purchase or manufacture for sale into California any Covered Products that have not been
14 reformulated, it will provide warnings on such Covered Product that comply with Proposition 65.

15 **2.2 Product Warnings**

16 For all Product sold or packaged for shipment to California that contain a Listed Phthalate
17 in an amount exceeding the Reformulation Standard set forth in Section 2.1 above, and which are
18 manufactured after the Compliance Date, Defendant shall provide the following Proposition 65
19 warning or other warning authorized by the applicable regulations:



21 **WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.**

22 or



24 **WARNING: This product can expose you to chemicals, including DEHP, which**
25 **are known to the State of California to cause cancer and birth defects or other reproductive**
26 **harm. For more information go to www.P65Warnings.ca.gov.**

27 The above warning statement shall be placed or affixed on the Product or its package so as
28 to be able to be read and understood by an ordinary individual prior to purchase or use or it may

1 be displayed at the point of purchase prior to final consummation of the sales transaction by
2 which the product is acquired by someone in California.

3 **3. STATUTORY PENALTY PAYMENTS**

4 **3.1 Civil Penalty**

5 Defendant shall pay \$3,000.00 in civil penalties pursuant to California Health & Safety
6 Code § 25249.7(b) in accordance with this Section. This penalty payment shall be allocated in
7 accordance with California Health & Safety Code § 25249.12(c)(l) and (d), with 75% of the
8 funds remitted to the California Office of Environmental Health Hazard Assessment
9 (“OEHHA”) and the remaining 25% of the penalty remitted to Shefa. More specifically, within
10 ten (10) business days of the Effective Date, Defendant shall issue two separate checks for the
11 civil penalty payment to (a) “OEHHA” in the amount of \$2,250.00 and with the memo line on
12 the check indicating “Prop 65 Penalties—Shefa LMV, Inc. v. Ponte Verda Gifts & Accessories
13 Company LLC” (Defendant may reference OEHHA’s Tax Identification Number of 68-
14 0284486 for this check); and (b) “Law Office of Daniel N. Greenbaum in Trust for Shefa” in the
15 amount of \$750.00 (for which Shefa shall provide Defendant a completed IRS Form W-9 with a
16 tax identification number within two days following the Effective Date, if not beforehand).
17 These checks shall be delivered to the addresses listed in Section 3.2 below.

18 **3.2 Payment Delivery**

19 (a) Payment to Shefa shall be delivered to the following address:

20 Daniel N. Greenbaum, Esq.
21 Law Office of Daniel N. Greenbaum
22 The Hathaway Building
23 7120 Hayvenhurst Avenue, Suite 320
24 Van Nuys, CA 91406

25 (b) Payment to OEHHA shall be delivered to one of the following addresses:

26 For United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

Or

1 For Non-United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

7 **4. REIMBURSEMENT OF FEES AND COSTS**

8 Defendant shall pay Shefa \$17,000.00 for fees and costs incurred as a result of
9 investigating, bringing this matter to Defendant’s attention, and negotiating a settlement in the
10 public interest. Defendant shall make its checks payable to “Law Office of Daniel N.
11 Greenbaum” and shall deliver payment to the address listed in Section 3(a) above within ten (10)
12 business days of the Effective Date. To facilitate timely payment, Shefa shall provide Defendant
13 with a completed IRS Form W-9 with the Law Office of Daniel N. Greenbaum’s tax
14 identification number within two (2) days following the Effective Date if not beforehand.

15 **5. CLAIMS COVERED AND RELEASED**

16 **5.1 Shefa’s Public Release of Proposition 65 Claims**

17 Shefa, acting on its own behalf and in a representative capacity in the public interest,
18 releases Defendant, and its parents, subsidiaries, affiliated entities, directors, officers, employees,
19 and attorneys, and the predecessors, successors, or assigns of each of them as well as each entity
20 from whom they acquire the Product or the Product’ components, and each entity to whom they
21 directly or indirectly distribute or sell Product, including, but not limited to, distributors,
22 wholesalers, dealers, customers, retailers (including, but not limited to, Grease Monkey, Kohls
23 Department Stores, Inc., and affiliated entities), franchisees, cooperative members, licensors, and
24 licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 based on
25 failure to warn of alleged exposures to DEHP from Product manufactured, sold, or packaged by
26 Defendant prior to the Effective Date, regardless of the date any Releasee distributes or sells the
27 Covered Products.¹

28 ¹ Following the Effective Date, compliance with the terms of this Consent Judgment shall be deemed compliance with Proposition 65 with respect to exposures to DEHP from the Product.

1 **5.2 Shefa’s Private Releases of Claims**

2 Shefa, *in its individual capacity and on its own behalf and on behalf of its past and*
3 *current agents, representatives, attorneys, successors, and/or assignees*, also provides a release to
4 Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all
5 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, fines, penalties,
6 losses, claims, liabilities and demands of any nature, character, or kind, whether known or
7 unknown, direct or indirect, suspected or unsuspected, arising out of alleged or actual exposures
8 to any of the chemicals listed under Proposition 65 (including but not limited to the Listed
9 Phthalates) in the Product. In this regard, Shefa hereby acknowledges that it is familiar with and
10 hereby waives Section 1542 of the California Civil Code, which provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
13 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
14 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

15 **5.3 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, whether in the course of investigating claims,
20 otherwise seeking to enforce Proposition 65 against Defendant in this matter, or with respect to
21 the Product.

22 **6. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved and entered by the Court within one (1)
25 year after it has been fully executed by all Parties, unless the Parties mutually agree to extend that
26 time period due to what they mutually agree are reasonably unforeseeable circumstances.

1 **7. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
3 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not
4 be adversely affected.

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California and apply within the State of California. In the event that Proposition 65 is repealed or
8 is otherwise rendered inapplicable by reason of law generally, or as to the Product, then
9 Defendant may provide written notice to Shefa of any asserted change in the law and have no
10 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
11 Product are so affected.

12 **9. NOTICES**

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

17 For Defendant:

18 Ponte Vedra Gifts and Accessories Company, LLC
19 c/o Jesse S. McIntyre, P.A.
20 105 Solana Road, Suite B
21 Ponte Vedra Beach, FL 32082

22 and

23 Jeffrey Parker, Esq.
24 Sheppard Mullin Richter & Hampton LLP
25 333 S. Hope Street, 43rd Floor
26 Los Angeles CA 90071

27 For Shefa:

28 Daniel N. Greenbaum, Esq.
 Law Office of Daniel N. Greenbaum
 The Hathaway Building
 7120 Hayvenhurst Avenue, Suite 320
 Van Nuys, CA 91406

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

3 **10. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

7 **11. POST EXECUTION ACTIVITIES**

8 Shefa agrees to comply with the reporting form requirements referenced in Health &
9 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety
10 Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement
11 manifested in this Consent Judgment. In furtherance of obtaining such approval, Shefa shall file
12 and serve a noticed motion for approval of this Consent Judgment within sixty (60) days of its
13 execution by all Parties and assure that the Office of the California Attorney General is served
14 with said motion and all supporting papers at least forty-five (45) days prior to the scheduled
15 hearing thereon. Defendant agrees to support the entry of this Consent Judgment once such
16 motion has been filed.

17 **12. ENFORCEMENT**

18 The Court shall retain jurisdiction to oversee, enforce, and/or modify the terms of this
19 Consent Judgment. Any Party may, after meeting and conferring, by motion or application for an
20 order to show cause before this Court, enforce the terms and conditions contained in this Consent
21 Judgment. However, before filing such a motion or an application for an order to show cause,
22 Shefa shall provide Defendant with 30 (thirty) days written notice of any alleged violations of the
23 terms of Injunctive Relief contained in Section 2 herein. As long as Defendant cures any such
24 alleged violations within 30 (thirty) days of receipt of the written notice by ceasing the sale of the
25 Covered Product in California until such time as warnings are provided for it pursuant to Section
26 2.2 above or testing reveals that the reformulation standard has been met for it pursuant to Section
27 2.1 above, then there shall be deemed no good cause for enforcement or actionable violation.
28

1 **13. INTEGRATION**

2 This Consent Judgment contains the sole and entire agreement of the Parties. Any and all
3 prior negotiations and understandings related hereto shall be deemed to have been merged within
4 it. No representations or terms of agreement other than those contained herein exist or have been
5 made by any Party with respect to the other Party or the subject matter hereof.

6 **14. MODIFICATION**


7 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
8 and upon entry, following at least twenty-one (21) days' notice to the Office of the Attorney
9 General, of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
10 application of any Party, which shall also be served on the Office of the California Attorney
11 General with at least twenty-one (21) days' notice, and the entry of a modified consent judgment
12 by the Court. Any Party seeking to modify this Consent Judgment shall attempt in good faith to
13 meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

14 **15. AUTHORIZATION**

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

18
19 **AGREED TO:**

20 Date: 1/18/2019

21 By: 
22 Shefa LMV, Inc.

23 **AGREED TO:**

24 Date: 01/17/19

25 By: 
26 Ponte Vedra Gifts &
27 Accessories Company, LLC

28

1 ORDER AND JUDGMENT

2 Please note that on _____, 2019 at _____, Plaintiff Shefa LMV Inc.'s
3 ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment
4 as to Defendant Ponte Vedra Gifts & Accessories Company, LLC came on for hearing before this
5 Court in Department _____, the Honorable _____ presiding. Counsel for Plaintiff
6 did [not] appear; counsel for Defendant did [not] appear.

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

- 11 a. The injunctive relief required by the Settlement Agreement complies with Health &
12 Safety Code § 25249.7;
- 13 b. The reimbursement of fees and costs to be paid pursuant to the Settlement Agreement
14 is reasonable under California law; and
- 15 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.

16
17
18 Dated: _____

19
20 _____
21 Judge of the Superior Court