

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

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S)			
	DEFENDANT(S) INVOLVED IN SETTLEMENT			
<b>CASE INFO</b>	COURT DOCKET NUMBER		COURT NAME	
	SHORT CASE NAME			
<b>REPORT INFO</b>	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 / /
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>			
<b>FILER INFO</b>	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  
Daniel N. Greenbaum, Esq. (SBN 268104)  
2 The Hathaway Building  
3 7120 Hayvenhurst Avenue, Suite 320  
Van Nuys, CA 91406  
4 Telephone: (818) 809-2199  
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6 Attorney for Plaintiff  
7 SHEFA LMV, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10  
11 SHEFA LMV, INC., ) Case No. RG19013414  
12 )  
Plaintiff, )  
13 )  
vs. ) **[PROPOSED] CONSENT JUDGMENT**  
14 ) **AS TO ORLY INTERNATIONAL, INC.**  
ORLY INTERNATIONAL, INC., )  
15 )  
Defendant. )  
16 ) Action Filed: April 3, 2019  
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18 )  

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[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT  
ORLY INTERNATIONAL, INC.

1     **1.     INTRODUCTION**

2             **1.1     Parties**

3             This consent judgment (“Consent Judgment”) is entered into by and between plaintiff Shefa  
4     LMV, Inc. (“Shefa” or “Plaintiff”) and Orly International, Inc., (“Defendant”) (Plaintiff and  
5     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 sale of lotion products, including but  
16    not limited to, Orly® Cuticle Therapy Crème UPC:079245245217, that are manufactured, sold, or  
17    distributed for sale in California by Defendant that contain Diethanolamine (“DEA”) (the “**Covered**  
18    **Products**”).

19            **1.5     General Allegations**

20            Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state  
21    of California, the Covered Products without first providing a clear and reasonable warning required  
22    by Proposition 65. DEA (CAS # 111-42-2) is a chemical listed under Proposition 65 as a chemical  
23    known to the state to cause cancer or reproductive toxicity.

24            **1.6     Notice of Violation**

25            On October 24, 2018, Shefa served Defendant and the requisite public enforcement agencies  
26    with a 60-Day Notice of Violation (the “**Notice**”) alleging that Defendant violated Proposition 65  
27    when it failed to warn its customers and consumers in California that the Covered Products expose  
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1 users to DEA. To the best of the Parties' knowledge, no public enforcer has commenced and is  
2 diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On April 3, 2019, Shefa filed the instant complaint in the Superior Court in and for the  
5 County of Alameda against Defendant, alleging violations of California Health & Safety Code  
6 § 25249.6, based on exposures to DEA contained in the Covered Products sold in the State of  
7 California (the "**Complaint**").

8 **1.8 No Admission**

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

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate: a) this Court has  
20 jurisdiction over Defendant as to the allegations in the Complaint; b) venue is proper in the County  
21 of Alameda; c) the Defendant employs or has employed ten or more persons during time periods  
22 relevant to the Complaint; and d) this Court has jurisdiction over the Parties to enter and enforce the  
23 provisions of this Consent Judgment pursuant to Proposition 65.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "**Effective Date**" shall mean the date the  
26 Consent Judgment is approved and entered by the Court.  
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1     **2.     INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2             **2.1     Reformulation**

3             As of the Effective Date, Defendant shall reformulate any Covered Products manufactured  
4 after the Effective Date and offered for sale in California to exclude DEA in the Covered Products.

5             **2.2     Warning**

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

13             (a)     the text, **“WARNING: This product can expose you to chemicals,**  
14                   **including Diethanolamine, which is known to the State of California to cause cancer.**  
15                   **For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”** accompanied by and placed to  
16 the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle  
17 with a bold black outline sized to be no smaller than the word, “WARNING” as provided by  
18 regulations adopted on or about August 30, 2016; or

19             (b)     the text, **“WARNING: Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”** accompanied  
20 by and placed to the right of a symbol consisting of a black exclamation point in a yellow  
21 equilateral triangle with a bold black outline sized to be no smaller than the word,  
22 “WARNING” as provided by regulations adopted on or about August 30, 2016.

23             The triangular warning symbol specified in Section 3.3(a) and 3.3(b) shall be in yellow with a black  
24 exclamation mark; *provided however*, the symbol may be printed in black and white if the Covered  
25 Product label is not printed against a yellow background.  
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1           **2.3 Covered Products in the Stream of Commerce.**

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

4           **3. MONETARY SETTLEMENT TERMS**

5           **3.1 Payment from Defendant.** Pursuant to the schedule set forth below, Defendant  
6 shall make the Total Settlement Payment of \$19,500.00.

7           **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)  
8 separate checks made payable and allocated as follows:

9                       **3.2.1 Civil Penalty.** Defendant shall pay \$2,500.00 as a civil penalty  
10 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in  
11 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of  
12 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the  
13 OEHHA portion of the civil penalty payment in the amount of \$1,875.00 shall be made payable to  
14 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be  
15 delivered as follows:

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

21           The Shefa portion of the civil penalty payment in the amount of \$625.00 shall be made  
22 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.  
23 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst  
24 Ave, Suite 320, Van Nuys, CA 91406.

25                       **3.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's  
26 fees and costs in the amount of \$17,000.00 payable to the "Law Office of Daniel N. Greenbaum,"  
27 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to  
28 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

1           **3.3       Payment Schedule** – Defendant shall pay the Total Settlement Payment in  
2 installments, with the civil penalties to be paid first, as specified below. The Payments will be made  
3 in accordance with Paragraph 4.2 of this agreement and as follows:

4                   **3.3.1       Payment to OEHHA and Shefa LMV Inc.:** Within ten (10) days of  
5 the Effective Date, Defendant shall pay \$1,875.00 of the civil penalty payment to OEHHA and  
6 \$625.00 of the civil Penalty to Shefa LMV, Inc. Payment shall be considered made if by United  
7 States Postal Service Delivery, the payment is postmarked within such 10 days or, if made by non-  
8 United States Postal Service Delivery, the payment is delivered with such 10 days.

9                   **3.3.2       Payment to The Law Office of Daniel Greenbaum**

10                   **3.3.2.1**       Within ten (10) days of the Effective Date, Defendant  
11 shall pay \$1,400.00 as partial payment for attorneys’ fees and costs by check made out to “The Law  
12 Office of Daniel N. Greenbaum.”

13                   **3.3.2.2**       One month after the first partial payment according to  
14 ¶ 3.3.2.1, Defendant shall pay \$3,900.00 as partial payment for attorneys’ fees and costs by check  
15 made out to “The Law Office of Daniel N. Greenbaum.”

16                   **3.3.2.3**       Two months after the first partial payment according to  
17 ¶ 3.3.2.1, Defendant shall pay \$3,900.00 as partial payment for attorneys’ fees and costs by check  
18 made out to “The Law Office of Daniel N. Greenbaum.”

19                   **3.3.2.4**       Three months after the first partial payment according to  
20 ¶ 3.3.2.1, Defendant shall pay \$3,900.00 as partial payment for attorneys’ fees and costs by check  
21 made out to “The Law Office of Daniel N. Greenbaum.”

22                   **3.3.2.5**       One month after the first partial payment according to  
23 ¶ 3.3.2.1, Defendant shall pay \$3,900.00 as partial payment for attorneys’ fees and costs by check  
24 made out to “The Law Office of Daniel N. Greenbaum.”

25                   **3.3.2.6**       All payments due from Defendant pursuant to this  
26 Paragraph 3.3.2 and its subparagraphs shall be sent via US Postal Delivery Service to the Law  
27  
28

1 Office of Daniel M. Greenbaum, The Hathaway Building 7120 Hayvenhurst Avenue, Suite 320 Van  
2 Nuys, CA 91406 and shall be postmarked no later than the 5<sup>th</sup> day of each month.

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Public Release**

5 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant  
6 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of  
7 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,  
8 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,  
9 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and  
10 each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered  
11 Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees,  
12 cooperative members, and licensees, including but not limited to Beauty One, Inc. (“**Releasees**”),  
13 based on failure to warn of alleged exposures to DEA from Covered Products manufactured, sold,  
14 or distributed for sale in California by Defendant prior to the Effective Date. The release in this  
15 Section 4.1 applies to all Covered Products that Defendant manufactured, distributed, or sold prior  
16 to the Effective Date, regardless of the date any other Releasee distributes or sells the Covered  
17 Products.

18 Compliance with the terms of this Consent Judgment shall constitute compliance with  
19 Proposition 65 by Defendant and the Releasees with respect to DEA in Covered Products  
20 manufactured, sold, or distributed on and after the Effective Date.

21 **4.2 Shefa’s Individual Release of Claims**

22 In further consideration of the promises and agreements herein contained, Shefa, on its own  
23 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or  
24 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
25 legal action, and releases all claims that it may have against Defendant and Releasees, including,  
26 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,  
27 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert  
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1 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEA 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 It is possible that other claims not known to the Parties arising out of the facts contained in  
13 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be  
14 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment  
15 is expressly intended to cover and include all such claims through and including the Effective Date,  
16 including all rights of action therefor. Shefa acknowledges that the claims released in Sections 4.1  
17 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in  
18 doing so waives California Civil Code § 1542, which reads as follows:

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

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

1 Releasees.

2 **5. COURT APPROVAL**

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

4 **6. GOVERNING LAW**

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

13 **7. NOTICE**

14 Unless specified herein, all correspondence and notices required to be provided pursuant to  
15 this Consent Judgment shall be in writing and sent by email or if requested by Defendant, the  
16 following service methods are allowed: (i) personal delivery; (ii) first-class, registered or certified  
17 mail, return receipt requested; or (iii) a recognized overnight courier on any Party by the other at the  
18 following addresses:

19 To Defendant:

20 Jodi Smith, Of Counsel  
21 Jeffer Mangels Butler & Mitchell LLP  
22 Two Embarcadero Center, 5th Floor, San  
Francisco, California 94111

To Shefa:

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

23  
24 Any Party may, from time to time, specify in writing to the other Party a change of address to which  
25 all notices and other communications shall be sent.

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

27 This Consent Judgment may be executed in counterparts, and by facsimile or portable  
28

1 document format (PDF) signature, each of which shall be deemed an original, and all of which,  
2 when taken together, shall constitute one and the same document.

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

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

6 **10. POST EXECUTION ACTIVITIES**

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

11 **11. MODIFICATION**

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

15 **12. DISPUTE RESOLUTION**

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

25 **13. AUTHORIZATION**

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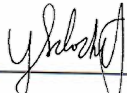
1 Consent Judgment.

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3 AGREED TO:

AGREED TO:

4  
5 Date: 7/16/2019

Date: JULY 15-2019

6  
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8 By:   
9 SHEFA LMV, INC.

By:   
ORLY INTERNATIONAL, 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 Orly 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.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge of the Superior Court