

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 Olivia Miller, Inc.			
CASE INFO	COURT DOCKET NUMBER 21STCV11165		COURT NAME SUPERIOR COURT OF CA, Los Angeles Co	
	SHORT CASE NAME Shefa LMV, Inc. v. Olivia Miller, Inc., et al.			
REPORT INFO	INJUNCTIVE RELIEF COMPLIANT PRODUCTS AND WARNINGS			
	PAYMENT: CIVIL PENALTY \$2,000.00	PAYMENT: ATTORNEYS FEES \$16,000.00	PAYMENT: OTHER \$0.00	For Internal Use Only
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" 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 1 / 19 / 2022	
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum			
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698	
	CITY Van Nuys	STATE CA	ZIP 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com

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
Facsimile: (424) 243-7689
5 Email: dgreenbaum@greenbaumlawfirm.com

6 Attorney for Plaintiff SHEFA LMV, INC.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10

11 SHEFA LMV, INC.,) Case No. 21STCV11165
12)
Plaintiff,)
13)
vs.) [PROPOSED] CONSENT JUDGMENT
14) AS TO OLIVIA MILLER, INC.
OLIVIA MILLER, INC.; and DOES 1 through)
15 100, Inclusive,)
16 Defendant.) Action Filed: March 23, 2021
17)
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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 Olivia Miller, Inc. (“**Defendant**,” with Shefa 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 Defendant’s plastic backpack products,
16 including, but not limited to Mini Heart Clear Backpack; UPC: 657486565099; SKU: 68593924,
17 that are manufactured, sold, or distributed for sale in California by Defendant (collectively, the
18 “**Covered 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. DEHP (CAS # 68515-48-0) is a chemical listed under Proposition 65 as a
23 chemical known to the state to cause cancer or reproductive toxicity. Notice of Violation

24 On April 6, 2020, Shefa served Defendant and the requisite public enforcement agencies
25 with a Sixty Day Notices of Violation (the “**Notices**”) alleging that Defendant violated Proposition
26 65 when it failed to warn its customers and consumers in California that the Covered Products
27 expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced
28

1 and is diligently prosecuting the allegations set forth in the Notice.

2 **1.6 Complaint**

3 On March 23, 2021, Shefa filed the instant complaint in the Superior Court in and for the
4 County of Los Angeles against Defendant alleging violations of California Health & Safety Code
5 § 25249.6, based on exposures to DEHP contained in the Covered Products sold in the State of
6 California (the “**Complaint**”).

7 **1.7 No Admission**

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

17 **1.8 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
20 County of Los Angeles, the Defendant agrees that they employs or have employed ten or more
21 persons during time periods relevant to the Complaint and that this Court has jurisdiction over the
22 Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

23 **1.9 Effective Date**

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

2 **2.1 Reformulation Standards**

3 Within 150 days of the Effective Date, Defendant shall not manufacture for sale in
4 California any Covered Products unless such Covered Products contain DEHP in concentrations
5 less than or equal to 1000 parts per million (“ppm”) when analyzed pursuant to U.S. Environmental
6 Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable
7 methodology for determining the concentration of DEHP in the Covered Products, unless the
8 Covered Product has a warning consistent with Section 2.2, below.

9 **2.2 Warning Standards**

10 Defendant agrees, promises, and represents that, within 150 days of the Effective Date, to
11 the extent it ships or sell Covered Products that do not meet the formulation standards set forth
12 above in Section 2.1, Defendant will provide warnings on such Covered Products that comply with
13 Proposition 65. The warnings shall be provided in a conspicuous and prominent manner such that
14 they will be likely to be read or seen by the consumer prior to or at the time of the sale or purchase.
15 The Parties agree that the warning set forth below shall constitute compliance with Proposition 65
16 with respect to any Covered Products that are not reformulated:

17 (a) the text, **“WARNING This product can expose you to chemicals, including Di(2-**
18 **ethylhexyl) phthalate (DEHP) which is known to the State of California to cause cancer**
19 **and birth defects or other reproductive harm. For more information go to**
20 **www.P65Warnings.ca.gov.”** accompanied by and placed to the right of a symbol consisting
21 of a black exclamation point in a yellow equilateral triangle with a bold black outline sized
22 to be no smaller than the word, “WARNING” as provided by regulations adopted on or
23 about August 30, 2016; or

24 (b) the text, **“WARNING Cancer and Reproductive Harm -**
25 **www.P65Warnings.ca.gov.”** accompanied by and placed to the right of a symbol consisting
26 of a black exclamation point in a yellow equilateral triangle with a bold black outline sized
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1 to be no smaller than the word, "WARNING" as provided by regulations adopted on or
2 about August 30, 2016.

3 The triangular warning symbol specified in Section 2.2(a) and 2.2(b) shall be in yellow with a black
4 exclamation mark; *provided however*, the symbol may be printed in black and white if the Covered
5 Product label is not printed using the color yellow.
6

7 **2.3 Covered Products in the Stream of Commerce.**

8 Any Covered Products that have been manufactured, distributed, shipped, or sold by
9 Defendant prior to ninety (150) days after the Effective Date, shall not be subject to the
10 requirements of Sections 2.1 or 2.2.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Payment from Defendant.** Starting on the Effective Date, Defendant shall make
13 Payment as specified in 3.2.4 and 3.2.5 in the aggregate amount of **\$18,000.00**.

14 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in eleven (11)
15 separate checks made payable and allocated as follows:

16 **3.2.1 Civil Penalty.** Defendant shall pay \$2,000.00 as a civil penalty
17 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
18 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
19 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
20 OEHHA portion of the civil penalty payment in the amount of \$1,500.00 shall be made payable to
21 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
22 delivered as follows:

23 For United States Postal Service Delivery:

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

1 **3.2.5.2** Thirty (30) days after the previous payment, Defendant
2 shall pay \$2,000.00 as partial payment for attorneys' fees and costs by check made out to "The Law
3 Office of Daniel N. Greenbaum."

4 **3.2.5.3** Thirty (30) days after the previous payment, Defendant
5 shall pay \$2,000.00 as partial payment for attorneys' fees and costs by check made out to "The Law
6 Office of Daniel N. Greenbaum."

7 **3.2.5.4** Thirty (30) days after the previous payment, Defendant
8 shall pay \$2,000.00 as partial payment for attorneys' fees and costs by check made out to "The Law
9 Office of Daniel N. Greenbaum."

10 **3.2.5.5** Thirty (30) days after the previous payment, Defendant
11 shall pay \$2,000.00 as partial payment for attorneys' fees and costs by check made out to "The Law
12 Office of Daniel N. Greenbaum."

13 **3.2.5.6** Thirty (30) days after the previous payment, Defendant
14 shall pay \$2,000.00 as partial payment for attorneys' fees and costs by check made out to "The Law
15 Office of Daniel N. Greenbaum."

16 **3.2.5.7** Thirty (30) days after the previous payment, Defendant
17 shall pay \$2,000.00 as partial payment for attorneys' fees and costs by check made out to "The Law
18 Office of Daniel N. Greenbaum."

19 **3.2.5.8** Thirty (30) days after the previous payment, Defendant
20 shall pay \$2,000.00 as partial payment for attorneys' fees and costs by check made out to "The Law
21 Office of Daniel N. Greenbaum."

22 **3.2.6** All payments due from Defendant pursuant to this Paragraph 3.2.5
23 and its subparagraphs shall be sent via US Postal Delivery Service to the Law Office of Daniel M.
24 Greenbaum, The Hathaway Building 7120 Hayvenhurst Avenue, Suite 320 Van Nuys, CA 91406.
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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Public Release**

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

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

19 **4.2 Shefa’s Individual Release of Claims**

20 In further consideration of the promises and agreements herein contained, Shefa, on its own
21 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
22 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
23 legal action, and releases all claims that it may have against Defendant and Releasees, including,
24 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
25 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
26 fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP from
27 Covered Products manufactured, sold, or distributed for sale by Defendant prior to the Effective
28

1 Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not releases on
2 behalf of the public.

3
4 **4.3 Release of Unknown Claims**

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

12 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
13 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
14 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE**
15 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
16 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
17 **PARTY.**

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

24 **5. COURT APPROVAL**

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

26 **6. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 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 Products, then Defendant

1 may provide written notice to Shefa of any asserted change in the law, and with the exception of
2 Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with
3 respect to, and to the extent that, the Covered Products are so affected. None of the terms of this
4 Consent Judgment shall have any application to Covered Products sold outside of the State of
5 California.

6 **7. NOTICE**

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

11 To Pacific Coast Distributing:

12 Subi Hamra
13 OLIVIA MILLER, INC.
14 275 Madison Avenue, 3rd Floor,
15 New York, New York 10016
16 Email: Subi@oliviamiller.com

To Shefa:

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

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

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

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

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

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

26 **10. POST EXECUTION ACTIVITIES**

27 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),
28 Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.

1 Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to submit this
2 Consent Judgment to the Court with a motion seeking Court approval.

3 **11. MODIFICATION**

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

7 **12. DISPUTE RESOLUTION**

8 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
9 Shefa shall provide notice to Defendant. Prior to bringing any action to enforce any requirement of
10 this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the
11 other party with written notice of the grounds for such allegation together with all supporting
12 information as well as a complete demand for the relief sought. The Parties shall then meet and
13 confer regarding the basis for the allegation to resolve the matter informally, including providing
14 the party alleged to be in violation with a reasonable opportunity of at least thirty (60) days to cure
15 any alleged violation. Should such attempt at informal resolution fail, the party alleging a violation
16 may file its lawsuit seeking the proposed relief.

17 **13. AUTHORIZATION**

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

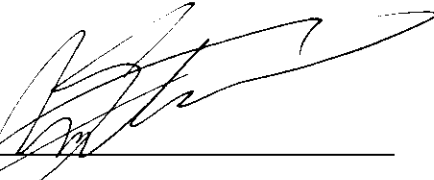
21 AGREED TO:

AGREED TO:

22
23 Date: 1/19/2022

Date: 1/18/2022

24
25
26 By: 

By: 

27 PLAINTIFF SHEFA LMV, INC.

DEFENDANT OLIVIA MILLER, INC.

[PROPOSED] JUDGMENT

Please note that on _____, 2022 at 8:30am, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Olivia Miller, Inc. 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.

The Consent Judgment is approved, and the clerk is directed to ENTER JUDGMENT in accordance with the terms of the Consent Judgment above.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date

Judge of the Superior Court