

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 1502
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF ENTRY OF JUDGMENT

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 JUDGMENT Mizco International, Inc.			
CASE INFO	COURT DOCKET NUMBER BC668988		COURT NAME Los Angeles County Superior Court	
	SHORT CASE NAME Shefa v. Mizco			
REPORT INFO	INJUNCTIVE RELIEF Reformulation or warning labels			
	PAYMENT: CIVIL PENALTY \$6,000.00	PAYMENT: ATTORNEYS FEES \$24,000.00	PAYMENT: OTHER 0	For Internal Use Only
	DATE SUBMITTED TO COURT 9 / 06 / 2017	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 09 / 06 / 2017	
	COPY OF JUDGMENT MUST BE ATTACHED			
NAME OF CONTACT Daniel N. Greenbaum, Esq.				
FILER INFO	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7689	
	CITY Van Nuys	STATE ZIP CA 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 judgment 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.

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LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
The Hathaway Building
7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
Telephone: (818) 809-2199
Facsimile:(424) 243-7689
Email:dgreenbaum@greenbaumlawfirm.com

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

OCT 23 2017

Sherri R. Carter, Executive Officer/Clerk
By  Deputy

Attorney for Plaintiff SHEFA LMV, INC.

MILLER LIEBY & ASSOCIATES PC
Evan Mizrahi, Esq.
32 Broadway
New York NY 10004
Telephone: (212) 227-4200
Facsimile: (212) 504-8369
Email: emizrahi@millerleiby.com

**RECEIVED
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Attorneys for Defendant MIZCO INTERNATIONAL, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHEFA LMV, INC.,) Case No. BC668988
Plaintiff,)
vs.) ~~PROPOSED~~ CONSENT JUDGMENT
MIZCO INTERNATIONAL, INC.; and DOES 1) AS TO MIZCO INTERNATIONAL,
through 100, Inclusive,) INC.
Defendants.)

Action Filed: July 18, 2017

By Fax

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 Mizco International, Inc. (“**MIZCO**” or
5 “**Defendant,**” with Shefa and MIZCO individually referred to as a “**Party**” and collectively as the
6 “**Parties.**”)

7 **1.2 Plaintiff**

8 Shefa is a limited liability company in California that seeks to promote awareness of
9 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
10 substances contained in consumer products.

11 **1.3 Settling Defendant**

12 MIZCO is a person in the course of doing business for purposes of the Safe Drinking Water
13 and Toxic Enforcement Act of 1986, Health and Safety Code §25249.6 *et seq.* (“**Proposition 65**”).

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are Travelocity headphone products that
16 allegedly contain Diisononyl Phthalate (“**DINP**”) without first providing a clear and reasonable
17 warning as required by Proposition 65 that are manufactured, sold, or distributed for sale in
18 California by MIZCO including, but not limited to Travelocity Stereo Headphones; UPC:
19 758302088874 sold to consumers by Family Dollar, Inc. or others in MIZCO’s chain of distribution
20 (collectively, the “**Covered Products**”).

21 **1.5 General Allegations**

22 Shefa alleges that MIZCO manufactures, imports, sells, or distributes, for sale in the state of
23 California, headphone products that contain DINP without first providing a clear and reasonable
24 warning required by Proposition 65. DINP (CAS # 68515-48-0) is a chemical listed under
25 Proposition 65 as a chemical “known to the state to cause cancer” as Proposition 65 defines that
26 term. 27 CCR §25000. MIZCO denies these allegations.

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1.6 Notice of Violation

On May 8, 2017, Shefa served MIZCO, others, and the requisite public enforcement agencies with a 60-Day Notice of Violation (the “**Notice**”) alleging that MIZCO violated Proposition 65 when it failed to warn its customers and consumers in California that the Covered Products expose users to DINP. 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 July 18, 2017, Shefa filed the instant complaint in the Superior Court in and for the County of Los Angeles against MIZCO and DOES 1-100, 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 “**Complaint**”).

1.8 No Admission

MIZCO 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 MIZCO 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 MIZCO of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by MIZCO. This section shall not, however, diminish or otherwise affect MIZCO’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 Los Angeles, the Defendant agrees that it employs or has 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.

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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.

2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

2.1 Reformulation Standards

Compliant Products are defined as those Products containing the Listed Chemical in concentrations less than or equal to 1000 parts per million (“ppm”) (0.1%) when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology for determining the Listed Chemical content in a substance of the form of the Covered Products herein.


Defendant agrees, promises, and represents that, as of Ninety (90) days after the Effective Date, to the extent it ships or sells any Covered Products that have not been reformulated, Defendant will provide warnings on such Covered Products that comply with Proposition 65.

The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase.

The Parties agree that product labeling stating one of the following shall constitute compliance with Proposition 65 with respect to any Covered Products not reformulated:

“WARNING: This product contains chemicals known to the State of California to cause cancer.”

Or

“ WARNING: This product can expose you to chemicals including Diisononyl phthalate (DINP) which are known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.”

2.2 Reformulation

Commencing ninety (90) days after the Effective Date, and continuing thereafter, MIZCO shall not manufacture or cause to be manufactured for sale in California, cause to be exported or

1 distributed for sale in California, Covered Products unless they are compliant with Section 2.1
2 above.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
5 Defendant shall make the Total Settlement Payment of **\$30,000.00**.

6 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
7 separate checks made payable and allocated as follows:

8 **3.2.1 Civil Penalty.** Defendant shall pay \$6,000.00 as a civil penalty
9 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
10 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
11 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
12 OEHHA portion of the civil penalty payment in the amount of \$4,500.00 shall be made payable to
13 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
14 delivered as follows:

15 For United States Postal Service Delivery:

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 For Non-United States Postal Service Delivery:

22 Attn: Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street, MS #19B
26 Sacramento, CA 95814

27 The Shefa portion of the civil penalty payment in the amount of \$1,500.00 shall be made
28 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.

1 **3.2.2 Attorney’s Fees and Costs.** A reimbursement of Shefa's attorney’s
2 fees and costs in the amount of \$24,000.00 payable to the “Law Office of Daniel N. Greenbaum,”
3 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
4 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

5 **4. CLAIMS COVERED AND RELEASED**

6 **4.1 Shefa’s Public Release of MIZCO and its Downstream Releasees**

7 This Consent Judgment is a full, final, and binding resolution between Shefa and MIZCO of
8 any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
9 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
10 against MIZCO, its parents, subsidiaries, affiliated entities under common ownership,
11 manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors, successors,
12 or assigns of each of them, and each entity to whom MIZCO directly or indirectly exports,
13 distributes or sells the Covered Products, including, without limitation, downstream distributors,
14 wholesalers, customers, retailers (including, without limitation, Family Dollar, Inc. and its
15 affiliates), franchisees, cooperative members, and licensees (“**Releasees**”), based on failure to warn
16 of alleged exposures from Covered Products manufactured, sold, exported or distributed for sale in
17 California by MIZCO prior to the Effective Date and for ninety (90) days after the Effective Date.
18 The release in this Section 4.1 applies to all Covered Products that MIZCO manufactured, exported,
19 distributed, or sold prior to the Effective Date and for Ninety (90) days after the Effective Date,
20 regardless of the date any other Releasee distributes or sells the Covered Products.

21 Upon entry of this Consent Judgment by the Court, going forward, MIZCO’s compliance
22 with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition
23 65 by MIZCO or any other Releasee with respect to DINP in Covered Products manufactured, sold,
24 or distributed for sale in California by MIZCO on and after the Effective Date.

25 **4.2 Shefa’s Individual Release of Claims**

26 In further consideration of the promises and agreements herein contained, Shefa, on its own
27 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
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1 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
2 legal action, and releases all claims that it may have against MIZCO and Releasees, including,
3 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
4 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
5 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DINP from
6 Covered Products manufactured, sold, or distributed for sale in California by MIZCO prior to the
7 Effective Date and for ninety (90) days after the Effective Date. The releases in Section 4.2 are
8 provided in Shefa's individual capacity and are not releases on behalf of the public.

9 **4.3 MIZCO's Release of Shefa**

10 MIZCO, on its own behalf and on behalf of its past and current agents, representatives,
11 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
12 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
13 by Shefa and its attorneys and other representatives, whether in the course of investigating claims,
14 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered
15 Products.

16 **4.4 Release of Unknown Claims**

17 It is possible that other claims not known to the Parties arising out of the facts contained in
18 the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
19 discovered or developed. Shefa, on behalf of itself only, on the one hand, and MIZCO, on the other
20 hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such
21 claims through and including the Effective Date and for ninety (90) days after the Effective Date,
22 including all rights of action therefor. Shefa and MIZCO acknowledge that the claims released in
23 Section 4 may include unknown claims, and nevertheless intend to release such claims, and in doing
24 so waive California Civil Code § 1542, which reads as follows:

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

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

6 **5. COURT APPROVAL**

7 This Consent Judgment is not effective until it is approved and entered by the Court and
8 shall be null and void if, for any reason, it is not approved and entered by the Court within ninety
9 (90) days after it has been fully executed by the Parties, or by such additional time as the Parties
10 may agree in writing.

11 **6. SEVERABILITY**

12 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
13 Judgment is held by a court to be void or unenforceable, or the Parties agree to modify any terms
14 due to comments from the Office of the Attorney General or after a hearing before the Court in
15 connection with Shefa's Motion to Approve, or for other good cause, each Party to be bound by any
16 such modified terms must re-execute the modified Consent Judgment and such modified Consent
17 Judgment then shall be presented by Shefa to the Court for approval; provided, however, that if a
18 provision of this Consent Judgment declared void or unenforceable is material to the Party for
19 whom such term provided a benefit or protection, that Party can seek other remedies, including,
20 without limitation, rescission or reformation, based on the provision being declared void or
21 unenforceable.

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of California
24 and apply within the State of California. DINP is listed pursuant to Proposition 65 as a chemical
25 that is known to the State of California to cause cancer and/or reproductive toxicity. In the event
26 that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or
27 as to the Covered Products, including without limitation the delisting of DINP, then MIZCO may
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1 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 **8. 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 MIZCO:

12 MILLER LIEBY & ASSOCIATES PC
13 Evan Mizrahi, Esq.
14 32 Broadway
New York NY 10004

To Shefa:

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

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

17 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

21 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

24 **11. POST EXECUTION ACTIVITIES**

25 **11.1** The Parties acknowledge that, pursuant to California Health & Safety Code
26 § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent
27 Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to
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1 submit this Consent Judgment to the Court with a motion seeking Court approval.

2 **12. MODIFICATION**

3 **12.1** In the event that any future settlement agreement or court approved consent
4 judgment entered into by Shefa involving another party, or any future court-approved consent
5 judgment entered into by any enforcer of Proposition 65 involving another party, sets out a
6 reformulation or compliance standard that is less stringent than that in Section 2.1 above for DINP
7 in substantially similar headphone products, then MIZCO is entitled to a corresponding
8 modification to the corresponding standard set forth in section 2.1 of this Consent Judgment, with
9 regard to the Covered Products.

10 **12.2** In the event OEHHA establishes a safe harbor No-Significant Risk Level (“NSRL”)
11 for DINP, which MIZCO asserts would allow for the Covered Products to contain levels of DINP in
12 amounts greater than those set forth above in Section 2.1, then such safe harbor levels shall be
13 substituted in place and instead of this set forth above in Section 2.1.

14 **12.3** This Consent Judgment may only be modified by a written instrument executed by
15 the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion.
16 Any motion to modify shall be served on all Parties and the Office of the Attorney General.

17 **13. DISPUTE RESOLUTION**

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

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14. 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.

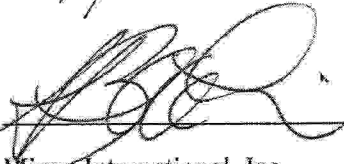
AGREED TO:

AGREED TO:

Date: 8/2/2017

Date: 8/1/17

By: 
Shefa LMV, Inc.

By: 
Mizco International, Inc.

[PROPOSED] JUDGMENT

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Please note that on 10/20/2017 at 8:30^{AM}, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Mizco International, Inc. came for hearing before this Court in Department 74, the Honorable Michelle Williams Court presiding. Counsel for Plaintiff did (not) appear; counsel for Defendant did (not) appear. *Both parties submitted on the Court's tentative ruling.*

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 Settlement Agreement is hereby approved, and the clerk is directed to ENTER JUDGMENT in accordance with the terms of the Settlement Agreement above.

OCT 23 2017

Date

Judge Michelle Williams Court

Superior Court Judge