

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**

Original Filing     Supplemental Filing     Corrected Filing

Please print or type required information

|                              |  |   |            |   |
|------------------------------|--|---|------------|---|
| <b>PARTIES TO THE ACTION</b> | PLAINTIFF(S)                             |   |            |   |
|                              | DEFENDANT(S) INVOLVED IN JUDGMENT        |   |            |   |
| <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  |
|                              | DATE SUBMITTED TO COURT<br>/ /           | IS JUDGMENT PURSUANT TO SETTLEMENT?<br><input type="checkbox"/> Yes <input type="checkbox"/> No |            | IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL<br>/ / |
|                              | <b>COPY OF JUDGMENT MUST BE ATTACHED</b> |   |            |   |
| <b>FILER INFO</b>            | NAME OF CONTACT                          |   |            |   |
|                              | ORGANIZATION                             |   |            | TELEPHONE NUMBER<br>(    )                                      |
|                              | ADDRESS                                  |   |            | FAX NUMBER<br>(    )  |
|                              | CITY                                     |   | STATE      | ZIP   |

**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

Attorney for Plaintiff SHEFA LMV, INC.

**FILED**  
Superior Court of California  
County of Los Angeles

**MAR 22 2019**

Sherri R. Carter, Executive Officer/Clerk  
By *Anthony Ortiz* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,  
  
Plaintiff,  
  
vs.  
  
IML BRAND HOLDING LLC.; and DOES 1  
through 100, Inclusive,  
  
Defendant.

) Case No. BC706026  
) *Hon. Ricardo E. Rico*  
) Dep. 17  
)  
)

) ~~PROPOSED~~ **CONSENT JUDGMENT**  
) **AS TO IML BRAND HOLDING LLC**  
) **AND ISAAC MORRIS LIMITED**

) Action Filed: May 14, 2018

03/26/2019

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 Defendants IML Brand Holding LLC and Isaac  
5 Morris Limited (“**Defendant**,” with Shefa and **Defendant** individually referred to as a “**Party**” and  
6 collectively as the “**Parties.**”)

7             **1.2       Plaintiff**

8             Shefa is a public benefit, non-profit corporation 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            Shefa alleges that Defendant employs ten (10) or more persons and is a person in the course  
13 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 Health and Safety Code §25249.6 *et seq.* (“**Proposition 65**”).

15            **1.4       Products Covered**

16            Shefa alleges that Defendant manufactures, imports, distributes, and/or sells in California  
17 earbud products, including, but not limited to, Pusheen Earbuds; SKU 10743682, that contain  
18 Diisononyl Phthalate (“**DINP**”) (collectively, the “**Covered Products**”).

19            **1.5       General Allegations**

20            Shefa alleges that Defendant manufactures, imports, sells, and/or distributes, for sale in the  
21 state of California Covered Products without first providing a clear and reasonable warning required  
22 by Proposition 65. DINP (CAS # 28553-12-0) is a chemical listed under Proposition 65.

23            **1.6       Notice of Violation**

24            On May 26, 2017, Shefa served Defendant and the requisite public enforcement agencies  
25 with a 60-Day Notice of Violation (the “**Notice**”) alleging that Defendant violated Proposition 65  
26 when it failed to warn consumers in California that the Covered Products allegedly expose users to  
27 DINP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently  
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1 prosecuting the allegations set forth in the Notice.

2 **1.7 Complaint**

3 On May 14, 2018, Shefa filed the instant complaint in the Superior Court in and for the  
4 County of Alameda against Defendant and DOES 1-100, alleging violations of California Health &  
5 Safety Code § 25249.6, based on alleged exposures to DINP contained in the Covered Products sold  
6 by Defendant in the State of California (the “**Complaint**”).

7 **1.8 No Admission**

8 1.0 The Parties enter into this Consent Judgment to settle disputed claims between them  
9 as alleged in the Notice and Complaint. Defendant denies the material, factual, and legal  
10 allegations contained in the Notice and Complaint and maintains that all the products it has  
11 manufactured, sold, or distributed for sale in California, including the Covered Products, have been,  
12 and are, in compliance with all laws, including but not limited to Proposition 65, and are completely  
13 safe for their intended use. Nothing in this Consent Judgment shall be construed as an admission by  
14 Defendant of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall  
15 compliance with this Consent Judgment by Defendant constitute or be construed as an admission by  
16 Defendant of any fact, finding, conclusion of law, issue of law, or violation of law, the same being  
17 specifically denied by Defendant. Nothing in this Consent Judgment, nor compliance with its  
18 terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission  
19 against interest or evidence of fault, wrongdoing, or liability by Defendant, its officers, directors,  
20 employees, or parents, subsidiaries or affiliated corporations, any person acting for Defendant, any  
21 direct or indirect customer of Defendant who sold or sells Covered Products, and/or any  
22 Downstream Releasees, as defined below, in any administrative or judicial proceeding or litigation  
23 in any court, agency, or forum. \_This section shall not, however, diminish or otherwise affect  
24 Defendant’s obligations, responsibilities, and duties under this Consent Judgment.  
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1           **1.9           Consent to Jurisdiction**

2           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
3 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the  
4 County of Alameda, and that this Court has jurisdiction over the Parties to enter and enforce the  
5 provisions of this Consent Judgment pursuant to Proposition 65.

6           **1.10           Effective Date**

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


9  
10          **2.           INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS**

11           **2.1           Reformulation Standards**

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

17           **2.2           Warning Standards**


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

26           “  **[California Proposition 65] WARNING:** This product can expose you to  
27 chemicals including Diisononyl Phthalate (DINP), which are known to the State of  
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1 California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

2 Or,

3  **[California Proposition 65] WARNING:** Cancer and  
4 Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).  
5 This warning only applies to the bag/case.

6 Language in brackets is optional. The background of the yellow triangle can be  
7 white if yellow is not otherwise used on the product label.

8  
9 **2.3 Covered Products in the Stream of Commerce.**

10 Any Covered Products that have been manufactured, imported, distributed, shipped, and/or  
11 sold by Defendant prior to the Effective Date, shall not be subject to the requirements of Section  
12 2.1.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Payment from Defendant.** Within ten (10) business days of the Defendant’s receipt  
15 of notice of entry of this consent judgment, Defendant shall make a total, all inclusive settlement  
16 payment in the amount of **\$17,500** (the “Total Settlement Payment”).

17 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)  
18 separate checks made payable and allocated as follows:

19 **3.2.1 Civil Penalty.** Defendant shall pay a total of \$2,500 as a civil penalty  
20 pursuant to Health & Safety Code § 25249.7(b), and in resolution of any claim for civil penalties,  
21 payments in lieu of penalties, damages or any other form of monetary relief other than Plaintiff’s  
22 attorney’s fees as set forth in Section 3.2.2 below. The civil penalty shall be apportioned in  
23 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of  
24 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the  
25 OEHHA portion of the civil penalty payment in the amount of \$1,875 shall be made by check  
26 payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment  
27 shall be delivered as follows:  
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1                    For United States Postal Service Delivery:

2                    Attn: Mike Gyurics  
3                    Fiscal Operations Branch Chief  
4                    Office of Environmental Health Hazard Assessment  
5                    P.O. Box 4010, MS #19B  
6                    Sacramento, CA 95812-4010

7                    For Non-United States Postal Service Delivery:

8                    Attn: Mike Gyurics  
9                    Fiscal Operations Branch Chief  
10                    Office of Environmental Health Hazard Assessment  
11                    1001 I Street, MS #19B  
12                    Sacramento, CA 95814

13                    The Shefa portion of the civil penalty payment in the amount of \$625 shall be made by check  
14                    payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.

15                    This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst  
16                    Ave, Suite 320, Van Nuys, CA 91406.

17                    **3.2.2            Attorney's Fees and Costs.** Defendant shall pay a total all-inclusive  
18                    amount of \$15,000.00 for Plaintiff's attorney's fees for all work performed through the mutual  
19                    execution of this agreement and the Court's approval of the same. The reimbursement shall cover  
20                    all attorney's fees investigation fees, testing expenses, and all other fees and expenses of any kind  
21                    incurred by Plaintiff investigating, bringing this matter to Defendant's attention, litigating and  
22                    negotiating a settlement of the matter in the public interest, and obtaining court approval of this  
23                    Consent Judgment. Defendant's \$15,000 payment pursuant to this section shall be by check payable  
24                    to the "Law Office of Daniel N. Greenbaum," and associated with taxpayer identification number  
25                    46-4580172. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120  
26                    Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

27                    **4.            CLAIMS COVERED AND RELEASED**

28                    **4.1            Public Release**

                    This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant  
of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of  
itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,

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1 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,  
2 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and  
3 each entity to or from whom Defendant directly or indirectly imports, exports, distributes or sells  
4 the Covered Products, including, without limitation, suppliers, distributors, wholesalers, customers,  
5 retailers, franchisees, cooperative members, licensors, and licensees, including but not limited to  
6 Hot Topic, Inc., (collectively “**Releasees**”), based on any failure or alleged failure to warn of  
7 alleged exposures to DINP from Covered Products manufactured, imported, sold, and/or or  
8 distributed for sale in California by Defendant prior to the Effective Date. The release in this  
9 Section 4.1 applies to all Covered Products that Defendant manufactured, imported, distributed,  
10 and/or sold prior to the Effective Date, regardless of the date any other Releasee distributes or sells  
11 the Covered Products. Compliance with the terms of this Consent Judgment shall constitute  
12 compliance with Proposition 65 by Defendant and the Releasees with respect to actual or alleged  
13 DINP in Covered Products manufactured, imported, sold, and/or distributed on and after the  
14 Effective Date.

15 **4.2 Shefa’s Individual Release of Claims**

16 2.1 In further consideration of the promises and agreements herein contained, Shefa, on  
17 its own behalf and on behalf of its past and current agents, representatives, attorneys, successors,  
18 and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any  
19 form of legal action, and releases all claims that it may have against Defendant and Releasees,  
20 including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations,  
21 damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation  
22 fees, expert fees, and attorneys’ fees arising from Covered Products manufactured, imported, sold,  
23 and/or distributed for sale by Defendant prior to the Effective Date..

24  
25 The releases in Section 4.2 are provided in Shefa’s individual capacity and are not releases  
26 on behalf of the public.  
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**4.3 Defendant’s Release of Shefa**

Defendant, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Shefa and its attorneys and other representatives, for any and all actions taken or statements made by Shefa and its attorneys and other representatives in the course of investigating the claims set forth in the Complaint or otherwise seeking to enforce Proposition 65 against it in this matter.

**4.4 Release of Unknown Claims**

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

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

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

**5. COURT APPROVAL**

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

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1 shall be null and void if not approved by the court within 9 months of its full execution by the  
2 Parties.

3 **6. GOVERNING LAW**

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

12 **7. NOTICE**

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

17 To IML Brand Holding LLC:

18 Milin Y. Shah, Esq.  
19 IML Brand Holdings LLC  
20 20 W. 33rd Street, #9  
21 New York NY 10001  
22 Email: mshah@isaacmorris.com

To Shefa:

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

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

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

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

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

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

4 **10. POST EXECUTION ACTIVITIES**

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

9 **11. MODIFICATION**

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

13 **12. DISPUTE RESOLUTION**

14 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,  
15 Shefa shall provide notice to Defendant. Prior to bringing any action to enforce any requirement of  
16 this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the  
17 other party with written notice of the grounds for such allegation together with all supporting  
18 information as well as a complete demand for the relief sought. The Parties shall then meet and  
19 confer regarding the basis for the allegation to resolve the matter informally, including providing  
20 the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure  
21 any alleged violation. If Defendant refutes the alleged violation (for example, by establishing the  
22 Covered Product is subject to the releases of claims herein or producing test results documenting the  
23 subject Covered Product meets the Reformulation Standard), no further action is necessary. If  
24 Shefa establishes the violation, then Defendant shall send the store or other place at which the  
25 Covered Product was available for sale to the public in California a letter directing that the subject  
26 product be immediately removed from sale and returned to Defendant. Should Defendant send such  
27 a letter within 30 days of receiving a notice of an alleged violation from Shefa it shall have no  
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1 monetary liability of any kind for such alleged violation. Should attempts at informal resolution  
2 fail, the party alleging a violation may file a motion seeking to enforce the terms of this Consent  
3 Judgment. Only the Parties hereto are entitled to enforce the terms of this Consent judgment..

4 **13. JOINT PREPARATION**

5  
6 The Parties have jointly participated in the preparation of this Consent Judgment and this  
7 Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any uncertainty or  
8 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of  
9 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
10 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
11 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this  
12 regard, the Parties hereby waive California Civil Code § 1654.

13 **14. ENTIRE AGREEMENT**

14 This Consent Judgment contains the sole and entire agreement and understanding of the  
15 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
16 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No  
17 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
18 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of  
19 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions  
20 hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth  
21 in writing between the Parties.

22  
23 **15. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

24 This Consent Judgment may be executed in counterparts and by facsimile or portable  
25 document format (pdf) signature, each of which shall be deemed an original and, all of which, when  
26 taken together, shall constitute one and the same document.  
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1 **16. AUTHORIZATION**


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

5  
6 **AGREED TO:**

**AGREED TO:**

7  
8 Date: 10/30/2018

Date: 10.29.2018

9  
10  
11 By:   
12 SHEFA LMV, INC.

By:   
13 DEFENDANT IML BRAND HOLDINGS

14 LLC

15 **AGREED TO:**

16 Date: 10.29.2018

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19 By:   
20 DEFENDANT ISAAC MORRIS LIMITED

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**[PROPOSED] JUDGMENT**

1  
2 Please note that on <sup>March 22 2019</sup> February 4, 2018 at 8:30am, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion  
3 for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendants IML  
4 Brand Holding LLC and Isaac Morris Limited came for hearing before this Court in Department 17,  
5 the Honorable Ricardo E. Rico presiding. Counsel for Plaintiff did ~~not~~ appear; counsel for Defendant  
6 did ~~not~~ appear.

7 After full consideration of the points and authorities and related pleadings submitted, the Court  
8 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
- 14 Agreement is reasonable under California law; and
- 15 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.

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17  
18 3/22/2019  
19 Date

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23 Judge of the Superior Court

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**EXHIBIT 2**

## SIXTY DAY NOTICE OF VIOLATION

*SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)*

---

**DATE:** May 26, 2017  
**To:** IML Brand Holdings LLC.; Hot Topic, Inc.;  
California Attorney General's Office;  
District Attorney's Office for 58 Counties; and  
City Attorney's Office for Los Angeles, San Diego, San Jose, and San Francisco.

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**From:** SHEFA LMV, INC.

### **I. INTRODUCTION**

We are a nonprofit public benefit corporation of the State of California acting in the interest of the general public. We seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve public health and safety by reducing the hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6, et seq. ("Proposition 65"). The violations alleged by this Notice consist of product exposures, routes of exposures, and types of harm that may potentially result from exposures to the toxic chemical ("listed chemical") identified below:

|                            |                                       |
|----------------------------|---------------------------------------|
| <b>Product Exposure:</b>   | <b>See Section VII</b>                |
| <b>Listed Chemical:</b>    | <b>DINP (Diisononyl Phthalate)</b>    |
| <b>Routes of Exposure:</b> | <b>Touch, Oral, Dermal absorption</b> |
| <b>Types of Harm:</b>      | <b>Carcinogen</b>                     |

### **II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)**

The specific type of product that is causing consumer exposures in violation of Proposition 65, and which is the subject of this Notice, is listed under "Product Category/Type" in Section VII below. All products *within the type* covered by this Notice shall be referred to hereinafter as the "products." The sales of these products in California dating at least as far back as April 30, 2017 are subject to this Notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without the clear and responsible warnings required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products, California citizenry lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

Through the act of buying, acquiring and using the products, citizens of California are exposed to the listed chemical in homes and elsewhere throughout California where these products are used. Exposure to consumers includes, but is not limited to, when handling the product the listed chemical comes into contact with the hands and is then absorbed through the skin, hand to mouth contact, hand to food to

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mouth contact, or through hand to cigarette to mouth. Exposure may continue to occur for a significant period after the initial contact. These violations and threatened violations pertain to a chemical listed as a carcinogen.

### **III. CONTACT INFORMATION**

Please direct all questions concerning this Notice to our counsel's offices at the following address:

Daniel N. Greenbaum, Esq.  
Law Office of Daniel N. Greenbaum  
The Hathaway Building  
7120 Hayvenhurst Avenue, Suite 320  
Van Nuys, CA 91406  
Main: (818) 809-2196  
Fax: (424) 243-7689  
Email: dgreenbaum@greenbaumlawfirm.com

### **IV. PROPOSITION 65 INFORMATION**

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment ("OEHHA") in the Proposition 65 Implementation Office at (916) 445-6900, or to visit their website at <http://oehha.ca.gov/proposition-65>.

**For the alleged Violator(s), please see the attached copy of "Proposition 65: A Summary" which has been prepared by OEHHA.**

### **V. RESOLUTION OF NOTICED CLAIMS**

Based on the allegations set forth in this Notice, we intend to file a citizen enforcement lawsuit against the alleged Violator(s), unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) reformulate such products to eliminate exposures to the listed chemicals; or, at a minimum, (3) provide clear and reasonable warnings for products sold in the future.

If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact the counsel identified above. It should be noted that we cannot: (A) finalize any settlement until after the 60-day Notice period elapses; or (B) speak for the Attorney General or any public agency who received this Notice. Therefore, although we may ultimately reach an agreement that will resolve our claims, such an agreement may not satisfy the public prosecutors.

03/26/2019

## VI. PRODUCT INFORMATION

| <u>Product</u>  | <u>Retailer(s)</u> | <u>Manufacturer(s)/Distributor(s)</u> |
|-----------------|--------------------|---------------------------------------|
| Pusheen Earbuds | Hot Topic, Inc.    | IML Brand Holdings LLC                |

Identified are specific examples of products recently purchased and witnessed as being available for purchase or use in California that is within the **category or type of product** covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of this exemplar product within the **category or type of product** are also provided below. We allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warnings” at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business to business, through the internet, and/or via catalog by the alleged Violator(s), as well as other distributors and retailers of the product(s).

## VII. EXEMPLAR PRODUCT

| <u>Product Category</u> | <u>Specific Product</u>           | <u>Manufacturer</u>    |
|-------------------------|-----------------------------------|------------------------|
| Plastic Earbuds         | Pusheen® Earbuds;<br>SKU 10743682 | IML Brand Holdings LLC |

The specific exemplar product identified above is within **the category or type of product** which is the subject of this Notice. We identify it herein for all recipients’ benefit in order to assist the investigation of the magnitude of potential exposure to the listed chemical from other items **within the product category or type** listed in Section VII. It is important to note that this exemplar product does *not* represent an exhaustive or comprehensive identification of any or all specific products of the type listed under “Product Category/Type” in Section VII.

Furthermore, it is our position that the alleged Violator(s) are the best situated to identify **any and all** products within the product category or type listed in Section VII. Therefore, as such, the Violator(s) are obligated to conduct (in good faith) an investigation into **any and all** other products **within the product type or category** described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violator(s)’ custody or control) during the relevant period in order to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

03/26/2019

**CERTIFICATE OF MERIT**

I, Daniel N. Greenbaum, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
- (4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

May 26, 2017  
Date

Daniel N. Greenbaum  
Name

  
Signature

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this case or action. My business address is:  
**7120 Hayvenhurst Ave., Suite 320, Van Nuys CA 91406**

A True and Correct copy of the documents entitled: **SIXTY DAY NOTICE OF VIOLATION; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** will be served or was served in the manner stated below:

I. Interested Parties (Served via US Mail): On May 26, 2017, I caused to be served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the US Mail, postage prepaid, and addressed as follows:

|                        |                        |  |                  |    |       |
|------------------------|------------------------|--|------------------|----|-------|
| Attn: CEO or President | IML Brand Holdings LLC | 20 W. 33 <sup>rd</sup> Street, 9 <sup>th</sup> Floor | New York         | NY | 10001 |
| Attn: CEO or President | Hot Topic, Inc.        | 18305 E. San Jose Ave.                               | City of Industry | CA | 91748 |
| Attn: CSC              | c/o Hot Topic, Inc.    | 2710 Gateway Oaks Dr., # 150N                        | Sacramento       | CA | 91748 |

- II. California Attorney General (via website Portal): On May 26, 2017, I uploaded a true and correct copy thereof as a PDF file via the California Attorney General's website.
- III. District and City Attorneys (via U.S. Mail): On May 26, 2017, I caused to be served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and addressed as follows: SEE ATTACHMENT A.
- IV. District and City Attorneys (via email): On May 26, 2017 I served the following persons and/or entities at the last known electronic addresses via email. The transmission was reported as sent without error.

cfepd@yolocounty.org; sgrassini@contracosta.org; Prop65DA@co.monterey.ca.us; epu@da.sccgov.org;  
CEPD@countyofnapa.org; jbarnes@sonoma-county.org; Prop65@co.tulare.ca.us;

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

May 26, 2017  
Date

Nathan Ford  
Name

  
Signature

03/26/2019



| Title             | Address Line 1         | Address Line 2                                    | City            | State | Zip Code |
|-------------------|------------------------|---|-----------------|-------|----------|
| District Attorney | ALAMEDA COUNTY         | 1225 Fallon Street, Room 900                      | Oakland         | CA    | 94612    |
| District Attorney | ALPINE COUNTY          | PO Box 248  | Markleeville    | CA    | 96120    |
| District Attorney | AMADOR COUNTY          | 708 Court Street #202                             | Jackson         | CA    | 95642    |
| District Attorney | BUTTE COUNTY           | 25 County Center Drive<br>Administration Building | Oroville        | CA    | 95965    |
| District Attorney | CALAVERAS COUNTY       | 891 Mountain Ranch Road                           | San Andreas     | CA    | 95249    |
| District Attorney | COLUSA COUNTY          | 346 5th Street, Suite 101                         | Colusa          | CA    | 95932    |
| District Attorney | DEL NORTE COUNTY       | 450 H Street Room 171                             | Crescent City   | CA    | 95531    |
| District Attorney | EL DORADO COUNTY       | 515 Main Street                                   | Placerville     | CA    | 95667    |
| District Attorney | FRESNO COUNTY          | 2220 Tulare Street, Suite. 1000                   | Fresno          | CA    | 93721    |
| District Attorney | GLENN COUNTY           | PO Box 430  | Willows         | CA    | 95988    |
| District Attorney | HUMBOLDT COUNTY        | 825 5th Street                                    | Eureka          | CA    | 95501    |
| District Attorney | IMPERIAL COUNTY        | 940 West Main Street, Suite. 102                  | El Centro       | CA    | 92243    |
| District Attorney | INYO COUNTY            | 168 North Edwards                                 | Independence    | CA    | 93526    |
| District Attorney | KERN COUNTY            | 1215 Truxtun Avenue                               | Bakersfield     | CA    | 93301    |
| District Attorney | KINGS COUNTY           | 1400 West Lacey Blvd.                             | Hanford         | CA    | 93230    |
| District Attorney | LAKE COUNTY            | 255 N. Forbes Street                              | Lakeport        | CA    | 95453    |
| District Attorney | LASSEN COUNTY          | 220 S. Lassen Street, Suite. 8                    | Susanville      | CA    | 96130    |
| District Attorney | LOS ANGELES COUNTY     | 210 W. Temple Street                              | Los Angeles     | CA    | 90012    |
| District Attorney | MADERA COUNTY          | 209 West Yosemite Avenue                          | Madera          | CA    | 93637    |
| District Attorney | MARIN COUNTY           | 3501 Civic Center Drive, Room 130                 | San Rafael      | CA    | 94903    |
| District Attorney | MARIPOSA COUNTY        | PO BOX 730  | Mariposa        | CA    | 95338    |
| District Attorney | MENDOCINO COUNTY       | PO BOX 1000                                       | Ukiah           | CA    | 95482    |
| District Attorney | MERCED COUNTY          | 550 West Main Street                              | Merced          | CA    | 95340    |
| District Attorney | MODOC COUNTY           | 204 S. Court Street, Room 202                     | Alturas         | CA    | 96101    |
| District Attorney | MONO COUNTY            | PO BOX 2053                                       | Mammoth Lakes   | CA    | 93546    |
| District Attorney | NEVADA COUNTY          | 201 Commercial Street                             | Nevada City     | CA    | 95959    |
| District Attorney | ORANGE COUNTY          | 401 Civic Center Drive West                       | Santa Ana       | CA    | 92701    |
| District Attorney | PLACER COUNTY          | 10810 Justice Center Drive                        | Roseville       | CA    | 95678    |
| District Attorney | PLUMAS COUNTY          | 520 Main Street, Room 404                         | Quincy          | CA    | 95971    |
| District Attorney | RIVERSIDE COUNTY       | 3960 Orange Street                                | Riverside       | CA    | 92501    |
| District Attorney | SACRAMENTO COUNTY      | 901 G Street                                      | Sacramento      | CA    | 95812    |
| District Attorney | SAN BENITO COUNTY      | 419 4th Street                                    | Hollister       | CA    | 95023    |
| District Attorney | SAN BERNARDINO COUNTY  | 303 W. Third Street                               | San Bernardino  | CA    | 92415    |
| District Attorney | SAN DIEGO COUNTY       | 330 W. Broadway, Suite 1300                       | San Diego       | CA    | 92101    |
| District Attorney | SAN FRANCISCO COUNTY   | 880 Bryant Street, Third Floor                    | San Francisco   | CA    | 94103    |
| District Attorney | SAN JOAQUIN COUNTY     | PO BOX 990  | Stockton        | CA    | 95202    |
| District Attorney | SAN LUIS OBISPO COUNTY | County Government Center, 4th Floor               | San Luis Obispo | CA    | 93408    |
| District Attorney | SAN MATEO COUNTY       | 400 County Center, Third Floor                    | Redwood City    | CA    | 94063    |
| District Attorney | SANTA BARBARA COUNTY   | 1112 Santa Barbara Street                         | Santa Barbara   | CA    | 93101    |
| District Attorney | SANTA CLARA COUNTY     | 70 West Hedding Street, West Wing                 | San Jose        | CA    | 95110    |
| District Attorney | SHASTA COUNTY          | 1355 West Street                                  | Redding         | CA    | 96001    |

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| Title                            | Address Line 1        | Address Line 2   | City          | State | Zip Code |
|----------------------------------|-----------------------|--|---------------|-------|----------|
| District Attorney                | SIERRA COUNTY         | 100 Courthouse Square                                  | Downieville   | CA    | 95936    |
| District Attorney                | SISKIYOU COUNTY       | PO BOX 986   | Yreka         | CA    | 96097    |
| District Attorney                | SOLANO COUNTY         | 675 Texas Street, Suite. 4500                          | Fairfield     | CA    | 94533    |
| District Attorney                | STANISLAUS COUNTY     | 832 12th Street, Suite. 300                            | Modesto       | CA    | 95353    |
| District Attorney                | SUTTER COUNTY         | 446 Second Street, Suite 102                           | Yuba City     | CA    | 95991    |
| District Attorney                | TEHAMA COUNTY         | PO BOX 519   | Red Bluff     | CA    | 96080    |
| District Attorney                | TRINITY COUNTY        | PO BOX 310   | Weaverville   | CA    | 96093    |
| District Attorney                | TUOLUMNE COUNTY       | 423 No. Washington Street                              | Sonora        | CA    | 95370    |
| District Attorney                | VENTURA COUNTY        | 800 South Victoria Avenue                              | Ventura       | CA    | 93009    |
| District Attorney                | YUBA COUNTY           | 215 Fifth Street, Suite. 152                           | Marysville    | CA    | 95901    |
| Mike Feuer, City Attorney        | CITY OF LOS ANGELES   | 800 City Hall East, 200 N. Main Street                 | Los Angeles   | CA    | 90012    |
| Mara Elliott, City Attorney      | CITY OF SAN DIEGO     | 1200 Third Avenue, Suite 1620                          | San Diego     | CA    | 92101    |
| Richard Doyle, City Attorney     | CITY OF SAN JOSE      | 200 East Santa Clara St., 16th Flr.                    | San Jose      | CA    | 95113    |
| Dennis J. Herrera, City Attorney | CITY OF SAN FRANCISCO | City Hall, Room 234<br>1 Dr. Carlton B. Goodlett Place | San Francisco | CA    | 94102    |

03/26/2019