

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

PARTIES TO THE ACTION	PLAINTIFF(S)			
	DEFENDANT(S) INVOLVED IN JUDGMENT			
CASE INFO	COURT DOCKET NUMBER		COURT NAME	
	SHORT CASE NAME			
REPORT INFO	INJUNCTIVE RELIEF			
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER	
	DATE SUBMITTED TO COURT / /	IS JUDGMENT PURSUANT TO SETTLEMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL / /	
	COPY OF JUDGMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT			
	ORGANIZATION		TELEPHONE NUMBER ()	
	ADDRESS		FAX NUMBER ()	
	CITY	STATE	ZIP	E-MAIL ADDRESS

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the 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.

AUG 22 2018

Sherri R. Carter, Executive Officer/Clerk
By C. Wilson, Deputy

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3 The Hathaway Building
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5 Van Nuys, CA 91406
6 Telephone: (818) 809-2199
7 Facsimile: (424) 243-7689
8 Email: dgreenbaum@greenbaumlawfirm.com

9 Attorney for Plaintiff SHEFA LMV, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 SHEFA LMV, INC.,

13 Plaintiff,

14 vs.

15 MMS TRADING, INC.; and DOES 1 through
16 100, Inclusive,

Defendant.

) Case No.: BC 701915
) Dept. 30
) Hon. Barbara Scheper

) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO MMS TRADING, INC.**

) Action Filed: April 12, 2018
)
)
)
)

1 **1. INTRODUCTION**

2
3 **1.1 Parties**

4 This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff
5 Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”) and MMS Trading, Inc. (“**Defendant,**” with Shefa and
6 **Defendant** individually referred to as a “**Party**” and 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 Defendant employs ten (10) or more persons and is a person in the course of doing business
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
14 Code §25249.6 *et seq.* (“**Proposition 65**”).

15 **1.4 Products Covered**

16 The products covered by this Consent Judgment are handbags, including, but not limited to,
#BLUSH The Perfect Clear Bag, SKU 337707; BGS-48816 that are manufactured, sold, or
distributed for sale in California by Defendant that contain Diisononyl Phthalate (“**DINP**”)
(collectively, the “**Covered Products**”).

1.5 General Allegations

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

1.6 Notice of Violation

 On August 29, 2017, Shefa served Defendant and the requisite public enforcement agencies
with a 60-Day Notice of Violation (the “**Notice**”) alleging that Defendant violated Proposition 65

1 when it failed to warn its customers and consumers in California that the Covered Products expose
2 users to DINP. To the best of the Parties' knowledge, no public enforcer has commenced and is
3 diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On April 12, 2018, Shefa filed the instant complaint in the Superior Court in and for the
6 County of Los Angeles against Defendant and DOES 1-100, alleging violations of California
7 Health & Safety Code § 25249.6, based on exposures to DINP contained in the Covered Products
8 sold in the State of California (the "Complaint").

9 **1.8 No Admission**

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

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.


1 **2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS**

2 **2.1 Reformulation Standards**

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

8 **2.2 Warning Standards**

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

16 “ **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.”

2.3 Covered Products in the Stream of Commerce.

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

3. MONETARY SETTLEMENT TERMS

3.1 Payment from Defendant. Within ten (10) business days of the Effective Date,
Defendant shall make the Total Settlement Payment of **\$14,000.00**.

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

1 **3.2.1 Civil Penalty.** Defendant shall pay \$1,000.00 as a civil penalty
2 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
3 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
4 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the
5 OEHHA portion of the civil penalty payment in the amount of \$750.00 shall be made payable to
6 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
7 delivered as follows:

8 For United States Postal Service Delivery:

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

12 For Non-United States Postal Service Delivery:

13 Attn: Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street, MS #19B
 Sacramento, CA 95814

 The Shefa portion of the civil penalty payment in the amount of \$250.00 shall be made 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.

3.2.2 Attorney’s Fees and Costs. A reimbursement of Shefa’s attorney’s fees and costs in the amount of \$13,000.00 payable to the “Law Office of Daniel N. Greenbaum,” and associated with taxpayer identification number 46-4580172. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

4. CLAIMS COVERED AND RELEASED

4.1 Public Release

This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant

1 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
2 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
3 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,
4 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and
5 each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered
6 Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees,
7 cooperative members, and licensees (“Releasees”), based on failure to warn of alleged exposures to
8 DINP from Covered Products manufactured, sold, or distributed for sale in California by Defendant
9 prior to the Effective Date. The release in this Section 4.1 applies to all Covered Products that
10 Defendant manufactured, distributed, or sold prior to the Effective Date, regardless of the date any
11 other Releasee distributes or sells the Covered Products.

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

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

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

4.3 Defendant’s Release of Shefa

Defendant, on its own behalf and on behalf of its past and current agents, representatives,

1 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
2 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
3 by Shefa and its attorneys and other representatives in the course of investigating the claims set
4 forth in the Complaint or otherwise seeking to enforce Proposition 65 against it in this matter.

5 **4.4 Release of Unknown Claims**

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

13 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
14 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
15 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
16 **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.

6. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise

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

7 **7. NOTICE**

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

12 To Defendant:

13 Sumir Kaytee
14 MMS Trading, Inc.
15 5390 Rickenbacker Road
16 Bell, CA 90201

To Shefa:

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

With a copy to:

William L. Troutman
Norton Rose Fullbright US LLP
500 South Flower Street
Forty-First Floor
Los Angeles, CA 90071

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

8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts, and by facsimile or portable
document format (PDF) signature, each of which shall be deemed an original, and all of which,
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
other party with written notice of the grounds for such allegation together with all supporting
information as well as a complete demand for the relief sought. The Parties shall then meet and
confer regarding the basis for the allegation to resolve the matter informally, including providing
the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure
any alleged violation. Should such attempt at informal resolution fail, the party alleging a violation
may file its lawsuit seeking the proposed relief.

13. **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.

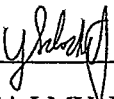
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AGREED TO:

AGREED TO:

Date: 06/05/2018

Date: 06-04-18

By: 
SHEFA LMV, INC.

By: 
DEFENDANT MMS TRADING, INC.

~~PROPOSED~~ JUDGMENT *a*

1
2 Please note that on *8-22*, 2018 at *8:30*, Plaintiff Shefa LMV Inc.'s
3 ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to
4 Defendant MMS Trading, Inc. came for hearing before this Court in Department 30 , the Honorable
5 Barbara Scheper presiding. Counsel for Plaintiff did ~~not~~ appear; counsel for Defendant did ~~not~~
6 appear. *a*

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.

16 *Doc defendants are dismissed:*

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

AUG 22 2018

Date

BARBARA M. SCHEPER

Judge of the Superior Court