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

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

FORM JUS 1502
(03-01)

REPORT OF ENTRY OF JUDGMENT

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PARTIES TO THE ACTION

PLAINTIFF(S)

Shefa LMV Inc.

DEFENDANT(S) INVOLVED IN JUDGMENT

Bastiat San Diego, Inc. sued herein as DOE 1

CASE INFO

COURT DOCKET NUMBER: 20STCV27953

COURT NAME: SUPERIOR COURT OF CA, Los Angeles Co

SHORT CASE NAME: Shefa LMV, Inc. v. YYGM SA d/b/a Brandy Melville, et al.

REPORT INFO

INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER
$1,000	$14,000.00	0
DATE SUBMITTED TO COURT: 12 / 17 / 2021	IS JUDGMENT PURSUANT TO SETTLEMENT? ☒ Yes ☐ No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL: 12 / 17 / 2021

COPY OF JUDGMENT MUST BE ATTACHED

For Internal Use Only

FILER INFO

NAME OF CONTACT: Daniel N. Greenbaum, Esq.

ORGANIZATION: Law Office of Daniel N. Greenbaum

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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.

LAW OFFICE OF DANIEL N. GREENBAUM
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Attorney for Plaintiff SHEFA LMV, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC., Plaintiff, vs. Y.Y.G.M. SA d/b/a BRANDY MELVILLE; and DOES 1 through 100, Inclusive, Defendants.	)))))))))))	Case No. 20STCV27953 *Dept. 76* *Hon.* ~~*Christopher K. Liu*~~ Christopher K. Lui **~~[PROPOSED]~~ CONSENT JUDGMENT AS TO BASTIAT SAN DIEGO, INC. SUED HEREIN AS DOE 1** Action Filed: July 24, 2020

Electronically Received 12/17/2021 08:01 AM

1. INTRODUCTION

1.1 Parties

This Consent Judgment ("**Consent Judgment**") is entered into by and between plaintiff Shefa LMV, Inc. ("**Shefa**" or "**Plaintiff**") and Bastiat San Diego, Inc. sued herein as DOE 1 ("**Defendant,**" with Shefa and **Defendant** individually referred to as a "**Party**" and collectively as the "**Parties**").

1.2 Plaintiff

Shefa is a public benefit, non-profit corporation that seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Settling Defendant

Defendant employs ten (10) or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code §25249.6 *et seq.* ("**Proposition 65**").

1.4 Products Covered

The products covered by this Consent Judgment are plastic bag products previously distributed or sold by or for Defendant, including, but not limited to, Brandy Melville Clear and Black Purse, ID#: MU790D00000888 (hereinafter "Plastic Purses") that contain Di-[2-Ethylhexyl] Phthalate ("DEHP") and Clear Circular Crossbody Bag, ID #: Model: MU702E00000888 (hereinafter "Crossbody Purses") that contain Diisononyl Phthalate ("DINP") (collectively, the "**Covered Products**") for sale within the State of California, without first giving clear and reasonable warning in violation of Proposition 65.

1.5 General Allegations

Shefa alleges that Defendant manufactures, imports, sells, and/or distributes, for sale in the state of California, the Covered Products without first providing a clear and reasonable warning required by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer or reproductive toxicity. DINP (CAS # 28553-12-0)

is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer

1.6 Notices of Violation

On September 17, 2019, Shefa served Defendant and the requisite public enforcement agencies with Sixty Day Notices of Violation (the "**Notices**") alleging that Defendant violated Proposition 65 when it failed to warn its customers and consumers in California that the Plastic Purses contained DEHP and the Crossbody Bags contained DINP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.7 Complaint

On November 14, 2019, Shefa filed a Complaint in the Superior Court in and for the County of Los Angeles against Y.Y.G.M. dba Brandy Melville, alleging violations of California Health & Safety Code § 25249.6, based on exposures to DEHP contained in the Plastic Purses and DINP contained in the Crossbody Bags sold in the State of California. On August 16, 2021, Shefa filed a First Amended Complaint, making the same allegations but substituting Defendant as Doe 1 (the "**Complaint**").

1.8 No Admission

Defendant denies the material, factual, and legal allegations contained in the Notices and Complaint and maintains that all the products it has manufactured, sold, and/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 Defendant 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 Defendant of any fact, finding, conclusion 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 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.

1.10 Effective Date and Compliance 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. The term "**Compliance Date**" is the date that is sixty (60) days from the Effective Date.

2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

2.1 Reformulation Standards

Except as otherwise provided for herein, after the Compliance Date, Defendant shall not manufacture for sale, sell and/or distribute for sale in California any Plastic Purses unless the Plastic Purses contain DEHP in concentrations less than or equal to 1000 parts per million ("ppm") when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology for determining the concentration of DEHP in the Plastic Purses. In addition, except as otherwise provided for herein, after the Compliance Date, Defendant also shall not manufacture for sale, sell and/or distribute for sale in California any Crossbody Bags unless the Crossbody Bags contain DINP in concentrations less than or equal to 1000 ppm when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology for determining the concentration of DINP in the Crossbody Bags.

2.2 Warning Standards

Defendant agrees, promises, and represents that, as of the Compliance Date, to the extent Defendant ships or sells Covered Products that do not meet the reformulation standards set forth above in Section 2.1, Defendant will provide warnings on such Covered Products that comply with Proposition 65. The warnings shall be provided in a conspicuous and prominent manner such that they will be likely to be read or seen by the consumer prior to or at the time of the sale or purchase.

The Parties agree that the warning set forth below shall constitute compliance with Proposition 65 with respect to any Covered Products that are not reformulated:

For Plastic Purses,

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

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

For Crossbody Bags,

(c) the text, "**WARNING:** This product can expose you to Diisononyl Phthalates (DINP), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov." accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING" as provided by regulations adopted on or about August 30, 2016; or

(d) the text, "**WARNING:** Cancer - www.P65Warnings.ca.gov." accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word,

"WARNING" as provided by regulations adopted on or about August 30, 2016.

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

2.3 Compliance with Warning Regulations.

Defendant shall be deemed to be in compliance with this Consent Judgment by either adhering to Section 2.2 of this Consent Judgment or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment after the Effective Date.

2.4 Covered Products in the Stream of Commerce.

Any Covered Products that have been produced, distributed, shipped, and/or sold by Defendant prior to the Compliance Date, shall not be subject to the requirements of Section 2.1 or 2.2.

3. MONETARY SETTLEMENT TERMS

3.1 Payment from Defendant. Within ten (10) business days of the Effective Date, Defendant shall make a payment of **$15,000.00** (the "**Total Settlement Payment**") in settlement and total satisfaction of all the claims referred to in the Notice, the Complaint, and in the Consent Judgment. Defendant's obligation to pay the Total Settlement Payment is contingent on the court's approval of the Consent Judgment.

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

3.2.1 Civil Penalty. Defendant shall pay $1,000.00 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment in the amount of $750.00 shall be made payable to

OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
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.

Shefa and its counsel will provide completed W-9s, or other required tax documents, to Defendant as a condition of Defendant making any payment, including payment of the penalty to EHA and OEHHA.

3.2.2 Attorney's Fees and Costs. The portion of the Total Settlement Amount attributable to Shefa's attorney's fees and costs, $14,000.00, shall be paid 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, on the one hand, and Defendant and any affiliated entities that do business as "Brandy Melville," on the other hand, 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, against Defendant, its owners, parents, subsidiaries, affiliated entities under common ownership, manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and each entity to whom Defendant directly or indirectly exports, distributes, and/or sells the Covered Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and other Brandy Melville licensees ("**Releasees**"), based on failure to warn of alleged exposures to DEHP from the Plastic Purses and DINP from Crossbody Bags manufactured, sold, and/or distributed for sale in California by Defendant prior to the Compliance Date. The release in this Section 4.1 applies to all Covered Products that Defendant manufactured, distributed, and/or sold prior to the Compliance Date, regardless of the date any other Releasee distributes or sells the Covered Products.

Compliance with the terms of this Consent Judgment shall constitute compliance with Proposition 65 by Defendant and the Releasees with respect to DEHP in Plastic Purses and DINP in Crossbody Bags manufactured, sold, or distributed on and after the Compliance Date.

4.2 Shefa's Individual Release of Claims

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 DEHP in Plastic Purses and DINP in Crossbody Bags manufactured, sold, and/or distributed for sale by Defendant prior to the Compliance 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,

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 Notices, or alleged in the Complaint, 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 through and including the Effective Date, including all rights of action 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

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. ENFORCEMENT

5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. A Party may enforce any of the terms and conditions of this Consent Judgment only after that Party first provides sixty (60) days' notice to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to

comply in an open and good faith manner. The provisions of sections 5.2 through 5.3 shall be the exclusive means of enforcing alleged violations of Section 2 of this Consent Judgment.

5.2 Notice of Violation

Prior to bringing any proceeding to enforce the terms of this Consent Judgment, Shefa shall provide a written notice of violation ("NOV") to Defendant that includes information sufficient for Defendant to be able to understand and correct the violation, including but not limited to: (a) the name of the product, (b) specific dates when the product was sold in California, (c) the store, website, or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice, including all test data obtained by Shefa regarding the Covered Product.

5.3 Notice of Election Response

Within 30 days of receiving an NOV, Defendant shall serve a Notice of Election ("NOE") either contesting or not contesting the NOV.

5.3.1 Non-Contested NOV. Shefa shall take no further action regarding the alleged violation against a Defendant that serves a NOE that elects not to contest the NOV and meets one of the following conditions:

(a) The Covered Product was produced**,** distributed, shipped, and/or sold by Defendant for sale in California before the Compliance Date, or

(b) Since receiving the NOV the Defendant has taken corrective action by either (i) taking all steps necessary to bring the sale of the product into compliance under the terms of this Consent Judgment, or (ii) requesting that its customers in California remove the Covered Products identified in the NOV from sale in California and destroy or return the Covered Products to Defendant, or (iii) refute the information provided in Section 5.2.

5.3.2 Contested NOV. If a Defendant serves a NOE electing to contest the NOV, the provisions of this Section 5.3.2 shall apply.

(a) Defendant may request that the sample(s) of Covered Products tested by Shefa be subject to confirmatory testing at an EPA or California-accredited laboratory.

(b) If the confirmatory testing establishes that the Covered Products do not contain DEHP or DINP, as applicable, in excess of the levels allowed in Section 2.1, above, Shefa shall take no further action regarding the alleged violation. If the testing does not establish compliance with Section 2.1, above, Defendant may withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 5.3.1.

(c) If Defendant does not withdraw an NOE to contest the NOV or take action under Section 5.3.1, above, the Parties shall meet and confer for a period of no less than 30 days before Shefa may take action seeking to enforce the terms of this Consent Judgment.

6. COURT APPROVAL

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

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California as applied within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable for any reason, including, but not limited to, changes in Proposition 65, the implementing regulations, the law, and/or any injunctive relief, and/or wherein warnings for DEHP and/or DINP are determined not to be required under Proposition 65 or where DEHP and/or DINP are subject to a safe harbor level higher than 1000 ppm, Defendant may provide written notice to Shefa of any asserted change in the law, and with the exception of Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered Products are so affected. None of the terms of this Consent Judgment shall have any application to Covered Products sold outside of the State of California.

8. NOTICE

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

To Defendant:

Keith J. Wesley, Esq.
BROWNE GEORGE ROSS O'BRIEN
ANNAGUEY & ELLIS LLP
2121 Avenue of the Stars, Suite 2800
Los Angeles, California 90067

To Shefa:

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

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.

9. 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.

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

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

11. POST EXECUTION ACTIVITIES

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

12. MODIFICATION

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

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.

AGREED TO:	AGREED TO:
Date: 12/8/2021	Date: 12/8/21
By:	By:
SHEFA LMV, INC.	BASTIAT SAN DIEGO, INC. SUED HEREIN AS DOE 1

~~[PROPOSED]~~ JUDGMENT

Please note that on February 7, 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 Bastiat San Diego, Inc. sued herein as DOE 1 came for hearing before this Court in Department 76, the Honorable Christopher K. Lui 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:

02/07/2022
Date

Christopher K. Lui / Judge
Judge of the Superior Court