

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

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

REPORT OF SETTLEMENT

Please print or type required information Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S)			
	DEFENDANT(S) INVOLVED IN SETTLEMENT			
CASE INFO	COURT DOCKET NUMBER		COURT NAME	
	SHORT CASE NAME			
REPORT INFO	INJUNCTIVE RELIEF			
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED / /
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT			
	ORGANIZATION			TELEPHONE NUMBER ()
	ADDRESS			FAX NUMBER ()
	CITY	STATE	ZIP 91406	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 settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

1 LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
2 The Hathaway Building
3 7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
4 Telephone: (818) 809-2199
Facsimile: (424) 243-7689
5 Email: dgreenbaum@greenbaumlawfirm.com

6 Attorney for Plaintiff SHEFA LMV, INC.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 SHEFA LMV, INC.,

11 Plaintiff,

12 vs.

13 HOBBY LOBBY STORES, INC.; and DOES 1
14 through 100, Inclusive,

15 Defendants.
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) CASE NO. BC679090

) Dept. 40

) Hon. *David Sotelo*

) **STIPULATION AND [PROPOSED]**

) **CONSENT JUDGMENT**

) **AS TO HOBBY LOBBY STORES, INC.**

) Action Filed: October 6, 2017

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Stipulation and [Proposed] consent judgment (“**Consent Judgment**”) is entered into by
4 and between plaintiff Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”) and Hobby Lobby Stores, Inc.
5 (“**Hobby Lobby**” or “**Defendant**,” with Shefa and Hobby Lobby individually referred to as a
6 “**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 Hobby Lobby employs ten 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 listed on the chart below, and covered by this Consent Judgment, were
17 manufactured, sold, or distributed for sale in California by Hobby Lobby, and are alleged to contain
18 Di-[2-Ethylhexyl]Phthalate (“**DEHP**”) and/or Diisononyl Phthalate (“**DINP**”) and/or Di-isodecyl
19 Phthalate (“**DIDP**”) (collectively, the “**Covered Products**”) without first providing a clear and
20 reasonable warning as required by Proposition 65.

21 **“COVERED PRODUCTS”**

Product Type	Product Name / Identifier
Plastic purse	“Hide Your Crazy” Purse; Item # 1337823
Plastic purse	Black And White -Striped Purse; SKU: 1296326
Plastic Handled Pliers	Gadgets & Gizmos Long Nose Pliers; Item # 258681
Plastic Handled Floral Cutter	Gadgets & Gizmos Floral Cutters; Item # 575084

Sewing Tape Measure	Sew-ology Tape Measure; Item # 306522
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1.5 General Allegations

Shefa alleges that Hobby Lobby manufactures, imports, sells, or distributes, for sale in the state of California, the Covered Products that contain DEHP and/or DINP and/or DIDP without first providing a clear and reasonable warning required by Proposition 65.

DEHP (CAS # 117-81-7) is listed under Proposition 65 as a chemical known to the state to cause cancer and reproductive toxicity as Proposition 65 defines that term. 27 CCR §25000

DINP (CAS # 28553-12-0) is listed under Proposition 65 as a chemical known to the state to cause cancer as Proposition 65 defines that term. 27 CCR §25000

DIDP (CAS # 26761-40-0) is listed under Proposition 65 as a chemical known to the state to cause reproductive toxicity as Proposition 65 defines that term. 27 CCR §25000

DEHP, DINP and DIDP are referred to hereafter as “the Listed Chemicals.”

Hobby Lobby denies these allegations.

1.6 Notice of Violation

On November 3, 2016 and August 30, 2017, Shefa served Defendant and the requisite public enforcement agencies with a series of 60-Day Notices of Violation alleging that Defendant violated Proposition 65 when it failed to warn its customers and consumers in California that the Covered Products expose users to the Listed Chemicals. 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 October 6, 2017, Shefa filed its Complaint in the Superior Court in and for the County of Los Angeles, Case No. BC679090, against Hobby Lobby Stores, Inc. and DOES 1-100, alleging violations of California Health & Safety Code § 25249.6, based on exposures to the Listed Chemicals contained in the Covered Products sold in the State of California (the “Complaint”).

1 **1.8 No Admission**

2 Hobby Lobby denies the material, factual, and legal allegations contained in the Notices and
3 Complaint and maintains that all the products it has manufactured, sold, or distributed for sale in
4 California, including the Covered Products, have been, and are, in compliance with Proposition 65.
5 Nothing in this Consent Judgment shall be construed as an admission by Hobby Lobby of any fact,
6 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
7 Judgment constitute or be construed as an admission by Hobby Lobby of any fact, finding,
8 conclusion of law, issue of law, or violation of law, the same being specifically denied by Hobby
9 Lobby. This section shall not, however, diminish or otherwise affect Hobby Lobby's obligations,
10 responsibilities, and duties under this Consent Judgment.

11 **1.9 Consent to Jurisdiction**

12 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
13 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
14 County of Los Angeles, the Defendant agrees that it employs or has employed ten or more persons
15 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
16 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

17 **1.10 Effective Date**

18 For purposes of this Consent Judgment, the term "**Effective Date**" shall mean the date the
19 Consent Judgment is approved and entered by the Court. For purposes of this Consent Judgment,
20 the term "**Execution Date**" shall mean the date this Consent Judgment is signed by all parties.

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


22 Commencing on the Effective Date, Hobby Lobby shall only sell, offer for sale, or distribute for
23 sale in California, Covered Products that are either (a) reformulated pursuant to Section 2.1 or (b)
24 include a warning as provided in Section 2.2.

25 **2.1 Reformulation Option.** The Covered Products shall be deemed to comply with
26 Proposition 65 if they contain the Listed Chemical in concentrations less than or equal to 1000
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1 parts per million (“ppm”) (0.1%) when analyzed pursuant to a scientifically reliable application of
2 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other
3 scientifically reliable methodology for determining the Listed Chemical content in a substance of
4 the form of the Covered Products herein.

5 **2.2 Warning Standards.** As an alternative to reformulating the Covered Products,
6 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent it ships or
7 sells products that are not Compliant Products, Defendant will provide warnings that comply with
8 Proposition 65 on such Covered Products as described in Section 2.3 below. The warnings shall be
9 provided in such a conspicuously and prominent manner that will assure the message is made
10 available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or
11 purchase.

12 **2.3 Actual Warning Language.** The Parties agree that product labeling stating the
13 following shall constitute compliance with Proposition 65 with respect to any Covered Products not
14 reformulated:

15
16 “  WARNING: Cancer and Reproductive Harm - Phthalates
17 www.P65Warnings.ca.gov”

18 OR

19 “  WARNING: This Product can expose you to chemicals including phthalates,
20 which are known to the State of California to cause cancer and birth defects or other
21 reproductive harm. For more information go to www.P65Warnings.ca.gov”

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
3 Defendant shall make the Total Settlement Payment of **\$26,000.00**.

4 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
5 separate checks made payable and allocated as follows:

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

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

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

25 The Shefa portion of the civil penalty payment in the amount of \$1,000.00 shall be made
26 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
27 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
28 Ave, Suite 320, Van Nuys, CA 91406.

1 **3.2.2 Attorney’s Fees and Costs.** A reimbursement of Shefa's attorney’s
2 fees and costs in the amount of \$22,000.00 payable to the “Law Office of Daniel N. Greenbaum,”
3 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
4 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

5 **4. CLAIMS COVERED AND RELEASED**

6 **4.1 Shefa’s Public Release of Hobby Lobby and Others in the Stream of**
7 **Commerce for the Covered Products**

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

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

1 which reads as follows:

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

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

12 **5. COURT APPROVAL**

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

17 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. DEHP is listed pursuant to Proposition 65 as a chemical
4 that is known to the State of California to cause cancer and reproductive toxicity. DINP is listed
5 pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer.
6 DIDP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to
7 cause reproductive toxicity.

8 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason
9 of law generally, or as to the Covered Products, including without limitation the delisting of DEHP,
10 DINP, and/or DIDP, then Hobby Lobby may provide written notice to Shefa of any asserted change
11 in the law, and with the exception of Sections 3.1 and 3.2 above, have no further obligations
12 pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered Products are
13 so affected. None of the terms of this Consent Judgment shall have any application to Covered
14 Products sold outside of the State of California.

15 **8. NOTICE**

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

20 To Hobby Lobby:

21 Jamison E. Power, Esq.
22 Buchalter, PC
23 18400 Von Karman Avenue, Suite 800
Irvine, CA 92612-0514

To Shefa:

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

24 Any Party may, from time to time, specify in writing to the other Party a change of address to which
25 all notices and other communications shall be sent.
26
27

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

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

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

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

8 **11. POST EXECUTION ACTIVITIES**

9 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),
10 Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.
11 Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to submit this
12 Consent Judgment to the Court with a motion seeking Court approval. In the event the Court does
13 not grant Shefa's motion for approval of or enter this Consent Judgment within eighteen (18)
14 months after it has been fully executed by the parties, the parties shall meet and confer as to (and
15 jointly agree on) whether to modify the language or appeal the ruling. If the parties do not jointly
16 agree on a course of action to take, then the case shall proceed in its normal course on the trial
17 court's calendar and Shefa's counsel shall refund Hobby Lobby the payment provided pursuant to
18 paragraph 3 in full within thirty (30) days of Hobby Lobby providing written notice thereof.

19 **12. MODIFICATION**

20 **12.1** In the event OEHHA re-establishes the safe harbor No-Significant Risk Level
21 ("NSRL") for either DEHP, DINP or DIDP, which HLS asserts would allow for the Covered
22 Products to contain levels of the Listed Chemicals in amounts greater than those set forth above in
23 Section 2.1, then Hobby Lobby may provide written notice to Shefa of any such assertion and the
24 Parties shall confer within 30 days to attempt to agree upon modification of this Consent Judgment.
25 Should such attempts at informal resolution of a modification fail, and in the event Hobby Lobby
26 still intends to change its reformulation obligations, Hobby Lobby will provide written notice to
27

1 Shefa of its intent to adopt a modified compliance standard. Upon receipt of Hobby Lobby's notice,
2 Shefa shall have the right to enforce the terms and conditions contained in the Consent Judgment by
3 motion or any other available remedy at law, with the sole issue to be adjudicated being the
4 technical question of whether the NSRL would allow for a higher DEHP, DINP or DIDP content in
5 the Covered Products than that set forth in Section 2.1.

6 **12.2** This Consent Judgment may only be modified by a written instrument executed by
7 the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion.
8 Any motion to modify shall be served on all Parties and the Office of the Attorney General.

9 **13. DISPUTE RESOLUTION**

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

19 **14. AUTHORIZATION**

20 The undersigned are authorized to execute this Consent Judgment on behalf of their
21 respective Parties and have read, understood and agree to all of the terms and conditions of this
22 Consent Judgment.
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AGREED TO:
SHEFA LMV, INC.

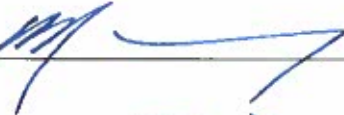
By: 

Printed Name: Yisroel Schochet

Its: Director

Date: 4/2/2018

AGREED TO:
HOBBY LOBBY STORES, INC.

By: 

Printed Name: ~~Perry Dossow~~

Its: SVP-LEGAL

Date: 4-2-18

[PROPOSED] JUDGMENT

Please note that on _____ at _____ am, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Consent Judgment and Entry of Consent Judgment as to Defendant Hobby Lobby Stores, Inc. came for hearing before this Court in Department 40, the Honorable David Sotelo 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 Consent Judgment and makes the following findings pursuant to Health & Safety Code § 25249.7(f)(4):

a. The injunctive relief required by the Consent Judgment complies with Health & Safety Code § 25249.7;

b. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is reasonable under California law; and

c. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.

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

Date

Judge of the Superior Court