

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

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S) <b>Shefa LMV Inc.</b>			
	DEFENDANT(S) INVOLVED IN SETTLEMENT <b>Michaels Stores, Inc.</b>			
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>N/A</b>		COURT NAME <b>N/A</b>	
	SHORT CASE NAME <b>N/A</b>			
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformulation and/or Warning label</b>			
	PAYMENT: CIVIL PENALTY <b>\$5,000</b>	PAYMENT: ATTORNEYS FEES <b>\$22,500</b>	PAYMENT: OTHER <b>0.00</b>	For Internal Use Only
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="radio"/> Yes <input checked="" type="radio"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED <b>5 / 10 / 2017</b>	
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>			
<b>FILER INFO</b>	NAME OF CONTACT <b>Daniel N. Greenbaum</b>			
	ORGANIZATION <b>Law Office of Daniel Greenbaum</b>		TELEPHONE NUMBER <b>( 818 ) 809-2199</b>	
	ADDRESS <b>7120 Hayvenhurst Ave., Suite 320</b>		FAX NUMBER <b>( 424 ) 243-7698</b>	
	CITY <b>Van Nuys</b>	STATE <b>CA</b>	ZIP <b>91406</b>	E-MAIL ADDRESS <b>dgreenbaum@greenbaumlawfirm.com</b>

**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.

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 **Shefa LMV, Inc. and Michaels Stores, Inc.**

This Settlement Agreement is entered into by and between Shefa LMV, Inc. (“Shefa”) and Michaels Stores, Inc., (“Michaels”). Together, Shefa and Michaels are collectively referred to as the “Parties.” Shefa is a California-based entity 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. Michaels is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, *et seq.* (“Proposition 65”).

### 1.2 **General Allegations**

Shefa alleges that Michaels has imported, distributed, and/or sold in the State of California glue guns without requisite Proposition 65 warnings. The glue guns addressed herein (“Products”) are those sold by Michaels under its various private label names, including but not limited to, Craft Smart, Darice, and ArtMinds. Shefa further alleges that such warnings are required because the Products contain the chemical Di(2-ethylhexyl) phthalate (“DEHP”), which will be transferred to the hands during use of the Products, and then ultimately transferred to the mouth. On January 1, 1988, the State of California listed DEHP under Proposition 65 as a chemical known to the State to cause cancer. On October 24, 2003, the State of California further listed DEHP under Proposition 65 as a chemical known to cause reproductive harm.

### 1.3 **Notice of Violation**

On November 3, 2016, Shefa served Michaels and Michael Stores Procurement Company and various public enforcement agencies with a document entitled “**60 DAY NOTICE OF**

**VIOLATION SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)**” (the “Notice”). The Notice provided Michaels, its affiliated companies, and certain public enforcers with notice that Shefa alleged that the sale of the Products was in violation of California Health & Safety Code § 25249.6 for failing to provide Proposition 65 warnings that they exposed consumers in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.4 No Admission**

Michaels denies the material factual and legal allegations contained in the Notice and asserts that all its products that are or have been sold and distributed in California, including the Products, have (and continue to) comply with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Michaels of any fact, finding, issue of law, or violation of law. Moreover, compliance with this Settlement Agreement shall not constitute or be construed as an admission by Michaels of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied. Notwithstanding the above, Section 1.4 shall not diminish or otherwise affect the obligations, responsibilities, and duties of Michaels under this Settlement Agreement.

#### **1.5 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date on which this Settlement Agreement is signed by both Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation or Labeling Requirement**

Commencing within 180 days following the Effective Date, and continuing thereafter, Michaels shall only manufacture, import, or otherwise source for authorized sale in California, Reformulated Products (as defined by Section 2.2 below), unless such Products are labeled with

a clear and reasonable Proposition 65 warning pursuant to Section 2.3 below. Products to which Michaels has taken title prior to the Effective Date are exempt from the foregoing obligations of Section 2.1. Michaels may offer such products for sale without the warnings described in section 2.3 even if such products are not Reformulated Products.

## **2.2 Reformulation Standard**

“Reformulated Products” shall mean Products that contain less than or equal to 1,000 parts per million (“ppm”) each of DEHP, Di-n-butyl Phthalate (“DBP”), Butyl benzyl phthalate (“BBP”), Di-n-hexyl Phthalate (“DnHP”), di-isodecyl phthalate (“DIDP”), and Diisononyl Phthalate (“DINP”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent testing methodologies authorized by government agencies for the detection of phthalate chemicals in consumer products. Collectively, DEHP, BBP, DBP, DIDP, DINP, and DnHP are referred to herein as “Listed Phthalates.”

## **2.3 Clear and Reasonable Warnings**

Michaels shall, for all Products subject to Section 2.1, affix a warning to the consumer-facing packaging or directly on each Product that states:

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

or

**WARNING:** This product contains phthalate chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

or

**WARNING:** This product can expose you to chemicals, including DEHP, which are 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](http://www.P65Warnings.ca.gov).

Regardless of which warning statement is utilized, it shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions prior to purchase or use.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

**3.1** In settlement of all the claims referred to in this Settlement Agreement, Michaels shall pay a total of \$5,000.00 in civil penalties pursuant to Health & Safety Code § 25249.7(b) in accordance with this Section. This penalty payment shall be allocated in accordance with Health & Safety Code § 25249.12(c)(l) and (d), with 75% of the funds remitted to the Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Shefa.

More specifically, within thirty (30) days of the Effective Date, Michaels shall issue two separate checks for the civil penalty payment to: (a) “OEHHA” in the amount of \$3,750.00 and with the memo line on the check indicating “Prop 65 Penalties - Shefa v. Michaels/DEHP” (Michaels may reference OEHHA’s Tax Identification Number of 68-0284486 for this check); and (b) “Law Office of Daniel N. Greenbaum in Trust for Shefa” in the amount of \$1,250.00. Shefa shall provide Michaels a completed IRS Form W-9 with a tax identification number within two (2) days following the Effective Date. These checks shall be delivered as follows:

- (i) The check to Shefa shall be delivered to 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

- (ii) The check for OEHHA shall be delivered to one of the following addresses:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

OR

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

Michaels shall provide Shefa's counsel with a copy of its check payable to OEHHA.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Shefa and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of this Settlement Agreement had been mutually agreed upon. Shefa then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.

The Parties reached an accord on the compensation due to Shefa and its counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Under these legal principles, Michaels shall reimburse Shefa's counsel for fees and costs incurred investigating this matter, and bringing it to Michaels's attention, and negotiating a settlement thereof. Within thirty (30) days of the Effective Date, Michaels shall issue a check payable to "Law Office of Daniel N. Greenbaum" in the amount of \$22,500.00 for delivery to 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

To facilitate timely payment, within two (2) days following the Effective Date, the Law Office of Daniel N. Greenbaum shall provide Michaels with a completed IRS Form W-9 with its tax identification number.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Michaels and Downstream Retailers and Entities**

Shefa, acting on its own behalf, releases Michaels, its parent and affiliates, and their respective directors, officers, agents, employees, and attorneys, and any entity to whom Michaels directly or indirectly distributes or sells the Products and their respective parents, affiliates, and subsidiaries (collectively, all of the preceding shall be referred to as the “Releasees”), from all claims for violations of Proposition 65 based on the failure to warn about alleged exposures to Listed Phthalates in the Products as acquired by Michaels prior to the Compliance Date. As between Shefa and Michaels (and the Releasees), compliance with the terms of this Settlement Agreement shall be deemed to constitute compliance with Proposition 65 relative to Listed Phthalates in the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section(s) 3 and 4 above, Shefa, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands against Michaels and its affiliated companies of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising up to the Effective Date, whether based on

Proposition 65 or otherwise. In this regard, Shefa acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides 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 is, in this regard, therefore expressly waiving and relinquishing any and all rights and benefits that it may have under, or that may be conferred on it by the provisions of, California Civil Code § 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

#### **5.2 Michaels's Release of Shefa**

Michaels, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Shefa, its attorneys, and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Shefa and/or its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

#### **6. SEVERABILITY**

If, after the execution of this Settlement Agreement, any of a Court deems any of the provisions of this Settlement Agreement to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

#### **7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. If Proposition 65 is repealed or is otherwise



rendered inapplicable by reason of law generally, or as to DEHP or the Products, Michaels shall provide written notice to Shefa of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Michaels:

Navin Rao  
Vice President, Assistant General Counsel  
and Chief Compliance Officer  
Michaels Stores, Inc.  
8000 Bent Branch Drive  
Irving, TX 75063

*With a copy to:*

Robert Falk  
RFalk@mofo.com  
Morrison & Foerster LLP  
425 Market Street, 32<sup>nd</sup> Floor  
San Francisco, CA 94105

For Shefa:

Daniel N. Greenbaum, Esq.  
Law Office of Daniel N. Greenbaum  
The Hathaway Building  
7120 Hayvenhurst Avenue, Suite 320  
Van Nuys, CA 91406

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

**9. ENFORCEMENT**

Any party may enforce the terms and conditions contained in this Settlement Agreement by filing suit for a breach thereof in a competent jurisdiction. However, before filing suit, Shefa shall provide Michaels with thirty (30) days written notice of any alleged violations of the terms of the Injunctive Relief contained in Section 2 herein. If Michaels cures any such alleged violations within thirty (30) days of receipt of the written notice by ceasing the sale of the Product in California until such warnings are provided for it pursuant to Section 2.3 above or testing reveals that the reformulation standard has been met for it pursuant to Section 2.2 above, then Michaels shall not be deemed in violation of this Settlement Agreement.

**10. INTEGRATION**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**11. COUNTERPARTS; SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

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

**13. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**14. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained in this Settlement Agreement.

**AGREED TO:**

Date: 5/10/17

By:   
Shefa LMV, Inc.

**AGREED TO:**

Date: 5/5/2017

By:   
Navin Rao  
Vice President, Assistant General  
Counsel and Chief Compliance Officer  
Michaels Stores, Inc.