

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 IML BRAND HOLDING LLC.; and DOES 1
14 through 100, Inclusive,

15 Defendant.
16

) 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
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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.”

2 Or,

3  **[California Proposition 65] WARNING:** Cancer and
4 Reproductive Harm - 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 **2.3 Covered Products in the Stream of Commerce.**

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

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:
28

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,

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 The releases in Section 4.2 are provided in Shefa’s individual capacity and are not releases
25 on behalf of the public.
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1 **4.3 Defendant’s Release of Shefa**

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

7 **4.4 Release of Unknown Claims**

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

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

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

28 **5. COURT APPROVAL**

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

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

17
18
19 By: 
20 DEFENDANT ISAAC MORRIS LIMITED

1 **[PROPOSED] JUDGMENT**

2 Please note that on 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.
- 16
17

18 _____
19 Date

Judge of the Superior Court