

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.

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3 The Hathaway Building
4 7120 Hayvenhurst Ave., Suite 320
5 Van Nuys CA 91406
6 Telephone: (818) 809-2199
7 Facsimile: (424) 243-7689
8 Email: dgreenbaum@greenbaumlawfirm.com

9 Attorney for Shefa LMV, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 SHEFA LMV, INC.,

13 Plaintiff,

14 vs.

15 MICHAELS STORES, INC.; and DOES 1
16 through 100, Inclusive,

17 Defendants.

) CASE NO: RG18907972

) *Dept. 23*

) **[PROPOSED] CONSENT JUDGMENT**
) **FOR DEFENDANT MICHAELS**
) **STORES, INC.**

) Health and Safety Code §25249.6, *et seq.*

) Action filed: June 07, 2018

1. **INTRODUCTION**

1.1 **Parties**

This Consent Judgment is entered into by and between plaintiff Shefa LMV, Inc., (“Shefa”) on the one hand, and Michaels Stores, Inc. (“Defendant”) on the other hand, with Shefa and Defendant individually referred to as a “Party” and collectively as the “Parties.”

1.2 **Plaintiff**

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.

1.3 **Defendant**

Defendant employs ten 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 Section 25249.6 *et seq.* (“Proposition 65”).

1.4 **General Allegations**

Shefa alleges Defendant manufactures, imports, sells, or distributes for sale to consumers in the State of California Bead Landing jewelry organizers and keychains containing Di (2-ethylhexyl) phthalate (“DEHP”) (“Products”) without first providing the clear and reasonable exposure warning required by Proposition 65. Shefa further alleges such warnings are required because the Products contain 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.

1.5 **Notice of Violation**

On October 4, 2017, 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

1 §25249.7(d)” (the “Notice”). The Notice provided Michaels, its affiliated companies, and certain
2 public enforcers with notice that Shefa alleged that the sale of the Products was in violation of
3 California Health & Safety Code § 25249.6 for failing to provide Proposition 65 warnings that the
4 Products exposed consumers in California to DEHP. No public enforcer has diligently
5 prosecuted the allegations set forth in the Notice.

6 **1.6 Complaint**

7 After the 60-day notice period was exhausted without an authorized public prosecutor of
8 Proposition 65 having asserted such claims, Shefa filed the instant action against Defendant
9 (“Complaint”) for the alleged violations of Health & Safety Code § 25249.6 that are the subjects
10 of the Notice.

11 **1.7 No Admission**

12 Defendant denies the material, factual, and legal allegations contained in the Notice and
13 maintains all the products it has manufactured, sold, or distributed for authorized sale in
14 California, including the Products, have been, and are, in compliance with all laws, including
15 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by
16 Defendant of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall
17 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
18 of any fact, finding, conclusion of law, issue of law, or violation of law, the same being
19 specifically denied by Defendant. This section shall not, however, diminish or otherwise affect
20 Defendant’s obligations, responsibilities, and duties under this Consent Judgment.

21 **1.8 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate: a) this Court has
23 jurisdiction over Defendant as to the allegations in the Complaint; b) venue is proper in Alameda
24 County, and c) this Court has jurisdiction to enter, enforce, and modify the provisions of this
25 Consent Judgment.
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1 **1.9 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
3 which Shefa serves notice on the Defendant and the Office of the California Attorney General
4 that the Court has approved and entered this Consent Judgement.

5 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**


6 By no later than the Compliance Date, and continuing thereafter, Defendant shall only
7 manufacture or import for potential sale in California, Products that meet the Reformulation
8 Standard set forth in Section 2.1 below (“Reformulated Products”) or which meet the warning
9 requirements set forth in Section 2.2 below. The “Compliance Date” shall mean August 19, 2018
10 or six months following the Effective Date, whichever arises earlier. Products manufactured for
11 and imported by the Defendant prior to the Compliance Date are exempted from the requirements
12 set forth in Sections 2.1 and 2.2 below and may be offered for sale in California and sold through
13 as is.

14 **2.1 Reformulation Standard**

15 For purposes of this Consent Judgment, Reformulated Products are defined as Products
16 that contain no more than 1,000 parts per million (0.1%) each of any of the following chemicals:
17 DEHP, Di-isodecyl phthalate (DIDP); Diisononyl Phthalate (DINP); Butyl benzyl phthalate
18 (BBP), Di-n-hexyl Phthalate (DnHP) and Di-n-butyl Phthalate (DBP) (“Listed Phthalates”). For
19 purposes of determining compliance with this Consent Judgment, the content of Listed Phthalates
20 shall be analyzed pursuant to EPA testing methodologies 3580A and 8270C or equivalent
21 methodologies utilized by state or federal agencies for determining Listed Phthalate content in a
22 solid substance.

23 **2.2 Product Warnings**

24 For all Products that contain a Listed Phthalate in an amount exceeding the Reformulation
25 Standard set forth in Section 2.1 above, and which are manufactured, sold, or packaged for
26 shipment to California following the Compliance Date, Defendant shall provide the following
27 Proposition 65 warning:
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1
2  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.¹

3
4 or

5 **WARNING:** This product contains chemicals known to the State of California to
6 cause cancer, and birth defects or other reproductive harm.²

7
8 or

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

12
13 or

14 **WARNING:** This product can expose you to chemicals, including DEHP, which
15 are known to the State of California to cause cancer and birth
16 defects or other reproductive harm. For more information go to
17 www.P65Warnings.ca.gov.

18 The above warning statement(s) shall be placed or affixed on the Product, or its package,
19 so that an ordinary individual will be able to read and understand it prior to purchase or use or it
20 may be displayed at the point of purchase prior to final consummation of the sales transaction by
21 which the product is acquired by someone in California.

22 The requirements for warnings, set forth in subsection (a) above are imposed pursuant to
23 the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive
24 methods of providing a warning under Proposition 65 and its implementing regulations.

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26
27 ¹ If Defendant elects to use this warning statement, it may include a symbol consisting of a black exclamation point
28 in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not
 printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left
 of the text of the warning, in a size no smaller than the height of the word “WARNING”.

² Where only one Listed Phthalate exceeds the Reformulation Standard, Defendant may elect to have this warning
 statement refer to the word “chemical” in the singular.

1 **3. STATUTORY PENALTY PAYMENTS**

2 **3.1 Civil Penalty**

3 Defendant shall pay \$4,000.00 in civil penalties pursuant to Health & Safety Code §
4 25249.7(b) in accordance with this Section. This penalty payment shall be allocated in
5 accordance with Health & Safety Code § 25249.12(c)(l) and (d), with 75% of the funds remitted
6 to the Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25%
7 of the penalty remitted to Shefa. More specifically, within fifteen (15) business days of the
8 Effective Date, Defendant shall issue two separate checks for the civil penalty payment to (a)
9 “OEHHA” in the amount of \$3,000.00 and with the memo line on the check indicating “Prop 65
10 Penalties—Shefa v. Michaels” (Defendant may reference OEHHA’s Tax Identification Number
11 of 68-0284486 for this check); and (b) “Law Office of Daniel N. Greenbaum in Trust for Shefa”
12 in the amount of \$1,000.00 (for which Shefa shall provide Defendant a completed IRS Form W-
13 9 with a tax identification number within two days following the Effective Date, if not
14 beforehand). These checks shall be delivered to the addresses listed in Section 3.2 below.

15 **3.2 Payment Delivery**

16 (a) Payment to Shefa shall be delivered to the following address:

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

20 (b) Payment to OEHHA shall be delivered to one of the following addresses:

21 For United States Postal Service Delivery:

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

25 or

26 For Non-United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

4. **REIMBURSEMENT OF FEES AND COSTS**

Defendant shall pay Shefa \$18,000.00 for fees and costs incurred as a result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement in the public interest. Defendant shall make its checks payable to the Law Office of Daniel N. Greenbaum and shall deliver payment to the address listed in Section 3(a) above within fifteen (15) business days of the Effective Date. To facilitate timely payment, Shefa shall provide Defendant with a completed IRS Form W-9 with Law Office of Daniel N. Greenbaum's tax identification number within two (2) days following the Effective Date (if not beforehand).

5. **CLAIMS COVERED AND RELEASED**

5.1 **Shefa's Public Release of Proposition 65 Claims**

Shefa, acting on its own behalf and in the public interest, releases Defendant, and its affiliated entities, directors, officers, employees, and attorneys, as well as each entity from whom they acquire the Products or the Products' components, and each entity to whom they directly or indirectly distribute or sell Products, including, but not limited to, distributors, wholesalers, dealers, customers, retailers, franchisees, cooperative members, licensors, and licensees, from all claims for violations of Proposition 65 based on exposures to DEHP from Products manufactured, sold, or packaged by Defendant prior to the Effective Date.

Following the Effective Date, compliance with the terms of this Consent Judgment shall be deemed compliance with Proposition 65 with respect to exposures to DEHP from the Products.

5.2 **Shefa's Private Releases of Claims**

Shefa, in its individual capacity only, also 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 of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to any of the chemicals listed under Proposition 65 (including but

1 not limited to the Listed Phthalates) in the Products. In this regard, Shefa hereby acknowledges
2 that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

7 **5.3 Defendant's Release of Shefa**

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

14 **6. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and
16 shall be null and void if, for any reason, it is not approved and entered by the Court within one
17 year after it has been fully executed by all Parties unless the Parties mutually agree to extend that
18 time period due to what they mutually agree are reasonably unforeseeable circumstances.

19 **7. SEVERABILITY**

20 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
21 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not
22 be adversely affected.

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event Proposition 65 is repealed or is
26 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendant
27 may provide written notice to Shefa of any asserted change in the law and have no further
28

obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.

9. **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 Defendant Michaels Stores, Inc.:

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, 32nd 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
dgreenbaum@greenbaumlawfirm.com

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.

10. **COUNTERPARTS; FACSIMILE 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 **11. POST EXECUTION ACTIVITIES**

2 Shefa agrees to comply with the reporting form requirements referenced in Health &
3 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety
4 Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement
5 manifested in this Consent Judgment. In furtherance of obtaining such approval, Shefa shall file
6 and serve a noticed motion for approval of this Consent Judgment within sixty (60) days of its
7 execution by all Parties and assure that the Office of the California Attorney General is served
8 with said motion and all supporting papers at least forty-five (45) days prior to the scheduled
9 hearing thereon. Defendant agrees to support the entry of this Consent Judgment once such
10 motion has been filed.

11 **12. ENFORCEMENT**

12 The Court shall retain jurisdiction to oversee, enforce and/or modify the terms of this
13 Consent Judgment. Any Party may, after meeting and conferring, by motion or application for an
14 order to show cause before this Court, enforce the terms and conditions contained in this Consent
15 Judgment. However, before filing such a motion or an application for an order to show cause,
16 Shefa shall provide Defendant with 30 (thirty) days written notice of any alleged violations of the
17 terms of Injunctive Relief contained in Section 2 herein. As long as Defendant cures any such
18 alleged violations within 30 (thirty) days of receipt of the written notice by ceasing the sale of the
19 Covered Product in California until such time as warnings are provided for it pursuant to Section
20 2.2 above or testing reveals that the reformulation standard has been met for it pursuant to Section
21 2.1 above, then there shall be deemed no good cause for enforcement or actionable violation.

22 **13. INTEGRATION**

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

14. **MODIFICATION**

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and upon entry, following at least twenty-one (21) days' notice to the Office of the Attorney General, of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application of any Party, which shall also be served on the Office of the California Attorney General with at least twenty-one (21) days' notice, and the entry of a modified consent judgment by the Court. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

15. **AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agreed to all of the terms and conditions of this Consent Judgment.

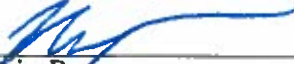
AGREED TO:

Date: 6/25/2018

By: 
Shefa LMV, Inc.

AGREED TO:

Date: 6/22/2018

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

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[PROPOSED] JUDGMENT

Please note that on _____, 2018 at _____, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Michaels Stores, Inc. came for hearing before this Court in Department ____, the Honorable _____ 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.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court