

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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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
11 SHEFA LMV, INC.,)

12 Plaintiff,)

13 vs.)

14 LEVINSOHN TEXTILE COMPANY, INC.,)

15 Defendant.)

Case No. 19STCV16021

**[PROPOSED] CONSENT JUDGMENT
AS TO LEVINSOHN TEXTILE
COMPANY, INC.**

Action Filed: May 7, 2019

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**”) acting on behalf of the public interest and Levinsohn
5 Textile Company, Inc. (“**Defendant**,” with Shefa and **Defendant** 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 Defendant employs ten (10) 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 covered by this Consent Judgment are sheet straps, including, but not limited
17 to, Hold On!™ Sheet Straps; UPC: 010482100068, that are manufactured, sold, or distributed for
18 sale in California by Defendant that contain Di-[n-Butyl] Phthalate (“**DBP**”), (collectively, the
19 “**Covered Products**”).

20 **1.5 General Allegations**

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

25 **1.6 Notice of Violation**

26 On December 21, 2017, Shefa served Defendant and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation (the “**Notice**”) alleging that Defendant violated
28

1 Proposition 65 by failing to warn its customers and consumers in California that the Covered
2 Products expose users to DBP. In the Notice, Shefa identified Defendant as Hold On!, a trademark
3 of Defendant. To the best of the Parties' knowledge, no public enforcer has commenced and is
4 diligently prosecuting the allegations set forth in the Notice.

5 **1.7 Complaint**

6 On May 7, 2019, Shefa filed the instant complaint in the Superior Court in and for the
7 County of Los Angeles against Defendant and DOES 1-100, alleging violations of California
8 Health & Safety Code § 25249.6, based on exposures to DBP contained in the Covered Products
9 sold in the State of California (the "**Complaint**").

10 **1.8 No Admission**

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

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
23 County of Los Angeles, Defendant agrees that it employs or has employed ten or more persons
24 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
25 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 as a full and
26 final binding resolution of all claims which were or could have been raised in the Complaint based
27 on the facts alleged therein and/or in the Notice.
28

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the
3 Consent Judgment is approved and entered by the Court.

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

5 **2.1 Reformulation Standards**

6 After the Effective Date, Defendant shall only order for sale in California Covered Products
7 that are Compliant Products. For purposes of this Consent Judgment, Compliant Products are
8 defined as Covered Products: (a) containing DBP in a concentration less than or equal to 1,000 parts
9 per million (“ppm”) (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency
10 testing methodologies 3580A and 8270C or any other scientifically reliable methodology for
11 determining the concentration of DBP in the Covered Products or (b) exhibiting a warning in
12 compliance with Section 2.2 (“Compliant Warning”).

13 **2.2 Warning Standards**

14 Whenever a Compliant Warning is required under Section 2.1 for Covered Products offered
15 for sale in California, said warning shall substantially and materially comply with the requirements
16 of Proposition 65, including 27 California Code of Regulations section 25600 et. seq. as may be
17 amended from time to time, with any such warning to be prominently displayed with such
18 conspicuousness as to render the warning likely to be read and understood by an ordinary individual
19 under customary conditions of purchase or use. Any such warning shall constitute compliance with
20 Proposition 65 with respect to any Covered Products that do not satisfy the DBP standard identified
21 in Section 2.1. Among the warnings deemed to comply with Section 2.2 and Proposition 65 and its
22 above identified warning regulations include the following:

- 23 (a) the text, **“WARNING This product can expose you to chemicals, including DBP,**
24 **which is known to the State of California to cause birth defects or other reproductive**
25 **harm. For more information go to www.P65Warnings.ca.gov.”** accompanied by and
26 placed to the right of a symbol consisting of a black exclamation point in a yellow
27 equilateral triangle with a bold black outline sized to be no smaller than the word,
28

1 “WARNING” as provided by regulations adopted on or about August 30, 2016; or

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

6
7 The triangular warning symbol specified in Section 2.2(a) and 2.2(b) shall be in yellow with a black
8 exclamation mark; *provided however*, the symbol may be printed in black and white if the Covered
9 Product label is not printed against a yellow background.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
12 Defendant shall make the Total Settlement Payment of **\$19,250.00**.

13 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
14 separate checks made payable and allocated as follows:

15 **3.2.1 Civil Penalty.** Defendant shall pay \$2,500.00 as a civil penalty
16 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
17 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
18 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the
19 OEHHA portion of the civil penalty payment in the amount of \$1,875.00 shall be made payable to
20 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
21 delivered as follows:

22 For United States Postal Service Delivery:

23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010, MS #19B
27 Sacramento, CA 95812-4010
28

1 Compliance with the terms of this Consent Judgment shall constitute compliance with
2 Proposition 65 by Defendant and the Releasees with respect to DBP in Covered Products ordered by
3 Defendant after the Effective Date.

4 **4.2 Shefa's Individual Release of Claims**

5 In further consideration of the promises and agreements herein contained, Shefa, on its own
6 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
7 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
8 legal action, and releases all claims that it may have against Defendant and Releasees, including,
9 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
10 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
11 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DBP from Covered
12 Products manufactured, sold, or distributed for sale by Defendant prior to the Effective Date. The
13 releases in Section 4.2 are provided in Shefa's individual capacity and are not releases on behalf of
14 the public.

15 **4.3 Defendant's Release of Shefa**

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

21 **4.4 Release of Unknown Claims**

22 It is possible that other claims not known to the Parties arising out of the facts contained in
23 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
24 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment
25 is expressly intended to cover and include all such claims through and including the Effective Date,
26 including all rights of action therefor. Shefa acknowledges that the claims released in Sections 4.1
27 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in
28

1 doing so waives California Civil Code § 1542, 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 Defendant or any of the
12 Releasees.

13 **5. COURT APPROVAL**

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

15 **6. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of California
17 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
18 rendered inapplicable by reason of law generally, or as to the Covered Products, then Defendant
19 may provide written notice to Shefa of any asserted change in the law, and with the exception of
20 Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with
21 respect to, and to the extent that, the Covered Products are so affected. None of the terms of this
22 Consent Judgment shall have any application to Covered Products sold outside of the State of
23 California.

24 **7. NOTICE**

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

1 To Defendant:

2 Adam Levinsohn
3 Levinsohn Textile Co., Inc
4 230 Fifth Avenue
5 New York City, NY 1001

6 With a copy to its counsel:

7 John E. Dittoe
8 Law Office of John E. Dittoe
9 70 Hazel Lane
10 Piedmont, CA 94611

To Shefa:

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

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

13 **8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

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

20 **10. POST EXECUTION ACTIVITIES**

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

25 **11. MODIFICATION**

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

1 **12. DISPUTE RESOLUTION**

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

11 **13. AUTHORIZATION**


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

15
16 AGREED TO:

AGREED TO:

17
18 Date: 05/29/2019

Date: May 29, 2019

19
20
21 By: 

By: 

22 SHEFA LMV, INC.

LEVINSOHN TEXTILE COMPANY, INC.

1 **[PROPOSED] JUDGMENT**

2 Please note that on _____, 2019 at ____ am/pm, Plaintiff Shefa LMV Inc.'s ("Plaintiff")
3 Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Levinsohn
4 Textile Company, Inc. came for hearing before this Court in Department 45, the Honorable Mel Red
5 Recana presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

6 After full consideration of the points and authorities and related pleadings submitted, the Court
7 GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code
8 §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following
9 findings pursuant to Health & Safety Code § 25249.7(f)(4):

10 a. The injunctive relief required by the Settlement Agreement complies with Health &
11 Safety Code § 25249.7;

12 b. The reimbursement of fees and costs to be paid pursuant to the Settlement
13 Agreement is reasonable under California law; and

14 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.
15

16 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
17
18

19 _____
20 Date

Judge of the Superior Court