

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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6 Attorney for Plaintiff SHEFA LMV, INC.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 SHEFA LMV, INC.,

11)
12 Plaintiff,

13 vs.

14 DISCOUNT DANCE, LLC; and DOES 1
through 100, Inclusive,

15 Defendant.
16
17
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) Case No. RG18918803
)
)

) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO DISCOUNT DANCE, LLC.**

) Action Filed: August 30, 2018
)
)
)

1 **1. INTRODUCTION**

2
3 **1.1 Parties**

4 This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff
5 Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”) and Discount Dance, LLC (“**Discount Dance**”) with
6 Shefa and **Discount Dance** individually referred to as a “**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 **Discount Dance** employs ten (10) or more persons and is a person in the course of doing
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
14 Safety Code §25249.6 *et seq.* (“**Proposition 65**”).

15 **1.4 Products Covered**

16 The products covered by this Consent Judgment are plastic garment bag products, including
17 but not limited to, Theatrical Purple Garment Bag, TH108; and Performance Repair Kit in plastic
18 case products, including but not limited to, Style TH KIT Theatricals Dancewear; UPC:
19 888891092799, that are manufactured, sold, or distributed for sale in California by Defendant that
20 contain Di-[2-Ethylhexyl] Phthalate (“**DEHP**”) (collectively, the “**Covered Products**”).

21 **1.5 General Allegations**

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

26 **1.6 Notice of Violation**

27 On February 6, 2018 and March 16, 2018, Shefa served **Discount Dance** and the requisite
28

1 public enforcement agencies with two Sixty Day Notice of Violation (the “**Notices**”) alleging that
2 **Discount Dance** violated Proposition 65 when it failed to warn its customers and consumers in
3 California that the Covered Products expose users to DEHP. To the best of the Parties’ knowledge,
4 no public enforcer has commenced and is diligently prosecuting the allegations set forth in the
5 Notices.

6 **1.7 Complaint**

7 On August 30, 2018, Shefa filed the instant complaint in the Superior Court in and for the
8 County of Alameda against **Discount Dance** and DOES 1-100, alleging violations of California
9 Health & Safety Code § 25249.6, based on exposures to DEHP contained in the Covered Products
10 sold in the State of California (the “**Complaint**”).

11 **1.8 No Admission**

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

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over **Discount Dance** as to the allegations in the Complaint, that venue is proper in the
24 County of Alameda, the **Discount Dance** agrees that they employs or have employed ten or more
25 persons during time periods relevant to the Complaint and that this Court has jurisdiction over the
26 Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.
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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 As of the Effective Date, **Discount Dance** shall not manufacture for sale in California any
7 Covered Products unless such Covered Products contain DEHP in concentrations less than or equal
8 to 1000 parts per million (“ppm”) when analyzed pursuant to U.S. Environmental Protection
9 Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology
10 for determining the concentration of DEHP in the Covered Products.

11 **2.2 Warning Standards**

12 Discount Dance agrees, promises, and represents that, as of the Effective Date, to the extent
13 they ship or sell Covered Products that do not meet the reformulation standards set forth above in
14 Section 2.1, Discount Dance will provide warnings on such Covered Products that comply with
15 Proposition 65. The warnings shall be provided in a conspicuous and prominent manner such that
16 they will be likely to be read or seen by the consumer prior to or at the time of the sale or purchase.
17 The Parties agree that the warning set forth below shall constitute compliance with Proposition 65
18 with respect to any Covered Products that are not reformulated:

19 “  **WARNING:** This product can expose you to chemicals, including Di-[2-
20 Ethylhexyl] Phthalate (DEHP), which are known to the State of California to cause birth defects or
21 other reproductive harm. For more information go to www.P65Warnings.ca.gov.”

22 **2.3 Covered Products in the Stream of Commerce.**

23 Any Covered Products that have been distributed, shipped, or sold by **Discount Dance** prior
24 to the Effective Date, shall not be subject to the requirements of Section 2.1.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Payment from Discount Dance.** Within ten (10) business days of the Effective
3 Date, Discount Dance shall make the Total Settlement Payment of **\$20,500.00**.

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.** Discount Dance 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.

3.2.2 Attorney’s Fees and Costs. A reimbursement of Shefa's attorney’s
fees and costs in the amount of \$16,500.00 payable to the “Law Office of Daniel N. Greenbaum,”

1 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
2 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Public Release**

5 This Consent Judgment is a full, final, and binding resolution between Shefa and Discount
6 Dance of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on
7 behalf of itself and in a representative capacity in the public interest under Health & Safety Code
8 § 25249.7, against Discount Dance, its parents, subsidiaries, affiliated entities, manufacturers,
9 suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of
10 each of them, and each entity to whom Discount Dance directly or indirectly exports, distributes or
11 sells the Covered Products, including, without limitation, distributors, wholesalers, customers,
12 retailers, franchisees, cooperative members, and licensees, (“**Releasees**”), based on failure to warn
13 of alleged exposures to DEHP from Covered Products manufactured, sold, or distributed for sale in
14 California by Discount Dance prior to the Effective Date. The release in this Section 4.1 applies to
15 all Covered Products that Discount Dance manufactured, distributed, or sold prior to the Effective
16 Date, regardless of the date any other Releasee distributes or sells the Covered Products.

17 Compliance with the terms of this Consent Judgment shall constitute compliance with
18 Proposition 65 by Discount Dance and the Releasees with respect to DEHP in Covered Products
19 manufactured, sold, or distributed on and after the Effective Date.

20 **4.2 Shefa’s Individual Release of Claims**

21 In further consideration of the promises and agreements herein contained, Shefa, on its own
22 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
23 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
24 legal action, and releases all claims that it may have against Discount Dance and Releasees,
25 including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations,
26 damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation
27 fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP
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1 from Covered Products manufactured, sold, or distributed for sale by Discount Dance prior to the
2 Effective Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not
3 releases on behalf of the public.

4 **4.3 Discount Dance's Release of Shefa**

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

11 **4.4 Release of Unknown Claims**

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

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

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

1 Releasees.

2 **5. COURT APPROVAL**

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

4 **6. GOVERNING LAW**

5 The terms of this Consent Judgment shall be governed by the laws of the State of California
6 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
7 rendered inapplicable by reason of law generally, or as to the Covered Products, then Discount
8 Dance may provide written notice to Shefa of any asserted change in the law, and with the
9 exception of Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent
10 Judgment, with respect to, and to the extent that, the Covered Products are so affected. None of the
11 terms of this Consent Judgment shall have any application to Covered Products sold outside of the
12 State of California.

13 **7. NOTICE**

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

18 To Discount Dance:

19 Elizabeth V. McNulty
20 Taylor | Anderson LLP
21 19100 Von Karman Ave., Ste. 820
Irvine, CA 92612

To Shefa:

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

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

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

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

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

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

5 **10. POST EXECUTION ACTIVITIES**

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

10 **11. MODIFICATION**

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

14 **12. DISPUTE RESOLUTION**

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

24 **13. AUTHORIZATION**

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


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AGREED TO:

AGREED TO:

Date: 1/14/2019

Date: 1/14/2019

By: 
SHEFA LMV, INC.

By: 
DISCOUNT DANCE, LLC.



1 **[PROPOSED] JUDGMENT**

2 Please note that on _____, 2019 at _____, Plaintiff Shefa LMV Inc.'s ("Plaintiff")
3 Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant
4 Discount Dance, LLC came for hearing before this Court in Department 18, the Honorable Jo-Lynne Q.
5 Lee 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

17 _____
18 Date

17 _____
18 Judge of the Superior Court