

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
2 Daniel N. Greenbaum, Esq. (SBN 268104)
3 The Hathaway Building
4 7120 Hayvenhurst Avenue, 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 Plaintiff SHEFA LMV, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 SHEFA LMV, INC.,

13 Plaintiff,

14 vs.

15 G-III APPAREL GROUP, LTD,

16 Defendant.

) Case No. 19STCV07627

)
)
) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO G-III APPAREL GROUP, LTD.**

)
) Action Filed: March 5, 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**”) and G-III Apparel Group, Ltd., (“**Defendant**,” with Shefa
5 and **Defendant** individually referred to as a “**Party**” and collectively as the “**Parties.**”)

6 **1.2 Plaintiff**

7 Shefa is a public benefit, non-profit corporation that seeks to promote awareness of
8 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Settling Defendant**

11 Defendant employs ten (10) or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code §25249.6 *et seq.* (“**Proposition 65**”).

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are handbags, purses, clutches, backpacks,
16 and wallets including, but not limited to Style: HM8ET932, Color: Yellow Andrew Marc Purse; ID:
17 400170430421, that are manufactured, sold, or distributed for sale in California by Defendant that
18 contain Di-[2-Ethylhexyl] Phthalate (“**DEHP**”) (collectively, the “**Covered Products**”).

19 **1.5 General Allegations**

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

24 **1.6 Notice of Violation**

25 On August 22, 2018, Shefa served Defendant and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (the “**Notice**”) alleging that Defendant violated Proposition 65
27 when it failed to warn its customers and consumers in California that the Covered Products expose
28

1 users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is
2 diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On March 5, 2019, Shefa filed the instant complaint in the Superior Court in and for the
5 County of Los Angeles against Defendant and DOES 1-100, alleging violations of California
6 Health & Safety Code § 25249.6, based on exposures to DEHP contained in the Covered Products
7 sold in the State of California (the "**Complaint**").

8 **1.8 No Admission**

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

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
21 County of Los Angeles, the Defendant agrees that they employ or have employed ten or more
22 persons during time periods relevant to the Complaint and that this Court has jurisdiction over the
23 Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "**Effective Date**" shall mean the date the
26 Consent Judgment is approved and entered by the Court.

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

2 **2.1 Reformulation Standards**

3 As of the Effective Date, Defendant shall not purchase or manufacture for sale in California
4 any Covered Products that contain DEHP in concentrations of more than 1000 parts per million
5 (“ppm”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
6 3580A and 8270C or any other scientifically reliable methodology for determining the
7 concentration of DEHP in the Covered Products.
8

9 **2.2 Warning Standards**

10 Defendant agrees, promises, and represents that Covered Products purchased or
11 manufactured after the Effective Date that do not meet the reformulation standard in Section 2.1,
12 shall be labeled with a warning . The warning shall be provided in a conspicuous and prominent
13 manner such that they will be likely to be read or seen by the consumer prior to or at the time of the
14 sale or purchase. The Parties agree that the warning set forth below shall constitute compliance
15 with Proposition 65 with respect to any Covered Products that are not reformulated:
16

17 (a) the text, **“WARNING This product can expose you to chemicals, including**
18 **DEHP, which is known to the State of California to cause birth defects or other**
19 **reproductive harm. For more information go to www.P65Warnings.ca.gov.”**

20 accompanied by and placed to the right of a symbol consisting of a black exclamation point
21 in a yellow equilateral triangle with a bold black outline sized to be no smaller than the
22 word, “WARNING” as provided by regulations adopted on or about August 30, 2016; or

23 (b) the text, **“WARNING Cancer and Reproductive Harm -**
24 **www.P65Warnings.ca.gov.”** accompanied by and placed to the right of a symbol consisting
25 of a black exclamation point in a yellow equilateral triangle with a bold black outline sized
26 to be no smaller than the word, “WARNING” as provided by regulations adopted on or
27

1 about August 30, 2016.

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

5
6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1** Payment from Defendant. Within ten (10) business days of the Effective Date,
8 Defendant shall make the Total Settlement Payment of \$22,250.00.

9 **3.2** Allocation of Payments. The Total Settlement Payment shall be paid in three (3)
10 separate checks made payable and allocated as follows:

11 **3.2.1** Civil Penalty. Defendant shall pay \$4,000.00 as a civil penalty
12 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
13 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
14 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
15 OEHHA portion of the civil penalty payment in the amount of \$3,000.00 shall be made payable to
16 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
17 delivered as follows:

18 For United States Postal Service Delivery:

19 Attn: Mike Gyurics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 P.O. Box 4010, MS #19B
23 Sacramento, CA 95812-4010

24 For Non-United States Postal Service Delivery:

25 Attn: Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 1001 I Street, MS #19B
Sacramento, CA 95814

The Shefa portion of the civil penalty payment in the amount of \$1,000.00 shall be made payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.

1 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
2 Ave, Suite 320, Van Nuys, CA 91406.

3 **3.2.2** Attorney's Fees and Costs. A reimbursement of Shefa's attorney's
4 fees and costs in the amount of \$18,250.00 payable to the "Law Office of Daniel N. Greenbaum,"
5 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
6 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1** Public Release

9 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant
10 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
11 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
12 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,
13 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and
14 each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered
15 Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees,
16 cooperative members, and licensees, including but not limited to Ross Stores, Inc., ("**Releasees**"),
17 based on failure to warn of alleged exposures to DEHP from Covered Products manufactured, sold,
18 or distributed for sale in California by Defendant prior to the Effective Date. The release in this
19 Section 4.1 applies to all Covered Products that Defendant manufactured, distributed, or sold prior
20 to the Effective Date, regardless of the date any other Releasee distributes or sells the Covered
21 Products.

22 Compliance with the terms of this Consent Judgment shall constitute compliance with
23 Proposition 65 by Defendant and the Releasees with respect to DEHP in Covered Products
24 manufactured, sold, or distributed on and after the Effective Date.

25 **4.2** Shefa's Individual Release of Claims

26 In further consideration of the promises and agreements herein contained, Shefa, on its own
27 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
28

1 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
2 legal action, and releases all claims that it may have against Defendant and Releasees, including,
3 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
4 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
5 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP from
6 Covered Products manufactured, sold, or distributed for sale by Defendant prior to the Effective
7 Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not releases on
8 behalf of the public.

9 **4.3 Defendant's Release of Shefa**

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

15 **4.4 Release of Unknown Claims**

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

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

28 Shefa understands and acknowledges that the significance and consequence of this waiver of

1 California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting
2 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not
3 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
4 Shefa will not be able to make any claim for those damages against Defendant or any of the
5 Releasees.

6 **5. COURT APPROVAL**

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

8 **6. GOVERNING LAW**

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

17 **7. NOTICE**

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

22 To Defendant:

23 Wayne Miller
24 G-III Apparel Group, Ltd.
25 512 7th Avenue New York, NY 10018

26 With a copy to:

27 Jeff Margulies, Esq.
28 NORTON ROSE FULBRIGHT US LLP
555 South Flower Street, Forty-First Floor

To Shefa:

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

1 Los Angeles, CA 90071
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5 Any Party may, from time to time, specify in writing to the other Party a change of address to which
6 all notices and other communications shall be sent.
7

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

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

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

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

15 **10. POST EXECUTION ACTIVITIES**

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

20 **11. MODIFICATION**

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

24 **12. DISPUTE RESOLUTION**

25 **12.1** Any Party may bring a motion to enforce the terms and conditions contained in
26 this Consent Judgment, consistent with the terms and conditions of this Section 12. Any action by
27 Shefa to enforce the requirements of Section 3 of this Consent Judgment, or to otherwise
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1 bring a claim regarding alleged exposure to DEHP in a Covered Product shall be governed
2 exclusively by Sections 12.2 and 12.3. At least 90 days before bringing any other action or
3 motion to enforce this Consent Judgment, the Party seeking enforcement or alleging violation
4 must notify the other Party of the specific act(s) alleged to constitute a breach of this Consent
5 Judgment.

6 **12.2** If Shefa contends that Defendant has failed to comply with the requirements of
7 Section 2 of this Consent Judgment, it shall provide a Notice of Violation (“NOV”) to Defendant.
8 The NOV shall contain, at a minimum: (a) the name of the product, including SKU, style number,
9 or other product code, (b) specific dates when the product was sold after the Effective Date in
10 California without reformulation, (c) the store or other place at which the product was available for
11 sale to consumers, (d) evidence that the Reformulation Standard was exceeded and a warning was
12 not provided, and (e) any other evidence or other support for the allegations in the NOV. The NOV
13 shall be served on Defendant within 30 days of the alleged violation.

14 **12.3** Within 30 days of receiving an NOV, Defendant shall serve a Notice of Election
15 (“NOE”) either contesting or not contesting the NOV.

16 **12.3.1** Non-Contested NOV. If Defendant elects not to contest the NOV, it
17 shall take corrective action by requesting that its customers in California remove the Covered
18 Product identified in the NOV from sale in California and destroy or return the Covered Product to
19 Defendant, or provide a warning pursuant to Section 2. Shefa will not take further action on an
20 NOV if Defendant complies with the requirements of this Section 12.3.1.

21 **12.3.2** Contested NOV. If Defendant elects to contest the NOV, the
22 provisions of this Section 12.3.2 shall apply.

23 (a) Defendant may contest the NOV by establishing that it
24 manufactured or purchased the Covered Product identified in the NOV before
25 the Effective Date.

26 (b) Defendant may contest the NOV by establishing that it
27

1 provided a warning on the Covered Product that complied with Section 2.2.

2 (c) Defendant may request that the sample(s) of Covered Product
3 tested by Shefa be subject to confirmatory testing at an EPA- or California-
4 accredited laboratory. If the confirmatory testing establishes that the
5 sample(s) do not contain DEHP in excess of the level allowed in Section 2,
6 Shefa shall take no further action regarding the alleged violation. If the
7 testing does not establish compliance with Section 2, Defendant may
8 withdraw its NOE to contest the violation and may serve a new NOE electing
9 not to contest the NOV and describing its corrective action, pursuant to
10 Section 12.3.1.
11

12 (d) If Shefa does not agree to withdraw an NOV that Defendant
13 contests under Sections 12.3.2(a) or (b) fails to take action under Section
14 12.3.1, the Parties shall meet and confer for no less than 30 days before Shefa
15 may take action seeking to enforce the terms of this Agreement.
16

17 (d) If Shefa establishes the violation, then Defendant shall take
18 the corrective action required for a non-contested NOV under Section 12.3.1.
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20 13. AUTHORIZATION

21 The undersigned are authorized to execute this Consent Judgment on behalf of their
22 respective Parties and have read, understood, and agree to all of the terms and conditions of this
23 Consent Judgment.
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AGREED TO:

AGREED TO:

Date: 7/25/2019

Date: 7/25/2019

By: 
SHEFA LMV, INC.

By: 
DEFENDANT G-III APPAREL GROUP,
LTD.

1 **[PROPOSED] JUDGMENT**

2 Please note that on _____, 2019 at _____ am/pm, Plaintiff Shefa LMV Inc.'s
3 ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment
4 as to Defendant G-III Apparel Group, Ltd. came for hearing before this Court in Department 15, the
5 Honorable Richard L. Fruin 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
8 Court 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 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

18
19
20 _____
Date

Judge of the Superior Court