

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				For Internal Use Only
FILER INFO	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER ()	
	ADDRESS			FAX NUMBER ()	
	CITY	STATE	ZIP	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.

SETTLEMENT AGREEMENT

1. **INTRODUCTION**

1.1 **Parties**

This Settlement 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 yarn needles with plastic tubing containing Diisononyl Phthalate (“DINP”) (“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 DINP, which will be transferred to the hands during use of the Products, and then ultimately transferred to the mouth. On December 20, 2013, the State of California listed DINP under Proposition 65 as a chemical known to the State to cause cancer.

1.5 **Notice of Violation**

On February 27, 2019, 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 §25249.7(d)” (the “Notice”). The Notice provided Michaels, its affiliated companies, and certain

public enforcers with notice that Shefa alleged that the sale of the Products was in violation of California Health & Safety Code § 25249.6 for failing to provide Proposition 65 warnings that the Products exposed consumers in California to DINP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.6 No Admission

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

1.7 Effective Date

For purposes of this Settlement, the term "Effective Date" shall mean the date on which Shefa provides Defendant with written notice that it has uploaded the mutually executed version of this Settlement Agreement to the Office of the California Attorney General.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

As of the Effective Date, and continuing thereafter, Defendant shall only manufacture or import for potential sale in California, Products that meet the Reformulation Standard set forth in Section 2.1 below ("Reformulated Products") or which meet the warning requirements set forth in Section 2.2 below. Products manufactured for and imported by the Defendant prior to the Effective Date are exempted from the requirements set forth in Sections 2.1 and 2.2 below and may be offered for sale in California and sold through as is.


2.1 Reformulation Standard

For purposes of this Settlement Agreement, Reformulated Products are defined as Products that contain no more than 1,000 parts per million (0.1%) each of any of the following


chemicals: DINP, Di (2-ethylhexyl) phthalate (“DEHP”); Di-isodecyl phthalate (DIDP); Butyl benzyl phthalate (BBP), Di-n-hexyl Phthalate (DnHP) and Di-n-butyl Phthalate (DBP) (“Listed Phthalates”). For purposes of determining compliance with this Settlement Agreement, the content of Listed Phthalates shall be analyzed pursuant to EPA testing methodologies 3580A and 8270C or equivalent methodologies utilized by state or federal agencies for determining Listed Phthalate content in a solid substance.

2.2 Product Warnings

For all Products that contain a Listed Phthalate in an amount exceeding the Reformulation Standard set forth in Section 2.1 above, and which are manufactured, sold, or packaged for shipment to California following the Effective Date, Defendant shall provide the following Proposition 65 warning:

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.¹

Or

 **WARNING:** This product can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.²

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

¹ If Defendant elects to use this warning statement, it may delete the phrase “and Reproductive Harm” if the only Listed Phthalate for which the warning is given is DINP. Where the sign, label or shelf tag for the product is not printed using the color yellow, the designated symbol at the beginning of the warning statement 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 If Defendant elects to use this warning statement, it shall substitute “DINP” for “DEHP” and delete the phrase “and birth defects or other reproductive harm” if the only Listed Phthalate for which the warning is given is DINP. In addition, 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 and that that it “is” known to the State to cause the specified effect(s) for which it is listed.

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

3. **STATUTORY PENALTY PAYMENTS**

3.1 **Civil Penalty**

Defendant shall pay \$2,000.00 in civil penalties pursuant to Health & Safety Code § 25249.7(b) in accordance with this Section. This penalty payment shall be allocated in accordance with Health & Safety Code § 25249.12(c)(l) and (d), with 75% of the funds remitted to the Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Shefa. More specifically, within fifteen (15) business days of the Effective Date, Defendant shall issue two separate checks for the civil penalty payment to (a) “OEHHA” in the amount of \$1,500.00 and with the memo line on the check indicating “Prop 65 Penalties—Shefa v. Michaels” (Defendant may reference OEHHA’s Tax Identification Number of 68-0284486 for this check); and (b) “Law Office of Daniel N. Greenbaum in Trust for Shefa” in the amount of \$500.00 (for which Shefa shall provide Defendant a completed IRS Form W-9 with a tax identification number within two days following the Effective Date, if not beforehand). These checks shall be delivered to the addresses listed in Section 3.2 below.

3.2 **Payment Delivery**

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

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

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

For United States Postal Service Delivery:

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

or

For Non-United States Postal Service Delivery:

Mike Gyurics
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 \$16,500.00 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 Release of Proposition 65 Claims**

Shefa, on behalf of itself and its past and current officers, agents, representatives, attorneys, and successors and/or assignees, hereby 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 DINP from Products manufactured, sold, or packaged by Defendant prior to the Effective Date. Following the Effective Date, as between Shefa and Defendant, compliance with the terms of this Settlement Agreement shall be deemed compliance with Proposition 65 with respect to exposures to Listed Phthalates from the Products.

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

Shefa also provides a release herein on behalf of itself and its past and current officers, agents, representatives, attorneys, and successors and/or assignees, 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 not limited to the Listed Phthalates) in the Products. In this regard, Shefa hereby acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY

5.3 Defendant's Release of Shefa

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

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Settlement shall be governed by the laws of the State of California and apply within the State of California. In the event Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendant may provide written notice to Shefa of any asserted change in the law and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

8. 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.

9. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement 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.

10. **POST EXECUTION ACTIVITIES**

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

11. **ENFORCEMENT**

Any action to enforce a the terms of this Settlement shall be filed in a California Superior Court. Any Party may, after meeting and conferring, may seek to enforce the terms and conditions contained in this Settlement through such an action. However, before filing such an

action, Shefa shall provide Defendant with 30 (thirty) days written notice of any alleged violations of the terms of Injunctive Relief contained in Section 2 herein. As long as Defendant cures any such alleged violations within 30 (thirty) days of receipt of the written notice by ceasing the sale of the Covered Product in California until such time as warnings are provided for it pursuant to Section 2.2 above or testing reveals that the reformulation standard has been met for it pursuant to Section 2.1 above, then there shall be deemed no good cause for enforcement or actionable violation.

12. **INTEGRATION**

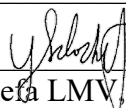
This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any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

13. **AUTHORIZATION**

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

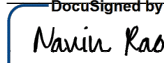
AGREED TO:

Date: 5/7/2019

By: 
Shefa LMV, Inc.

AGREED TO:

Date: 5/6/2019

By: 
Navin Rao

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