

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.

LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
The Hathaway Building
7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
Telephone: (818) 809-2199
Facsimile: (424) 243-7689
Email: dgreenbaum@greenbaumlawfirm.com

Attorney for Plaintiff SHEFA LMV, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

MIWORLD ACCESSORIES LLC;

Defendant.

) Case No. 19STCV41234

)

)

)

)

)

)

)

)

)

)

Action Filed: November 14, 2019

1. INTRODUCTION

1.1 Parties

This Consent Judgment (“**Consent Judgment**”) is entered into by and between plaintiff Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”) and MiWorld Accessories LLC (“**Defendant**,” with Shefa and **Defendant** individually referred to as a “**Party**” and collectively as the “**Parties.**”)

1.2 Plaintiff

Shefa is a public benefit, non-profit corporation 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 Settling Defendant

Defendant employs ten (10) 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 §25249.6 *et seq.* (“**Proposition 65**”).

1.4 Products Covered

The products covered by this Consent Judgment are plastic cosmetic bag products, including but not limited to, Blue Cosmetic Bag; ID: 87-60-190127-000800-41; UPC842100122479; CW-0270, that are manufactured, sold, or distributed for sale in California by Defendant that contain Di-[2-Ethylhexyl] Phthalate (“DEHP”) (“**Cosmetic Bags**”) and Kensie Boarding Pass (Set of 3 Bags), that are manufactured, sold, or distributed for sale in California by Defendant that contain Diisononyl Phthalate (“DINP”) (“**Boarding Pass Holders**”) (collectively, the “**Covered Products**”).

1.5 General Allegations

Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state of California, the Covered Products without first providing a clear and reasonable warning required by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer or reproductive toxicity. DINP (CAS # 28553-12-0) is a chemical listed under Proposition 65 as a chemical known to the state to cause cancer

1 **1.6 Notices of Violation**

2 On May 2, 2019 and June 19, 2019, Shefa served Defendant and the requisite public
3 enforcement agencies with Sixty Day Notices of Violation (the “**Notices**”) alleging that Defendant
4 violated Proposition 65 when it failed to warn its customers and consumers in California that the
5 Cosmetic Bags expose users to DEHP and the Boarding Pass Holders expose users to DINP. To the
6 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
7 allegations set forth in the Notices.

8 **1.7 Complaint**

9 On November 14, 2019, Shefa filed the instant complaint in the Superior Court in and for
10 the County of Los Angeles against Defendant, alleging violations of California Health & Safety
11 Code § 25249.6, based on exposures to DEHP contained in the Cosmetic Bags and DINP contained
12 in the Boarding Pass Holders sold in the State of California (the “**Complaint**”).

13 **1.8 No Admission**

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

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
26 County of Los Angeles, the Defendant agrees that it employs or has employed ten or more persons
27 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
28

enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

1.10 Effective Date

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

2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

2.1 Reformulation Standards

As of the Effective Date, Defendant shall not manufacture for sale in California any Cosmetic Bags unless the Cosmetic Bags contain DEHP in concentrations less than or equal to 1000 parts per million (“ppm”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology for determining the concentration of DEHP in the Cosmetic Bags. Defendant also shall not manufacture for sale in California any Boarding Pass Holders unless the Boarding Pass Holders contain DINP in concentrations less than or equal to 1000 parts per million (“ppm”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology for determining the concentration of DINP in the Boarding Pass Holders.

2.2 Warning Standards

Defendant agrees, promises, and represents that, as of the Effective Date, to the extent they ship or sell Covered Products that do not meet the reformulation standards set forth above in Section 2.1, Defendant will provide warnings on such Covered Products that comply with Proposition 65. The warnings shall be provided in a conspicuous and prominent manner such that they will be likely to be read or seen by the consumer prior to or at the time of the sale or purchase.

The Parties agree that the warning set forth below shall constitute compliance with Proposition 65 with respect to any Covered Products that are not reformulated:

For Cosmetic Bags,

- a) the text, “**WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause

1 cancer and birth defects or other reproductive harm. For more information go to
2 www.P65Warnings.ca.gov.” accompanied by and placed to the right of a symbol consisting
3 of a black exclamation point in a yellow equilateral triangle with a bold black outline sized
4 to be no smaller than the word, “WARNING” as provided by regulations adopted on or
5 about August 30, 2016; or

6
7 (b) the text, “**WARNING:** Cancer and Reproductive Harm -
8 www.P65Warnings.ca.gov.” accompanied by and placed to the right of a symbol consisting
9 of a black exclamation point in a yellow equilateral triangle with a bold black outline sized
10 to be no smaller than the word, “WARNING” as provided by regulations adopted on or
11 about August 30, 2016.

12 For Boarding Pass Holders,

13
14 (c) the text, “**WARNING:** This product can expose you to chemicals including
15 Diisononyl Phthalates (DINP), which is known to the State of California to cause cancer.
16 For more information go to www.P65Warnings.ca.gov.” accompanied by and placed to the
17 right of a symbol consisting of a black exclamation point in a yellow equilateral triangle
18 with a bold black outline sized to be no smaller than the word, “WARNING” as provided by
19 regulations adopted on or about August 30, 2016; or

20
21 (d) the text, “**WARNING:** Cancer - www.P65Warnings.ca.gov.” accompanied
22 by and placed to the right of a symbol consisting of a black exclamation point in a yellow
23 equilateral triangle with a bold black outline sized to be no smaller than the word,
24 “WARNING” as provided by regulations adopted on or about August 30, 2016.

25 The triangular warning symbol specified in Section 2.2 shall be in yellow with a black exclamation
26 mark; *provided however*, the symbol may be printed in black and white if the Covered Product label
27 is not printed using the color yellow.
28

1 **2.3 Compliance with Warning Regulations.**

2 Defendant shall be deemed to be in compliance with this Consent Judgment be either
3 adhering to Section 2.2 of this Consent Judgment or by complying with warning requirements
4 adopted by the State of California's Office of Environmental Health Hazard Assessment after the
5 Effective Date.

6 **2.4 Covered Products in the Stream of Commerce.**

7 Any Covered Products that have been produced, distributed, shipped, or sold by Defendant
8 prior to the Effective Date, shall not be subject to the requirements of Section 2.1 or 2.2.

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
11 Defendant shall make the Total Settlement Payment of **\$24,500.00**.

12 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
13 separate checks made payable and allocated as follows:

14 **3.2.1 Civil Penalty.** Defendant shall pay \$3,000.00 as a civil penalty
15 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
16 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
17 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
18 OEHHA portion of the civil penalty payment in the amount of \$2,250.00 shall be made payable to
19 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
20 delivered as follows:

21 For United States Postal Service Delivery:

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

1 For Non-United States Postal Service Delivery:

2 Attn: Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street, MS #19B
6 Sacramento, CA 95814

7 The Shefa portion of the civil penalty payment in the amount of \$750.00 shall be made
8 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
9 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
10 Ave, Suite 320, Van Nuys, CA 91406.

11 **3.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's
12 fees and costs in the amount of \$21,500.00 payable to the "Law Office of Daniel N. Greenbaum,"
13 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
14 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

15 **4. CLAIMS COVERED AND RELEASED**

16 **4.1 Public Release**

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

1 Compliance with the terms of this Consent Judgment shall constitute compliance with
2 Proposition 65 by Defendant and the Releasees with respect to DEHP in Cosmetic Bags and DINP
3 in Boarding Pass Holders manufactured, sold, or distributed on and 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 DEHP in Cosmetic
12 Bags and DINP in Boarding Pass Holders manufactured, sold, or distributed for sale by Defendant
13 prior to the Effective Date. The releases in Section 4.2 are provided in Shefa's individual capacity
14 and are not releases on behalf of 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 Notices, 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 THAT THE**
3 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST**
4 **IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND**
5 **THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED**
6 **HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

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.

12 **5. ENFORCEMENT**

13 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
14 hereto. A Party may enforce any of the terms and conditions of this Consent Judgment only after
15 that Party first provides sixty (60) days' notice to the Party allegedly failing to comply with the
16 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
17 comply in an open and good faith manner. The provisions of sections 5.2 through 5.3 shall be the
18 exclusive means of enforcing alleged violations of Section 2 of this Consent Judgment.

19 **5.2 Notice of Violation**

20 Prior to bringing any proceeding to enforce the terms of this Consent Judgment, Plaintiff
21 shall provide a written notice of violation ("NOV") to Defendant that includes information
22 sufficient for them to be able to understand and correct the violation, including but not limited to:
23 (a) the name of the product, (b) specific dates when the product was sold in California, (c) the store,
24 website, or other place at which the product was available for sale to consumers, and (d) any other
25 evidence or other support for the allegations in the notice, including all test data obtained by
26 Plaintiff regarding the Covered Product.

1 **5.3 Notice of Election Response**

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

4 **5.3.1 Non-Contested NOV.** Plaintiffs shall take no further action
5 regarding the alleged violation against a Defendant that serves a NOE that elects not to contest the
6 NOV and meets one of the following conditions:

7 (a) The Covered Product was produced, distributed, shipped, or sold by Defendant for
8 sale in California before the Effective Date, or

9 (b) Since receiving the NOV the Defendant has taken corrective action by either (i)
10 taking all steps necessary to bring the sale of the product into compliance under the terms of this
11 Consent Judgment, or (ii) requesting that its customers in California remove the Covered Products
12 identified in the NOV from sale in California and destroy or return the Covered Products to
13 Defendant, or (iii) refute the information provided in Section 5.2.

14 **5.3.2 Contested NOV.** If a Defendant serves a NOE electing to contest the
15 NOV, the provisions of this Section 5.3.2 shall apply.

16 (a) Defendant may request that the sample(s) of Covered Products tested by Plaintiff be
17 subject to confirmatory testing at an EPA or California-accredited laboratory.

18 (b) If the confirmatory testing establishes that the Covered Products do not contain
19 DEHP or DINP, as applicable, in excess of the levels allowed in Section 2.1, above, Plaintiff shall
20 take no further action regarding the alleged violation. If the testing does not establish compliance
21 with Section 2.1, above, Defendant may withdraw its NOE to contest the violation and may serve a
22 new NOE pursuant to Section 5.3.1.

23 (c) If Defendant does not withdraw an NOE to contest the NOV or take action under
24 Section 5.3.1, above, the Parties shall meet and confer for a period of no less than 30 days before
25 Plaintiff may take action seeking to enforce the terms of this Consent Judgment.
26
27
28

1 **5.4** In any proceeding brought by either Party to enforce this Consent Judgment, the
2 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

3 **6. COURT APPROVAL**

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

5 **7. GOVERNING LAW**

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

14 **8. NOTICE**

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

19 To Defendant:

20 Martin Erani
21 MiWorld Accessories LLC
22 1 E 33rd St., 11th Floor
23 New York, NY 10016

20 To Shefa:

21 Daniel N. Greenbaum
22 Law Office of Daniel N. Greenbaum
23 7120 Hayvenhurst Ave., Suite 320
24 Van Nuys, CA 91406

25 With copy to:

26 Jeffrey Margulies, Esq.
27 Norton Rose Fulbright US LLP
28 555 South Flower Street, 41st Floor
29 Los Angeles, California 90071

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

1 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

5 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

8 **11. POST EXECUTION ACTIVITIES**

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

13 **12. MODIFICATION**

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

18 **13. AUTHORIZATION**


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

1 AGREED TO:

AGREED TO:

2
3 Date: 12/3/2019

Date: 12/3/2019

4
5
6 By: 
7 SHEFA LMV, INC.

By: 
MIWORLD ACCESSORIES LLC

1 **[PROPOSED] JUDGMENT**

2 Please note that on _____, 2019 at 8:30am, Plaintiff Shefa LMV Inc.'s ("Plaintiff")
3 Motion to Approve Entry of Consent Judgment as to Defendant MiWorld Accessories LLC came for
4 hearing before this Court in Department 62, the Honorable Michael L. Stern presiding. Counsel for
5 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 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
18

19
20 _____
21 Date

Judge of the Superior Court