

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 1502
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF ENTRY OF JUDGMENT

Please print or type required information

☒ Original Filing ☐ Supplemental Filing ☐ Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV Inc.				
	DEFENDANT(S) INVOLVED IN JUDGMENT Sakar International, Inc.				
CASE INFO	COURT DOCKET NUMBER BC668589		COURT NAME Los Angeles County Superior Court		
	SHORT CASE NAME Shefa v. Sakar				
REPORT INFO	INJUNCTIVE RELIEF Reformulation or warning labels				
	PAYMENT: CIVIL PENALTY \$2,700.00		PAYMENT: ATTORNEYS FEES \$21,500.00		For Internal Use Only
	PAYMENT: OTHER 0				
	DATE SUBMITTED TO COURT 08 / 14 / 2017		IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="radio"/> Yes <input type="radio"/> No		
	COPY OF JUDGMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum, Esq.				
	ORGANIZATION Law Office of Daniel Greenbaum			TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320			FAX NUMBER (424) 243-7689	
	CITY Van Nuys	STATE CA	ZIP 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com	

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 judgment 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.

TUCKER ELLIS LLP
Matthew Kaplan, Esq.
515 S. Flower Street, 42nd Floor
Los Angeles 90071
Telephone: (213) 430-3309
Facsimile: (213) 430-3409
Email: matthew.kaplan@tuckerellis.com

Attorneys for Defendant
SAKAR INTERNATIONAL, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,)	Case No. BC668589
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
vs.)	AS TO SAKAR INTERNATIONAL,
SAKAR INTERNATIONAL, INC.; and DOES)	INC.
1 through 100, Inclusive,)	
)	
Defendants.)	Action Filed: July 13, 2017
)	
)	
)	

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 11 2017

Sherri R. Carter, Executive Officer/Clerk
By LaTrina Woods, Deputy

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 Sakar International, Inc. (“**Sakar**” or “**Defendant**”).
5 Shefa and Sakar are referred to individually as a “**Party**” and collectively as the “**Parties.**”

6 **1.2 Plaintiff**

7 Shefa is a limited liability company in California that alleges it seeks to promote awareness
8 of 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 SAKAR is alleged to employ ten or more persons and constitute a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
13 and Safety Code §25249.6 *et seq.* (“**Proposition 65**”).

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are headphone products, including but not
16 limited to Vivitar Listen Up DJ Studio Headphones (UPC681066436981), that contain Diisononyl
17 Phthalate (“**DINP**”), manufactured, sold, or distributed for sale in California by SAKAR
18 (collectively, the “**Covered Products**”).

19 **1.5 General Allegations**

20 Shefa alleges that SAKAR manufactures, imports, sells, or distributes, for sale in the state of
21 California, headphone products, including the Covered Products that contain DINP without first
22 providing a clear and reasonable warning required by Proposition 65. DINP (CAS # 68515-48-0) is
23 a chemical listed under Proposition 65 as a chemical “known to the state to cause cancer.” 27 CCR
24 §25000. SAKAR denies these allegations.

25 **1.6 Notice of Violation**

26 On March 2, 2017, Shefa served SAKAR, others, and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation (the “**Notice**”) alleging that SAKAR violated
28

1 Proposition 65 when it failed to warn its customers and consumers in California that the Covered
2 Products expose users to DINP. To the best of the Parties' knowledge, no public enforcer has
3 commenced and is diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On July 13, 2017, Shefa filed the instant complaint in the Superior Court in and for the
6 County of Los Angeles against SAKAR and DOES 1-100, alleging violations of California
7 Health & Safety Code § 25249.6, based on exposures to DINP contained in the Covered Products
8 sold to consumers in the State of California (the "**Complaint**").

9 **1.8 No Admission**

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

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
22 County of Los Angeles, and that this Court has jurisdiction over the Parties to enter and enforce the
23 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 Commencing on the Effective Date, and continuing thereafter, SAKAR shall not
4 manufacture, distribute, sell, or offer for sale any Covered Products in California that contain DINP
5 on any component to which consumers are exposed in concentrations in excess of 1000 parts per
6 million ("ppm") (0.1%) when analyzed pursuant to a scientifically reliable application of U.S.
7 Environmental Protection Agency testing methodologies 3580A, 8270C or any other scientifically
8 reliable methodology for determining the levels of Listed Chemical content in a substance of the
9 form of the Covered Products, unless the Covered Products contain a warning that complies with
10 Section 2.2 of this Consent Judgment.

11 **2.2 Warning Standard**

12 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent it
13 ships or sells any Covered Products in California that do not meet the reformulation standard of
14 Section 2.1, Defendant will provide a warning on such Covered Products that complies with
15 Proposition 65. The warning shall be provided in such a conspicuous and prominent manner so as
16 to render it likely to be read, seen, or heard by the consumer prior to or at the time of the sale or
17 purchase.

18 The Parties agree that product labeling stating one of the following shall constitute
19 compliance with Proposition 65 with respect to any Covered Products not reformulated:

20 **"WARNING: This product contains chemicals known to the State of California to**
21 **cause cancer."**

22 Or

23 **"⚠ WARNING:** This product can expose you to chemicals including Diisononyl
24 phthalate (DINP) which is known to the State of California to cause cancer. For more information
25 go to www.P65Warnings.ca.gov."

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
3 Defendant shall make a Total Settlement Payment of **\$24,200.**

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.** Defendant shall pay **\$2,700.00** 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 \$2,025 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
 Sacramento, CA 95812-4010

18 For Non-United States Postal Service Delivery:

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

22 The Shefa portion of the civil penalty payment in the amount of \$675.00 shall be made
23 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
24 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
25 Ave, Suite 320, Van Nuys, CA 91406.

26 **3.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's
27 fees and costs in the amount of **\$21,500.00** payable to the "Law Office of Daniel N. Greenbaum,"
28

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 Shefa's Public Release of SAKAR and its Downstream Releasees**

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

18 Upon entry of this Consent Judgment by the Court, going forward, SAKAR's compliance
19 with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition
20 65 by SAKAR or any other Releasee with respect to DINP in Covered Products manufactured, sold,
21 or distributed for sale in California by SAKAR on and after the Effective Date.

22 **4.2 Shefa's Individual Release of Claims**

23 In further consideration of the promises and agreements herein contained, Shefa, on its own
24 behalf, and not in its representative capacity, and on behalf of its past and current agents,
25 representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or
26 participate in, directly or indirectly, any form of legal action, and releases all claims that it may
27 have against SAKAR and Releasees, including, without limitation, all actions and causes of action,
28

1 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses,
2 including, without limitation, investigation fees, expert fees, and attorneys' fees arising under
3 Proposition 65 or any other law relating to or arising from Covered Products manufactured, sold, or
4 distributed for sale in California by SAKAR prior to the Effective Date. The releases in Section 4.2
5 are provided in Shefa's individual capacity and are not releases on behalf of the public.

6 **4.3 SAKAR's Release of Shefa**

7 SAKAR, on its own behalf and on behalf of its past and current agents, representatives,
8 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
9 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
10 by Shefa and its attorneys and other representatives, in the course of investigating claims under
11 Proposition 65 related to the Covered Products, otherwise seeking to enforce Proposition 65 against
12 it in this matter, or with respect to the Covered Products.

13 **4.4 Release of Unknown Claims**

14 It is possible that other claims not known to the Parties arising out of the facts contained in
15 the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
16 discovered or developed. Shefa, on its own behalf and on behalf of its past and current agents,
17 representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, on the
18 one hand, and SAKAR, on the other hand, acknowledge that this Consent Judgment is expressly
19 intended to cover and include all such claims through and including the Effective Date, including all
20 rights of action therefor. Shefa and SAKAR acknowledge that the claims released in Section 4 may
21 include unknown claims, and nevertheless intend to release such claims, and in doing so waive
22 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
California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting

1 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not
2 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
3 Shefa will not be able to make any claim for those damages against any of the Releasees.

4 **5. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and
6 shall be null and void if, for any reason, it is not approved and entered by the Court within ninety
7 (90) days after it has been fully executed by the Parties, or by such additional time as the Parties
8 may agree in writing.

9 **6. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of California
11 and apply within the State of California. DINP is listed pursuant to Proposition 65 as a chemical
12 that is known to the State of California to cause cancer and/or reproductive toxicity. In the event
13 that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or
14 as to the Covered Products, including without limitation the delisting of DINP, then, with the
15 exception of Sections 3.1 and 3.2 above, SAKAR shall have no further obligations pursuant to this
16 Consent Judgment, with respect to, and to the extent that, the Covered Products are so affected.
17 None of the terms of this Consent Judgment shall have any application to Covered Products sold
18 outside of the State of California.

19 **7. NOTICE**

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

24 To SAKAR:

25 TUCKER ELLIS LLP
26 Matthew Kaplan, Esq.
27 515 S. Flower Street, 42nd Floor
28 Los Angeles 90071

To Shefa:

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

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.

8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

This Consent Judgment 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.

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

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

10. POST EXECUTION ACTIVITIES

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

11. MODIFICATION

11.1 In the event OEHHA establishes a safe harbor No-Significant Risk Level ("NSRL") for DINP, which SAKAR asserts would allow for the Covered Products to contain levels of DINP in amounts greater than those set forth above in Section 2.1, then SAKAR may provide written notice to Shefa of any such assertion and the Parties shall confer within 30 days to attempt to agree upon modification of this Consent Judgment. Should such attempt at informal resolution of a modification fail, and in the event SAKAR still intends to change its reformulation obligations, SAKAR will provide written notice to Shefa of its intent to adopt a modified compliance standard. Upon receipt of SAKAR's notice, Shefa shall have the right to enforce the terms and conditions contained in the Consent Judgment by motion or any other available remedy at law, with the sole issue to be adjudicated being the question of whether the DINP content in the Covered Products set forth in Section 2.1 shall continue to apply or whether the NSRL should govern permissible DINP levels.

1 **11.2** This Consent Judgment may only be modified by a written instrument executed by
2 the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion.
3 Any motion to modify shall be served on all Parties and the Office of the Attorney General.

4 **12. DISPUTE RESOLUTION**

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

14 **13. AUTHORIZATION**

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

18
19 AGREED TO:

AGREED TO:

20
21 Date: July 19, 2017

Date:

July 18, 2017

22
23
24 By: 

25 SHEFA LMV, INC.

By: 

26 SAKAR INTERNATIONAL, INC.

1
2 **[PROPOSED] ORDER AND JUDGMENT**

3 On _____, 2017 at _____, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court
4 Approval of and Entry of Consent Judgment as to Defendant Sakar International, Inc. came for
5 hearing before this Court in Department 61, the Honorable Gregory Keosian presiding. Counsel for
6 Plaintiff did [not] appear; counsel for Defendant 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).

10 The Court reviewed the Consent Judgment and makes the following findings pursuant to
11 Health & Safety Code § 25249.7(f)(4):

12 a. The injunctive relief required by the Consent Judgment complies with Health &
13 Safety Code § 25249.7;

14 b. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is
15 reasonable under California law; and

16 c. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.

17 The Consent Judgment is hereby approved, and the clerk is directed to enter judgment in
18 accordance with the terms of the Consent Judgment above.

19
20 OCT 11 2017

21 Dated

22 GREGORY KEOSIAN

23 Judge of the Superior Court
24
25
26
27
28