

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)				
	DEFENDANT(S) INVOLVED IN JUDGMENT				
CASE INFO	COURT DOCKET NUMBER			COURT NAME	
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES		For Internal Use Only
	DATE SUBMITTED TO COURT / /		IS JUDGMENT PURSUANT TO SETTLEMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No		
			IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL / /		
	COPY OF JUDGMENT MUST BE ATTACHED				
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 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.

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 PREMIER ACCESSORY GROUP LLC;
16 AUTOZONE, INC.; and DOES 1 through 100,
17 Inclusive,

18 Defendants.

) Case No. BC698904

)
)
) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO PREMIER ACCESSORY**
) **GROUP LLC**

) Action Filed: March 16, 2018
)
)
)

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

JAN 18 2019

Sherri R. Carter, Executive Officer/Clerk
By: Michael Tran, 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 Premier Accessory Group LLC ("**PGA**") and
5 AutoZone, Inc. ("**Zone**") (PAG and Zone are collectively referred to as "**Defendant**," with Shefa
6 and **Defendant** 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 product.

11 **1.3 Settling Defendant**

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

15 **1.4 Product Covered**

16 The product covered by this Consent Judgment are plastic audio cables, including, but not
17 limited to, Premier Audio Auxiliary Audio Cable, Model PSAUXC1; UPC847181013050, that are
18 manufactured, sold, or distributed for sale in California by Defendant that contain Diisononyl
19 Phthalate ("**DINP**") (collectively, the "**Covered Product**").

20 **1.5 General Allegations**

21 Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state
22 of California, the Covered Product without first providing a clear and reasonable warning required
23 by Proposition 65. DINP (CAS # 28553-12-0) is a chemical listed under Proposition 65 as a
24 chemical known to the state to cause cancer. Defendant denies the allegation in its entirety.

25 **1.6 Notice of Violation**

26 On April 6, 2017, Shefa served Defendant and the requisite public enforcement agencies
27 with a 60-Day Notice of Violation (the "**Notice**") alleging that Defendant violated Proposition 65
28

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

4 **1.7 Complaint**

5 On March 16, 2018, Shefa filed the instant complaint in the Superior Court in and for the
6 County of Los Angeles against Defendant and DOES 1-100, alleging violations of California
7 Health & Safety Code § 25249.6, based on exposures to DINP contained in the Covered Product
8 sold in the State of California (the "**Complaint**").

9 **1.8 No Admission**

10 Defendant denies the material, factual, and legal allegations contained in the Notice and
11 Complaint and maintains that all the product it has manufactured, sold, or distributed for sale in
12 California, including the Covered Product, have been, and are, in compliance with all laws.
13 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
14 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
15 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion
16 of law, issue of law, or violation of law, the same being specifically denied by Defendant. This
17 section shall not, however, diminish or otherwise affect Defendant's obligations, responsibilities,
18 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, the Defendant agrees that they employs or have employed ten or more
23 persons during time periods relevant to the Complaint and that this Court has jurisdiction over the
24 Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

25 **1.10 Effective Date**

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


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

2 **2.1 Reformulation Standards**


3 As of the Effective Date, Defendant shall not knowingly manufacture for sale in California any
4 Covered Product unless such Covered Product contain DINP in concentrations less than or equal to
5 1000 parts per million ("ppm") when analyzed pursuant to U.S. Environmental Protection Agency
6 testing methodologies 3580A and 8270C or any other scientifically reliable methodology for
7 determining the concentration of DINP in the Covered Product.

8 **2.2 Warning Standards**

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

17 “ **WARNING:** This product can expose you to chemicals, including Diisononyl
18 Phthalate (DINP), which are known to the State of California to cause cancer. For more
19 information go to www.P65Warnings.ca.gov.”

20 or

21 “ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.”

22
23 **2.3 Covered Product in the Stream of Commerce.**

24 Any Covered Product that has been manufactured, distributed, shipped, or sold by
25 Defendant prior 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 Defendant.** Defendant shall make a Total Settlement Payment of
3 **\$18,000.00**, in two (2) installments such that the final installment shall be received by Plaintiff's
4 counsel not later than November 30, 2018. Plaintiff's counsel shall deposit the Total Settlement
5 Payment into his attorney escrow account for distribution pursuant to Section 3.2 below.

6 **3.2 Allocation of Payments.** Upon receipt of the Total Settlement Payment and subject
7 to the Court approval of this Settlement and dismissal of the action with prejudice, Plaintiff's
8 counsel shall disburse the funds in three (3) separate checks made payable and allocated as follows:

9 **3.2.1 Civil Penalty.** Defendant shall pay \$2,000.00 as a civil penalty
10 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
11 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
12 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
13 OEHHA portion of the civil penalty payment in the amount of \$1,500.00 shall be made payable to
14 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
15 delivered as follows:

16 For United States Postal Service Delivery:

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

20 For Non-United States Postal Service Delivery:

21 Attn: Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 1001 I Street, MS #19B
 Sacramento, CA 95814

25 The Shefa portion of the civil penalty payment in the amount of \$500.00 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 \$16,000.00 payable to the "Law Office of Daniel N. Greenbaum," and associated with taxpayer identification number 46-4580172. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

4. CLAIMS COVERED AND RELEASED

4.1 Public Release

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

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

4.2 Shefa's Individual Release of Claims

In further consideration of the promises and agreements herein contained, Shefa, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of

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

8 **4.3 Defendant's Release of Shefa**

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

14 **4.4 Release of Unknown Claims**

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

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

27 Shefa understands and acknowledges that the significance and consequence of this waiver of
28 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 Product, including but not
2 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Product,
3 Shefa will not be able to make any claim for those damages against Defendant or any of the
4 Releasees.

5 **5. COURT APPROVAL**

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

7 **6. GOVERNING LAW**

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

16 **7. NOTICE**

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

21 To Defendant:

22 Brian A. Bloom Esq.
23 MORITT HOCK & HAMROFF LLP
24 400 Garden City Plaza, 2nd Floor
Garden City, New York 11530

To Shefa:

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

25 Any Party may, from time to time, specify in writing to the other Party a change of address to which
26 all notices and other communications shall be sent.
27
28

1 **8. 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 **9. 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 **10. 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 **11. 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.

17 **12. DISPUTE RESOLUTION**

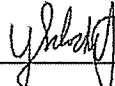
18 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
19 Shefa shall provide notice to Defendant. Prior to bringing any action to enforce any requirement of
20 this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the
21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

13. AUTHORIZATION

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

AGREED TO:

Date:

By: 


SHEFA LMV, INC.

Printed Name: Yisroel Schochet

Title: Manager

AGREED TO:

Date:

By: 

PREMIER ACCESSORY GROUP LLC

Printed Name: Sam Essex

Title: Manager

1 [PROPOSED] JUDGMENT

2 Please note that on _____, 2018 at 8:30am, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion
3 to Approve Entry of Consent Judgment as to Premier Accessory Group LLC came for hearing before
4 this Court in Department 14, the Honorable Terry A. Green presiding. Counsel for Plaintiff did [not]
5 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):

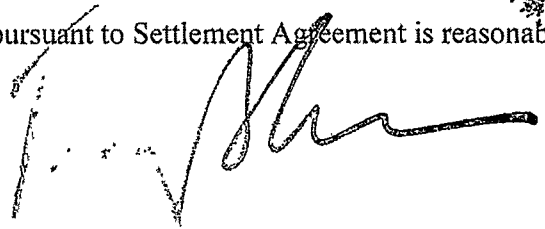
10 a. The injunctive relief required by the Settlement Agreement complies with Health &
11 Safety Code § 25249.7;

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 1/16/19

17 _____
Date

18
19 

20 _____
Judge of the Superior Court

21 Judge Terry A. Green
22
23
24
25
26
27
28