

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
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2 The Hathaway Building
3 7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
4 Telephone: (818) 809-2199
Facsimile: (424) 243-7689
5 Email: dgreenbaum@greenbaumlawfirm.com

6 Attorney for Plaintiff SHEFA LMV, INC.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10
11 SHEFA LMV, INC.,) Case No. BC685132
12 Plaintiff,)
13 vs.) **[PROPOSED] CONSENT JUDGMENT**
14) **AS TO LOGAN GRAPHIC PRODUCTS,**
LOGAN GRAPHIC PRODUCTS, INC.;) **INC. and AARON BROTHERS, INC.**
15 AARON BROTHERS, INC.; and DOES 1)
through 100, Inclusive,) Action Filed: November 30, 2017
16 Defendant.)
17)
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1 **1. INTRODUCTION**

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3 **1.1 Parties**

4 This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff
5 Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”), Logan Graphic Products, Inc. (“**Logan**”) and Aaron
6 Brothers, Inc. (“**Aaron Brothers**” and collectively with Logan, “**Defendants**,” with Shefa and
7 **Defendants** individually referred to as a “**Party**” and collectively as the “**Parties.**”)

8 **1.2 Plaintiff**

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

12 **1.3 Settling Defendants**

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

16 **1.4 Products Covered**

17 The products covered by this Consent Judgment are plastic or rubberized tools used for
18 framing of pictures or other crafts that are manufactured, sold, or distributed for sale in California
19 by Defendants and contain or are alleged to contain Diisononyl Phthalate (“**DINP**”) (collectively,
20 the “**Covered Products**”). Examples of the Covered Products include, but are not limited to, Mat
21 Knife, Model 500; UPC008957050000, the product at issue in this lawsuit.

22 **1.5 General Allegations**

23 Shefa alleges that Defendants manufacture, import, sell, or distribute, for sale in the state of
24 California, the Covered Products without first providing a clear and reasonable warning required by
25 Proposition 65. DINP (CAS # 28553-12-0) is a chemical listed under Proposition 65 as a chemical
26 known to the state to cause cancer.

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1.6 Notice of Violation

On May 26, 2017, Shefa served Defendants and the requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”) alleging that Defendants violated Proposition 65 when they failed to warn their customers and consumers in California that the Covered Products expose users to DINP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On November 30, 2017, Shefa filed the instant complaint in the Superior Court in and for the County of Los Angeles against Defendant and DOES 1-100, alleging violations of California Health & Safety Code § 25249.6, based on exposures to DINP contained in the Covered Product sold in the State of California (the “Complaint”).

1.8 No Admission

Defendants deny the material, factual, and legal allegations contained in the Notice and Complaint and maintain that all the products they have manufactured, sold, or distributed for sale in California, including the Covered Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendants of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendants. This section shall not, however, diminish or otherwise affect Defendants’ obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

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

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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, Defendants shall not manufacture for sale in California any Covered Product unless such Covered Product 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 Covered Product.


In the event Plaintiff believes that Defendants are violating the terms of this Agreement or otherwise violating Proposition 65 with regard to the Covered Products, Plaintiff shall provide, pursuant to the notice provisions contained herein, detailed written notice substantiating this claim and providing facts, including but not limited to any laboratory test results, supporting such belief. Defendants shall have a period of 90 days to investigate and cure the alleged violations. If Defendants cure the violation within this 90 day period, they shall have no liability for any alleged breaches of this Agreement or violations of Proposition 65 as to the Covered Products.

2.2 Warning Standards

Defendants agree, promise, and represent 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, Defendants will provide warnings on such Covered Products that comply with Proposition 65. The Parties agree that the warnings set forth below are non-exclusive examples of such warnings that shall constitute compliance with Proposition 65 with respect to any Covered Products that are not reformulated:

“ **WARNING:** This product can expose you to chemicals, including Diisononyl Phthalate (DINP), which are known to the State of California to cause cancer. For more

1 information go to www.P65Warnings.ca.gov.”

2 “ **WARNING: Cancer – www.P65Warnings.ca.gov.”**

3 **2.3 Covered Products in the Stream of Commerce.**

4 Any Covered Products that have been distributed, shipped, or sold by Defendant prior to the
5 Effective Date, shall not be subject to the requirements of Section 2.1 and shall not give rise to any
6 liability under Proposition 65.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
9 Defendant Logan shall make the Total Settlement Payment of **\$18,500.00**.

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

12 **3.2.1 Civil Penalty.** Logan shall pay \$2,500.00 as a civil penalty pursuant
13 to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with
14 Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of California’s Office of
15 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the
16 civil penalty payment in the amount of \$1,875.00 shall be made payable to OEHHA and associated
17 with taxpayer identification number 68-0284486. This payment shall be 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 \$625.00 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 \$16,000.00 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 Defendants
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 Defendants, their 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 Defendants directly or indirectly export, distribute or sell the Covered
15 Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees,
16 cooperative members, and licensees, including but not limited to Michaels Stores, Inc., Michaels
17 Stores Procurement Company, Inc. and the Michaels Companies, Inc. ("**Releasees**"), based on
18 failure to warn of alleged exposures to DINP from the Covered Products manufactured, sold, or
19 distributed for sale in California by Defendants prior to the Effective Date. The release in this
20 Section 4.1 applies to all Covered Products that Defendants manufactured, distributed, or sold prior
21 to the Effective Date, regardless of the date any other Releasee distributes or sells the Covered
22 Products.

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

26 **4.2 Shefa's Individual Release of Claims**

27 In further consideration of the promises and agreements herein contained, Shefa, on its own
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1 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
2 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
3 legal action, and releases all claims that it may have against Defendants and Releasees, including,
4 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
5 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
6 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DINP from
7 Covered Products manufactured, sold, or distributed for sale by Defendants prior to the Effective
8 Date.

9 **4.3 Defendants' Release of Shefa**

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

16 **4.4 Release of Unknown Claims**

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

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

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 Defendants 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 Defendants
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, with a courtesy copy sent via email:

22 To Defendant:

23 Nick Kennedy
24 Baker & McKenzie LLP
25 1900 North Pearl St.
26 Suite 1500
Dallas, TX 75201
Nicholas.Kennedy@bakermckenzie.com

To Shefa:

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

27 With a copy to:

28 General Counsel

1 Aaron Brothers, Inc.
2 8000 Bent Branch Drive
3 Irving, TX 75063
4

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 and dismissal of this action.

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 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
26 Shefa shall provide notice to Defendants. Prior to bringing any action to enforce any requirement of
27 this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the
28 other party with written notice of the grounds for such allegation together with all supporting

1 information as well as a complete demand for the relief sought. The Parties shall then meet and
2 confer regarding the basis for the allegation to resolve the matter informally, including providing
3 the party alleged to be in violation with a reasonable opportunity of at least ninety (90) days to cure
4 any alleged violation. Should such attempt at informal resolution fail, the party alleging a violation
5 may file its lawsuit seeking the proposed relief.

6 **13. AUTHORIZATION**

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

10
11 [SIGNATURE PAGES TO FOLLOW]

12 AGREED TO:

AGREED TO:

13
14 Date: 10/18/2018

Date: 10/18/18

15
16
17 By:  _____

18 SHEFA LMV, INC.

19
20
21 By:  _____

22 DEFENDANT: LOGAN GRAPHIC
23 PRODUCTS, INC

24
25
26 AGREED TO:

27 Date: 10/24/19

28 By:  _____

DEFENDANT: AARON BROTHERS, INC.
Michael J. Veitenheimer
EVP & SECRETARY

[PROPOSED] JUDGMENT

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Please note that on _____, ____ am, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Logan Graphic Products, Inc. and Aaron Brothers, Inc. came for hearing before this Court in Department 45, the Honorable Mel Red Recana presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

After full consideration of the points and authorities and related pleadings submitted, the Court GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following findings pursuant to Health & Safety Code § 25249.7(f)(4):

- a. The injunctive relief required by the Settlement Agreement complies with Health & Safety Code § 25249.7;
- b. The reimbursement of fees and costs to be paid pursuant to the Settlement Agreement is reasonable under California law; and
- c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.

Date

Judge of the Superior Court