

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

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

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	PAYMENT: OTHER	
	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
Daniel N. Greenbaum, Esq. (SBN 268104)
2 The Hathaway Building
7120 Hayvenhurst Avenue, Suite 320
3 Van Nuys, CA 91406
Telephone: (818) 809-2199
4 Facsimile: (424) 243-7689
5 Email: dgreenbaum@greenbaumlawfirm.com

6 Attorney for Plaintiff SHEFA LMV, INC.

7 SCARINCI | HOLLENBECK
Kurt Watkins, Esq. (SBN 47592)
8 1100 Valley Brook Avenue
9 Lyndhurst NJ 07071
Telephone: (201) 806-3419
10 Facsimile: (201) 806-3485
Email: kwatkins@sh-law.com

11 Attorneys for Defendant METABO CORP.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES

15 SHEFA LMV, INC.

16 Plaintiff,

17 vs.

18 METABO CORPORATION; PROX-TECH,
19 INC. D/B/A PROXXON, INC.; HOME
20 DEPOT USA, INC.; and DOES 1 to 50,
Inclusive

21 Defendants.
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CASE NO. BC653222

The Honorable David Sotelo
Dept. 40

~~PROPOSED~~ CONSENT JUDGMENT AS
TO METABO CORPORATION

Action filed: March 10, 2017

FILED
Superior Court of California
County of Los Angeles
FEB 21 2018
E. Scott R. Carter, Executive Officer/Clerk
By Rosaiva R. Reza Deputy

02/01/2018

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment (the "Consent Judgment") is entered into by and between
3 Shefa LMV Inc. ("Shefa") and Metabo Corporation ("Settling Defendant"), with Shefa and
4 Settling Defendant each individually referred to as a "Party" and collectively as the "Parties."

5 1.2 The products covered by this Consent Judgment (the "Covered Products") are
6 power tool products manufactured, distributed, and/or sold by Settling Defendant that expose
7 users to lead and/or lead compounds ("Lead" or "Pb"), including the W2000 7" angle grinder.

8 1.3 On or about June 27, 2016, Shefa mailed a 60-Day Notice of Violation under
9 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety
10 Code §§ 25249.5, *et seq.*) to Settling Defendant, the California Attorney General, the District
11 Attorneys of every County in the State of California, and the City Attorneys for every City in the
12 State of California with a population greater than 750,000.

13 1.4 On March 10, 2017, Shefa filed the Complaint in the instant action.

14 1.5 Shefa alleges that the 60-Day Notice of Violation alleged violations of
15 Proposition 65 with respect to exposure to Lead when consumers use the Covered Products sold,
16 distributed, and/or manufactured by Settling Defendant.

17 1.6 Settling Defendant denies the claims of alleged violations asserted against it in
18 the Complaint and deny that they have any liability under Proposition 65.

19 1.7 Settling Defendant further denies that the normal use of the Covered Products
20 will result in any exposure to lead that would require a warning pursuant to Proposition 65.

21 1.8 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
22 Court has jurisdiction over the allegations of violations contained in the operative Complaint
23 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts
24 alleged in the Complaint; (ii) venue is proper in the County of Los Angeles; and, (iii) this Court
25 has jurisdiction to approve this Consent Judgment.

26 1.9 Nothing in this Consent Judgment is or shall be construed as an admission by the
27 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with

1 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
2 conclusion of law, issue of law, or violation of law.

3 1.10 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
4 remedy, argument, or defense the Parties may have in any other legal proceeding.

5 1.11 Further, Settling Defendant denies the material, factual, and legal allegations
6 contained in the 60-Day Notices and in the operative Complaint, and maintains that all the
7 products that Settling Defendant has imported, manufactured, distributed, wholesaled, or retailed
8 for sale in California, including the Covered Products, have been and are in compliance with all
9 laws, including but not limited to Proposition 65.

10 1.12 Nothing herein shall be construed as an admission by Settling Defendant of any
11 fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
12 constitute or be construed as an admission by Settling Defendant of any fact, finding, conclusion,
13 issue of law, or violation of law.

14 1.13 Except as expressly set forth herein, nothing in this Consent Judgment shall
15 prejudice, waive, or impair any right, remedy, argument, complaint, or defense the Parties may
16 have in any other or future legal proceeding unrelated to this specific proceeding.

17 1.14 This Consent Judgment is the product of negotiation and compromise and is
18 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
19 this action.

20 1.15 The term "Effective Date" means the date on which this Consent Judgment is
21 approved and entered by the Court.

22 2. CLEAR AND REASONABLE WARNINGS

23 2.1 All Covered Product sold for use in the State of California shall provide clear and
24 reasonable warnings that some uses of those products expose persons to chemicals known to the
25 State of California to cause cancer, birth defects, or other reproductive harm; these warnings
26 shall be given under the circumstances, in the manner, and according to the schedules provided
27 in this Consent Judgment.

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1 2.2 Nothing in this Consent Judgment shall require Settling Defendant to provide
2 warnings on or with any Covered Products other than those it manufactures or sells in packaging
3 bearing its name or trademark. The use of other warning methods, such as labels and in-manual
4 warnings under this Consent Judgment, is consented to by the parties to the Consent Judgment,
5 and shall not be construed to mean that those methods are the only lawful means of compliance
6 with Proposition 65.

7 2.3 For the purposes of this Consent Judgment, a Proposition 65 warning is one that
8 contains the following language: **“WARNING: Some dust created by using power tools
9 contains chemicals known to the State of California to cause cancer and birth defects or
10 other reproductive harm.”** However, nothing in this Consent Judgment shall prevent a party
11 from providing any warning that is or may potentially be required by any law other than
12 Proposition 65, including any regulatory or tort law.

13 2.4 Nothing in this Consent Judgment requires that warnings be given for Covered
14 Products sold for use outside the State of California.

15 2.5 **Warnings in manuals.** A Settling Defendant required to provide a warning for a
16 Covered Product under subparagraph 2.1 may provide that warning in the owner's manual for
17 that Covered Product if all the following conditions are met:

18 a. **Placement of the warning shall be in one of the following places in the**
19 **owner's manual:** the outside of the front cover, the inside of the front cover, the first
20 page other than the cover, or the outside of the back cover. Unless a different warning is
21 approved by the Plaintiff, the warning shall have the exact content as the warning in §
22 2.3. The warning shall be printed in a font no smaller than the font used for other safety
23 warnings in the manual. Alternatively, the warning may be included in a safety warning
24 section consistent with specifications UL 745-1 or UL 45, issued by Underwriters
25 Laboratories Inc., as amended. The warning may either be printed in the manual or
26 contained in a durable label or sticker affixed to the manual.

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- b. the Covered Product contains a durable label or sticker directing the operator's attention to the owner's manual;
- c. Settling Defendant intends the owner's manual to be provided with the original packaging of the Covered Product to the initial consumer/purchaser;
- d. at least one other safety warning appears in the owner's manual; and
- e. all or a substantial portion of operation instructions, if any, are contained in the Owner's manual.

2.6 **Warnings on the Product.** As an alternative to complying with the requirements of subparagraph 2.3 and 2.5, Settling Defendant may satisfy its obligations under this Consent Judgment by providing warnings on the product. Any such warning may be provided by affixing a durable label containing a warning with the language contained in § 2.3 on the Covered Product in a location that can be seen by the user of the Covered Product under normal circumstances of use of the Covered Product.

2.7 **Reporting to the Plaintiff.** Each Settling Defendant responsible for providing one or more warnings under subparagraph 2.3 and 2.5 shall mail one sample copy of a warning, regardless of the number of product types manufactured, together with a certificate stating that the warning requirements under the Consent Judgment have been complied with, to the Plaintiff within one year and 30 days following the entry of this Consent Judgment.

3. PAYMENTS

3.1 Within ten (10) business days following the Effective Date, Settling Defendant shall make a Total Settlement Payment of \$27,500.00 by delivering checks payable to "Shefa LMV, LLC" and "Law Office of Daniel N. Greenbaum" as set forth below to counsel for Shefa.

3.2 The funds paid by Settling Defendant shall be allocated as follows:

- a. **Civil Penalty.** A civil penalty in the amount of \$4,000.00 payable to "Shefa LMV, LLC," pursuant to Health & Safety Code § 25249.7(b), with such money to be apportioned and distributed by Shefa in accordance with Health & Safety Code §

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1 25249.12 as follows: 25% to Shefa and 75% to the State of California's Office of
2 Environmental Health Hazard Assessment ("OEHHA").

3 b. **Attorneys' Fees and Costs.** A reimbursement of Shefa's attorney's fees
4 and costs in the amount of \$23,500.00 payable to the "Law Office of Daniel N.
5 Greenbaum."

6 3.3 Shefa shall provide and deliver to Settling Defendant a W-9 for each payment
7 noted above upon request.

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Full and Binding Resolution of Proposition 65 Allegations:** This Consent

10 Judgment is a full, final, and binding resolution between

11 (i) Shefa on behalf of itself and the public interest; and

12 (ii) Settling Defendant and their affiliates, their former affiliates, any person or entity
13 who directly or indirectly owns or controls, is owned or controlled by, or is under common
14 ownership or control with Settling Defendant, and their current and past directors, officers,
15 employees, and attorneys ("Defendant Releasees"), and each entity to whom (or from whom)
16 any of them directly or indirectly distribute, receive for distribution, and/or sell the Covered
17 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
18 cooperative members, licensors, and licensees ("Distributor Releasees"), of any violation of
19 Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant,
20 Defendant Releasees, and Distributor Releasees, based on failure to warn about an alleged
21 exposure to Lead from the reasonably foreseeable use of the Covered Products shipped,
22 distributed, or sold by Settling Defendant, Defendant Releasees, and Distributor Releasees prior
23 to 120 days after the Effective Date.

24 **4.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,
25 representatives, attorneys, and successors and/or assignees, and **not** in its representative capacity,
26 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a
27 bar to all Claims under Proposition 65 and any other statutory or common law, that are or may

1 be asserted against Settling Defendant, Defendant Releasees, and Distributor Releasees, whether
2 known or unknown, suspected or unsuspected, arising out of alleged exposures to, and/or failure
3 to warn of alleged exposures to, Lead from the Covered Products shipped, distributed, or sold
4 prior to 120 days after the Effective Date by Settling Defendant, Defendant Releasees, and
5 Distributor Releasees.

6 **4.3 General Release:** It is possible that other Claims not known to the Parties which
7 arise out of the facts alleged in the Notices and/or the Complaint will develop or be discovered.
8 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and successors
9 and/or assigns, and **not** in its representative capacity, acknowledges that this Consent Judgment
10 is expressly intended to cover and include all such Claims, including all rights of action therefor.
11 Shefa has full knowledge of the contents of Civil Code § 1542. Shefa acknowledges that the
12 Claims released in Sections 4.1 and 4.2 include unknown Claims, and Shefa nevertheless waives
13 Civil Code § 1542 as to any such unknown Claims. Civil Code § 1542 reads as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
15 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
16 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
17 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
18 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

17 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and
18 successors and/or assignees, and **not** in its representative capacity, acknowledges and
19 understands the significance and consequences of this specific waiver of Civil Code § 1542.

20 **4.4** Compliance with the terms of this Consent Judgment by Settling Defendant shall
21 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
22 Distributor Releasees with respect to any alleged failure to warn about Lead in Covered Products
23 manufactured, distributed, or sold by Settling Defendant, Defendant Releasees, and Distributor
24 Releasees 120 days after the Effective Date.

25 **4.5** Nothing in this Section 4 affects Shefa's right to commence or prosecute an action
26 pursuant to Proposition 65 against any person other than Settling Defendant, Defendant
27 Releasees, or Distributor Releasees.

1 **5. ENFORCEMENT**

2 5.1 Shefa may, by motion or application for an order to show cause before the Superior
3 Court of Los Angeles County, enforce the terms and conditions contained in this
4 Consent Judgment.

5 5.2 Prior to bringing any motion or application to enforce the requirements of this
6 Consent Judgment, Shefa shall provide Settling Defendant with a Notice of Violation
7 and proof of purchase and a copy of any test results which purportedly support the
8 Notice of Violation.

9 5.3 The Parties shall then meet and confer regarding the basis for the anticipated
10 motion or application to resolve it informally, including providing Settling Defendant with a
11 reasonable opportunity of at least thirty (30) days to cure any alleged violation.

12 5.4 Should such attempt at informal resolution fail, Shefa may file an enforcement
13 motion or application.

14 **6. ATTORNEYS' FEES**

15 6.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
16 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and
17 costs.

18 6.2 For purposes of Section 6.1, the term "prevailing Party" refers to the Party that was
19 successful in obtaining relief more favorable to it than the relief that the other Party
20 was amenable to providing during the Parties' good faith attempt to resolve the
21 dispute pursuant to Section 5.

22 6.3 Except as otherwise provided in this Consent Judgment, each Party shall bear its own
23 attorneys' fees and costs.

24 6.4 Nothing in this Section 6 shall preclude a Party from seeking an award of
25 sanctions pursuant to law.

26 **7. NOTICE**

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7.1 When Shefa is entitled to receive any notice under this Consent Judgment, the notice

shall be sent by first class and electronic mail to:

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

7.2 When Settling Defendant is entitled to receive any notice under this Consent

Judgment, the notice shall be sent by electronic mail to:

SCARINCI | HOLLENBECK
Kurt Watkins, Esq. (SBN 47592)
1100 Valley Brook Avenue
Lyndhurst NJ 07071
Email: kwatkins@sh-law.com

7.3 Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by electronic mail.

8. MODIFICATION

8.1 Written Consent. This Consent Judgment may be modified from time to time by express signed written agreement of the Parties with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

8.2 Meet and Confer. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

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

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

10. COURT APPROVAL

10.1 This Consent Judgment shall become effective upon entry by the Court of judgment pursuant to Health & Safety Code §§ 25249.7.

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10.1 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this Consent Judgment.

10.3 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, and Shefa shall draft and file such motion within fifteen (15) days of the date this Consent Judgment is fully executed by the Parties, and Settling Defendant shall not oppose it if such motion is consistent with the terms and conditions of this Consent Judgment.

10.4 If the Court does not enter this Consent Judgment, it shall be of no force or effect and shall never be introduced into evidence or otherwise used in any proceeding for any purpose.

11. OTHER TERMS

11.1 The laws of the State of California shall govern the terms of this Consent Judgment.

11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling Defendant, its affiliates, and the successors or assigns of any of them.

11.3 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

11.4 There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein.

11.5 No representations, oral or otherwise, express, or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

11.6 No other agreements not specifically contained or referenced herein, oral, or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

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11.7 No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby, except as provided by ¶¶ 8.1 & 8.2.

11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether similar, nor shall such waiver constitute a continuing waiver.

11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights Settling Defendant might have against any other party, whether or not that party is a Defendant Releasee or Distributor Releasee.

11.10 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

11.11 The signatories of this Consent Judgment may execute in counterparts, and by means of facsimile or portable document format (pdf) such separate signatures may be taken together and shall be deemed to constitute one document.

11.12 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the relevant Party to consent to this Consent Judgment and to enter and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

11.13 The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel.

11.14 The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, since one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment.

11.15 It is conclusively presumed that all the Parties participated equally in the preparation and drafting of this Consent Judgment.

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1 12 REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF
2 CONSENT JUDGMENT

3 12.1 This Consent Judgment came before this Court upon the request of the Parties.

4 12.1 The Parties request the Court to review this Consent Judgment and to make the
5 following findings pursuant to Health & Safety Code § 25249.7(f)(4):

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


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

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

12
13 AGREED TO:

14 Dated: 6/14/2014

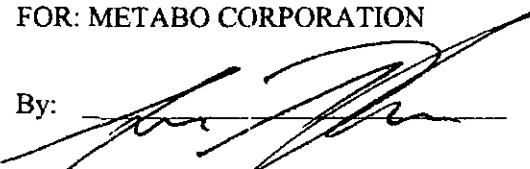
FOR: SHEFA LMV, INC.

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16 By: 

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18 Its: Manager

19 Dated: June 14, 2017

FOR: METABO CORPORATION

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21 By: 

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23 Its: VP Finance & Operations

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BC 653222

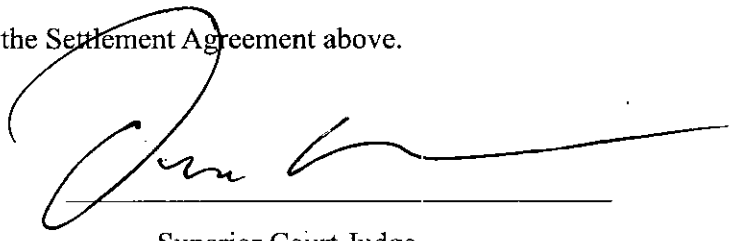
~~PROPOSED~~ CONSENT JUDGMENT

1
2 Please note that on 2-21, 2018 at 8:30 AM, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion
3 for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant
4 Metabo Corporation came for hearing before this Court in Department 40, the Honorable David
5 Sotelo presiding. Counsel for 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

- 11 a. The injunctive relief required by the Settlement Agreement complies with Health
12 & Safety Code § 25249.7;
- 13 b. The reimbursement of fees and costs to be paid pursuant to the Settlement
14 Agreement is reasonable under California law; and
- 15 c. The civil penalty amount to be paid pursuant to Settlement Agreement is
16 reasonable.
17

18 The Settlement Agreement is hereby approved, and the clerk is directed to enter judgment
19 in accordance with the terms of the Settlement Agreement above.
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22 2-21-2018



23 Date

Superior Court Judge
24 DAVID SOTELO
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