

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 Harbor Freight Tools USA, Inc.				
CASE INFO	COURT DOCKET NUMBER BC665582		COURT NAME Los Angeles County Superior Court		
	SHORT CASE NAME Shefa v. Harbor Freight				
REPORT INFO	INJUNCTIVE RELIEF Reformulation or warning labels				
	PAYMENT: CIVIL PENALTY \$4,000.00		PAYMENT: ATTORNEYS FEES \$21,500.00		For Internal Use Only
	PAYMENT: OTHER 0				
	DATE SUBMITTED TO COURT 08 / 28 / 2017		IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="radio"/> Yes <input type="radio"/> No		
	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 08 / 28 / 2017				
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.

1 LAW OFFICE OF DANIEL N. GREENBAUM
2 Daniel N. Greenbaum, Esq. (SBN 268104)
3 The Hathaway Building
4 7120 Hayvenhurst Avenue
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6 Van Nuys, CA 91406
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FILED
Superior Court of California
County of Los Angeles

OCT 12 2017

Sherri R. Carter, Executive Officer/Clerk
By T. Richardson, Deputy
T. Richardson

Attorney for Plaintiff SHEFA LMV, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,
Plaintiff,

vs.

HARBOR FREIGHT TOOLS USA, INC.; and
DOES 1 through 100, inclusive,
Defendants.

) Case No. BC665582
) Dept. 62
) Hon. Michael L. Stern

) **PROPOSED** CONSENT JUDGMENT
) AS TO HARBOR FREIGHT TOOLS
) USA, INC.

) Action Filed: June 19, 2017
)

[PROPOSED] CONSENT JUDGMENT

sf-3810274

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 Harbor Freight Tools USA., Inc. ("**Defendant**," with
5 Shefa and Harbor individually referred to as a "**Party**" and collectively as the "**Parties.**")

6 **1.2 Plaintiff**

7 Shefa is a public benefit non-profit corporation that seeks to promote awareness of
8 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 Defendant employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 §25249.6 *et seq.* ("**Proposition 65**").

14 **1.4 Products Covered**

15 The following products sold in California by Defendant are subject to this Consent
16 Judgment: 1) Razor Blade Scraper (UPC: 792363980395); 2) Mechanic's Stethoscope; Item 69913
17 (UPC: 792363699136); and 3) Telescoping Magnetic Pickup Tool; Item 95933; (UPC:
18 792363959339) (collectively, the "**Covered Products**").

19 **1.5 General Allegations**

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

25 **1.6 Notice of Violation**

26 On September 26, 2016, Shefa served Defendant and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation alleging that Defendant violated Proposition 65 when it

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

4 **1.7 Complaint**

5 On June 19, 2017, 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 DEHP contained in the covered products
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 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 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 it employs or has employed ten or more persons
23 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
24 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 entered by the Court.

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

2 **2.1 Reformulation Standards**

3 **Within 90 days of the Effective Date**, Defendant agrees not to sell in California the
4 Covered Products unless they are "Reformulated Products" or carry a clear and reasonable within
5 the meaning of Proposition 65. For purposes of this Consent Judgment, "Reformulated Products" is
6 defined as a product containing no more than 1,000 parts per million (0.1%) DEHP content when
7 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
8 8270C or equivalent methodologies utilized by state or federal agencies to determine DEHP content
9 in a solid substance.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Payment from Defendant.** Within thirty (30) business days of the Effective
12 Date, Defendant shall make the Total Settlement Payment of **\$25,500.00**.

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

15 **3.2.1 Civil Penalty.** Defendant shall pay \$4,000.00 as a civil penalty
16 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
17 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
18 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
19 OEHHA portion of the civil penalty payment in the amount of \$3,000.00 shall be made payable to
20 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
21 delivered as follows:

22 For United States Postal Service Delivery:

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

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 \$1,000.00 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 Shefa's Public Release of Defendant and its Downstream Releasees**

17 This Consent Judgment is a full, final, and binding resolution between Shefa, and Defendant
18 and each of its past and present parents, affiliates, subsidiaries, divisions, predecessors, successors,
19 and assigns, and each of their respective owners, officers, directors, board members, trustees,
20 shareholders, managers, members, employees, agents, insurers, attorneys, auditors, accountants,
21 experts, stockholders, representatives, partners, and any other persons acting on their behalf
22 ("Released Parties") concerning or in any way relating to the claims that have been or could have
23 been asserted against Defendant and/or the Released Parties up through the Effective Date, provided
24 that such claims are based on or relate to the facts alleged in the Complaint. Upon entry of this
25 Consent Judgment by the Court, going forward, Defendant's compliance with the terms of this
26 Consent Judgment shall be deemed to constitute compliance with Proposition 65 by Defendant or
27 any other Released Party with respect to DEHP in Covered Products manufactured, sold, or
28 distributed for sale in California by Defendant on and after the Effective Date.

1 **4.2 Shefa's Individual Release of Claims**

2 Shefa, in its individual capacity only and not in any representative capacity, also provides a
3 release to Defendant, and the Released Parties, which shall be effective as a full and final accord
4 and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'
5 fees, damages, losses, claims, liabilities and demands of any nature, character or kind, whether
6 known or unknown, suspected or unsuspected that have been or could have been asserted based on
7 the allegations in the Complaint.

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, whether in the course of investigating claims,
13 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered
14 Products.

15 **4.4 Release of Unknown Claims**

16 It is possible that other claims not known to the Parties arising out of the facts contained in
17 the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
18 discovered or developed. Shefa, on behalf of itself only, on the one hand, and Defendant, on the
19 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all
20 such claims through and including the Effective Date, including all rights of action therefor. Shefa
21 and Defendant acknowledge that the claims released in Section 4 may include unknown claims, and
22 nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542,
23 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 any of the Released Parties.

5 **5. COURT APPROVAL**

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

10 **6. SEVERABILITY**

11 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
12 Judgment is held by a court to be void or unenforceable, or the Parties agree to modify any terms
13 due to comments from the Office of the Attorney General or after a hearing before the Court in
14 connection with Shefa's Motion to Approve, or for other good cause, each Party to be bound by any
15 such modified terms must re-execute the modified Consent Judgment and such modified Consent
16 Judgment then shall be presented by Shefa to the Court for approval; provided, however, that if a
17 provision of this Consent Judgment declared void or unenforceable is material to the Party for
18 whom such term provided a benefit or protection, that Party can seek other remedies, including,
19 without limitation, rescission or reformation, based on the provision being declared void or
20 unenforceable.

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within the State of California. DEHP is listed pursuant to Proposition 65 as a chemical
24 that is known to the State of California to cause cancer and/or reproductive toxicity. In the event
25 that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or
26 as to the Covered Products, including without limitation the delisting of DEHP, then Defendant may
27 provide written notice to Shefa of any asserted change in the law, and with the exception of
28

Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered Products are so affected. None of the terms of this Consent Judgment shall have any application to Covered Products sold outside of the State of California.

8. NOTICE

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

To Defendant:

Navi Dhillon
MORRISON & FOERSTER LLP
425 Market St.
San Francisco, CA 94105

To Shefa:

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

Tammy Stafford
Associate General Counsel
Harbor Freight Tools
26541 Agoura Road
Calabasas, CA 91302

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.

9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts, and by facsimile or e-mail 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.

10. 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).

11. POST EXECUTION ACTIVITIES

11.1 The Parties acknowledge that, pursuant to California Health & Safety Code

1 § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent
2 Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to
3 submit this Consent Judgment to the Court with a motion seeking Court approval.

4 **12. MODIFICATION**

5 **12.1** In the event that any future settlement agreement or court approved consent
6 judgment entered into by Shefa involving another party, or any future court-approved consent
7 judgment entered into by any enforcer of Proposition 65 involving another party, sets out a
8 reformulation or compliance standard that is less stringent than that in Section 2.1 above for DEHP
9 in products substantially similar to the Covered Products, then upon written notice to Shefa,
10 Defendant is entitled to a corresponding modification to the corresponding standard set forth in
11 section 2.1 of this Consent Judgment, with regard to the Covered Products.

12 **12.2** In the event OEHHA establishes a safe harbor No-Significant Risk Level ("NSRL")
13 for DEHP, which Defendant asserts would allow for the Covered Products to contain levels of
14 DEHP in amounts greater than those set forth above in Section 2.1, then Defendant may provide
15 written notice to Shefa of any such assertion and the Parties shall confer within 30 days to attempt
16 to agree upon modification of this Consent Judgment. Should such attempts at informal resolution
17 of a modification fail, and in the event Defendant still intends to change its reformulation
18 obligations, Defendant will provide written notice to Shefa of its intent to adopt a modified
19 compliance standard. Upon receipt of Defendant notice, Shefa shall have the right to enforce the
20 terms and conditions contained in the Consent Judgment by motion or any other available remedy at
21 law, with the sole issue to be adjudicated being the technical question of whether the NSRL would
22 allow for a higher DEHP content in the Covered Products than that set forth in Section 2.1.

23 **12.3** This Consent Judgment may only be modified by a written instrument executed by
24 the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion.
25 Any motion to modify shall be served on all Parties and the Office of the Attorney General.

26 **13. DISPUTE RESOLUTION**

27 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
28

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

9 **14. AUTHORIZATION**

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

13
14 AGREED TO:

AGREED TO:

15
16 Date: 8/10/2017

Date: 8/8/17

17
18
19 By: 

20 SHEFA LMV, INC.

By: 

21 HARBOR FREIGHT TOOLS USA,
22 INC.

1 ORDER AND JUDGMENT

2
3 Please note that on October 12, 2017 at 8:30am, Plaintiff Shefa LMV Inc.'s ("Plaintiff")
4 Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to
5 Defendant Harbor Freight Tools USA, Inc. came for hearing before this Court in Department 62, the
6 Honorable Michael L. Stern presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant
7 did [not] appear.


8 After full consideration of the points and authorities and related pleadings submitted, the
9 Court GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code
10 §25249.7(f)(4).

11 The Court reviewed the above Settlement Agreement and makes the following findings
12 pursuant to Health & Safety Code § 25249.7(f)(4):

- 13 a. The injunctive relief required by the Settlement Agreement complies with Health &
14 Safety Code § 25249.7;
15 b. The reimbursement of fees and costs to be paid pursuant to the Settlement Agreement is
16 reasonable under California law; and
17 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.
18

19 The Settlement Agreement is hereby approved, and the clerk is directed to enter judgment in
20 accordance with the terms of the Settlement Agreement above.

21
22 Dated: October 12, 2017

23
24 
25 Judge of the Superior Court
26