

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.

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

FILED
Superior Court of California
County of Los Angeles
JUL 02 2019
Sherri R. Carter, Executive Officer/Clerk
By *A. Barton* Deputy

Attorney for Plaintiff SHEFA LMV, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHEFA LMV, INC.,) Case No. 19STCV02098
Plaintiff,)
vs.) **~~PROPOSED~~ CONSENT JUDGMENT**
PRO PERFORMANCE SPORTS LLC; and)
DOES 1 through 100, Inclusive,)
Defendant.) Action Filed: January 22, 2019

**~~PROPOSED~~ CONSENT JUDGMENT AS TO DEFENDANT
PRO PERFORMANCE SPORTS LLC**

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 Pro Performance Sports LLC (“**Defendant**,” with
5 Shefa and **Defendant** 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 Defendant**

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

14 **1.4 General Allegations**

15 Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state
16 of California jump ropes containing Di-[2-Ethylhexyl] Phthalate (“**DEHP**”) without first providing a
17 clear and reasonable warning required by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical
18 listed under Proposition 65 as a chemical known to the state to cause cancer or reproductive
19 toxicity.

20 **1.5 Products Covered**

21 The products covered by this Consent Judgment are plastic jump rope products alleged to
22 contain DEHP that are manufactured, sold, or distributed for sale in California by Defendant,
23 including, but not limited to, SKLZ Jump Rope Conditioning Trainer (Model No. JROP-001 / UPC:
24 849102018588) (collectively, the “**Covered Products**”).

25 **1.6 Notice of Violation**

26 On May 31, 2018, Shefa served Defendant and Dick’s Sporting Goods, Inc., and the requisite
27 public enforcement agencies with a Sixty Day Notice of Violation (the “**Notice**”) alleging that
28

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

4 **1.7 Complaint**

5 On January 22, 2019, 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. Nothing
17 in this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that
18 Defendant may have in any other future legal proceeding. This section shall not, however, diminish
19 or otherwise affect Defendant's obligations, responsibilities, and duties under this Consent
20 Judgment.

21 **1.9 Consent to Jurisdiction**

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

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the
3 Consent Judgment is approved and entered by the Court.

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

5 **2.1 Reformulation Standards**

6 As of the Effective Date, and subject to the exception listed in Section 2.2 below, Defendant shall
7 not manufacture for sale in California any Covered Products unless such Covered Products contain
8 DEHP in concentrations less than or equal to 1000 parts per million (“ppm”) when analyzed
9 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any
10 other scientifically reliable methodology for determining the concentration of DEHP in the Covered
11 Products.

12 **2.2 Warning Standards**

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

20 (a) the text, “**WARNING This product can expose you to chemicals, including**
21 **DEHP, which is known to the State of California to cause birth defects or other**
22 **reproductive harm. For more information go to www.P65Warnings.ca.gov.”**

23 accompanied by and placed to the right of a symbol consisting of a black exclamation point
24 in a yellow equilateral triangle with a bold black outline sized to be no smaller than the
25 word, “WARNING” as provided by regulations adopted on or about August 30, 2016; or

26 (b) the text, “**WARNING Cancer and Reproductive Harm -**
27

1 **www.P65Warnings.ca.gov.”** accompanied by and placed to the right of a symbol consisting
2 of a black exclamation point in a yellow equilateral triangle with a bold black outline sized
3 to be no smaller than the word, “WARNING” as provided by regulations adopted on or
4 about August 30, 2016.

5
6 The triangular warning symbol specified in Section 2.2(a) and 2.2(b) shall be in yellow with a black
7 exclamation mark; *provided however*, the symbol may be printed in black and white if the Covered
8 Product label is printed against a yellow background.

9 **2.3 Covered Products in the Stream of Commerce.**

10 Any Covered Products that have been distributed, shipped, or sold by Defendant prior to the
11 Effective Date, shall not be subject to the requirements of Sections 2.1 and 2.2, and may be sold as
12 is.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
15 Defendant shall make the settlement payment of \$17,000.00 (“**Total Settlement Payment**”).

16 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
17 separate checks made payable and allocated as follows:

18 **3.2.1 Civil Penalty.** Defendant shall pay \$2,000.00 as a civil penalty
19 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
20 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
21 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the
22 OEHHA portion of the civil penalty payment in the amount of \$1,500.00 shall be made payable to
23 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
24 delivered as follows:

25 For United States Postal Service Delivery:

26 Attn: Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B

1 Sacramento, CA 95812-4010

2 For Non-United States Postal Service Delivery:

3 Attn: Mike Gyurics
4 Fiscal Operations Branch Chief
5 Office of Environmental Health Hazard Assessment
6 1001 I Street, MS #19B
7 Sacramento, CA 95814

8 The Shefa portion of the civil penalty payment in the amount of \$500.00 shall be made
9 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.

10 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
11 Ave, Suite 320, Van Nuys, CA 91406.

12 **3.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's
13 fees and costs in the amount of \$15,000.00 payable to the "Law Office of Daniel N. Greenbaum,"
14 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
15 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Public Release**

18 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant
19 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
20 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
21 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,
22 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and
23 each entity to whom Defendant (and Defendant's parents, subsidiaries, affiliated entities,
24 manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors, successors,
25 or assigns of each of them) directly or indirectly exports, distributes or sells the Covered Products,
26 including, without limitation, distributors, wholesalers, customers, retailers, franchisees, cooperative
27 members, and licensees, including but not limited to Dick's Sporting Goods, Inc., (collectively,
28 "Releasees"), based on failure to warn of alleged exposures to DEHP from Covered Products
manufactured, sold, or distributed for sale in California by Defendant prior to the Effective Date.

1 The release in this Section 4.1 applies to all Covered Products that Defendant manufactured,
2 distributed, or sold prior to the Effective Date, regardless of the date any Releasees distribute or sell
3 the Covered Products.

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

7 **4.2 Shefa's Individual Release of Claims**

8 In further consideration of the promises and agreements herein contained, Shefa, on its own
9 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
10 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
11 legal action, and releases all claims that it may have against Defendant and Releasees, including,
12 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
13 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
14 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP from
15 Covered Products manufactured, sold, or distributed for sale by Defendant prior to the Effective
16 Date. The releases in this Section 4.2 applies to all Covered Products that Defendant manufactured,
17 distributed, or sold prior to the Effective Date, regardless of the date any Releasees distribute or sell
18 the Covered Products. Further, the releases in Section 4.2 are provided in Shefa's individual
19 capacity and are not releases on behalf of the public.

20 **4.3 Defendant's Release of Shefa**

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

26 **4.4 Release of Unknown Claims**

27 It is possible that other claims not known to the Parties arising out of the facts contained in
28

1 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
2 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment
3 is expressly intended to cover and include all such claims through and including the Effective Date,
4 including all rights of action therefor. Shefa acknowledges that the claims released in Sections 4.1
5 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in
6 doing so waives California Civil Code § 1542, which reads as follows:

7 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
8 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
9 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
10 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
11 **WITH THE DEBTOR.**

12 Shefa understands and acknowledges that the significance and consequence of this waiver of
13 California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting
14 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not
15 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
16 Shefa will not be able to make any claim for those damages against Defendant or any of the
17 Releasees.

18 **5. COURT APPROVAL**

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

20 **6. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California
22 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
23 rendered inapplicable by reason of law generally, or as to the Covered Products, then Defendant
24 may provide written notice to Shefa of any asserted change in the law, and with the exception of
25 Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with
26 respect to, and to the extent that, the Covered Products are so affected. None of the terms of this
27 Consent Judgment shall have any application to Covered Products sold outside of the State of
28 California.

1 **7. NOTICE**

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

6 To Defendant:

7 Jonathan A. Muenkel, Esq.
8 NorthStar Law Group
9 2636 High Bluff Drive, Suite 400
 San Diego, CA 92130

 To Shefa:

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

10
11 Any Party may, from time to time, specify in writing to the other Party a change of address to which
12 all notices and other communications shall be sent.

13 **8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

14 This Consent Judgment may be executed in counterparts, and by facsimile or portable
15 document format (PDF) signature, each of which shall be deemed an original, and all of which,
16 when taken together, shall constitute one and the same document.

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

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

20 **10. POST EXECUTION ACTIVITIES**

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

25 **11. MODIFICATION**

26 This Consent Judgment may only be modified by a written instrument executed by the Party
27 or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion
28

1 to modify shall be served on all Parties and the Office of the Attorney General.

2 **12. DISPUTE RESOLUTION**

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

12 **13. AUTHORIZATION**

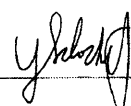
13 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understood, and agree to all of the terms and conditions of this
15 Consent Judgment.

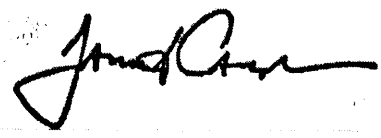
17 AGREED TO:

AGREED TO:

19 Date: 3/20/19

19 Date: 3-19-19

21 By: 

21 By: 

23 SHEFA LMV, INC.

23 DEFENDANT PRO PERFORMANCE
24 SPORTS, LLC

~~PROPOSED~~ JUDGMENT

Please note that on July 2, 2019 at 8:30 am, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Pro Performance Sports, LLC came for hearing before this Court in Department 71, the Honorable Monica Bachner presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did ~~[not]~~ appear. *The Consent Judgment is entered.*

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.

Jul 7-2-19
Date

M. Bachner
Judge of the Superior Court
MONICA BACHNER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 71

19STCV02098

SHEFA LMV, INC. vs PRO PERFORMANCE SPORTS LLC

July 2, 2019

2:19 PM

Judge: Honorable Monica Bachner

Judicial Assistant: A. Barton

Courtroom Assistant: D. Major

CSR: None

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS:

COURT ORDER

Consent Judgment is signed and filed this date.

On the Court's own motion, the Order to Show Cause Re: Dismissal After Settlement scheduled for 09/04/2019 is advanced to this date and vacated .

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	FILED Superior Court of California County of Los Angeles 07/02/2019
PLAINTIFF/PETITIONER: Shefa LMV, Inc.	Sherri R. Carter, Executive Officer / Clerk of Court By: <u> A. Barton </u> Deputy
DEFENDANT/RESPONDENT: Pro Performance Sports LLC	
CERTIFICATE OF MAILING	CASE NUMBER: 19STCV02098

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (COURT ORDER) of 07/02/2019 and Consent Judgment, Consent Judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Daniel Greenbaum
Daniel N. Greenbaum, Esq.
7120 Hayvenhurst Avenue
Suite 320
Van Nuys, CA 91406

Jonathan Muenkel
NorthStar Law Group
12636 High Bluff Drive
Suite 400
San Diego, CA 92130

Dated: 07/2/2019

Sherri R. Carter, Executive Officer / Clerk of Court

By: A. Barton
Deputy Clerk

CERTIFICATE OF MAILING

