

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

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S) <b>Shefa LMV Inc.</b>			
	DEFENDANT(S) INVOLVED IN SETTLEMENT <b>Metabo Corp.</b>			
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>BC653222</b>		COURT NAME <b>Los Angeles County Superior Court</b>	
	SHORT CASE NAME <b>Shefa v. Metabo</b>			
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformulation or Warning label</b>			
	PAYMENT: CIVIL PENALTY <b>\$4,000</b>	PAYMENT: ATTORNEYS FEES <b>\$23,500</b>	PAYMENT: OTHER <b>0.00</b>	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" 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 <b>6 / 14 / 2017</b>	
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>			
<b>FILER INFO</b>	NAME OF CONTACT <b>Daniel N. Greenbaum</b>			
	ORGANIZATION <b>Law Office of Daniel Greenbaum</b>		TELEPHONE NUMBER ( <b>818</b> ) <b>809-2199</b>	
	ADDRESS <b>7120 Hayvenhurst Ave., Suite 320</b>		FAX NUMBER ( <b>424</b> ) <b>243-7698</b>	
	CITY <b>Van Nuys</b>	STATE <b>CA</b>	ZIP <b>91406</b>	E-MAIL ADDRESS <b>dgreenbaum@greenbaumlawfirm.com</b>

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**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.

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6 Attorney for Plaintiff SHEFA LMV, INC.

7 SCARINCI | HOLLENBECK  
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9 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  
DEPOT USA, INC.; and DOES 1 to 50,  
20 Inclusive

21 Defendants.

CASE NO. BC653222

*The Honorable William F. Fahey*  
*Dept. 69*

**[PROPOSED] CONSENT JUDGMENT AS  
TO METABO CORPORATION**

Action filed: March 10, 2017

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.





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.

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.

15  
16 By:  \_\_\_\_\_

17  
18 Its: Manager

19 Dated: June 14, 2017

FOR: METABO CORPORATION

20  
21 By:  \_\_\_\_\_

22  
23 Its: VP Finance & Operation

1 **[PROPOSED] CONSENT JUDGMENT**

2 Please note that on \_\_\_\_\_, 2017 at \_\_\_\_\_, 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.  
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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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23 \_\_\_\_\_  
Date

\_\_\_\_\_  
Superior Court Judge