

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 / /	For Internal Use Only
	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.

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12 Attorneys for Defendant Robert Bosch Tool Corporation

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15 SHEFA LMV, INC.,) Case No. BC676932
16 Plaintiff,)
17 vs.) *Hon. Rita Miller*
ROBERT BOSCH TOOL CORPORATION;) *Dept. 16*
18 and DOES 1 through 100, inclusive,)
19 Defendants.) **[PROPOSED] CONSENT JUDGMENT**

20)
21) Action Filed: September 21, 2017
22)
23)
24)
25)
26)
27)
28)

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 Robert Bosch Tool Corporation (“**RBTC**” or
5 “**Defendant**,” with Shefa and RBTC individually referred to as a “**Party**” and collectively as the
6 “**Parties.**”)

7 **1.2 Plaintiff**

8 Shefa is a limited liability company in California that seeks to promote awareness of
9 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
10 substances contained in consumer products.

11 **1.3 Settling Defendant**

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

15 **1.4 Products Covered**

16 The products covered by this Consent Judgment are flexible shaft attachments for Dremel
17 rotary tools that contain diisononyl phthalate (“**DINP**”) which are manufactured, sold, or distributed
18 for sale in California by RBTC including, but not limited to, Dremel Flex Shaft 225-01 (UPC:
19 080596002251) sold to consumers by Fry’s Electronics, Inc. (“**FRY’S**”) or others in RBTC’s chain
20 of distribution (collectively, the “**Covered Products**”).

21 **1.5 General Allegations**

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

1 **1.6 Notice of Violation**

2 On September 27, 2016, Shefa served RBTC, others, and the requisite public enforcement
3 agencies with a 60-Day Notice of Violation (the “**Notice**”)¹ alleging that RBTC violated Proposition
4 65 when it failed to warn its customers and consumers in California that the Covered Products
5 expose users to DINP. To the best of the Parties’ knowledge, no public enforcer has commenced
6 and is diligently prosecuting the allegations set forth in the Notice.

7 **1.7 Complaint**

8 On September 21, 2017, Shefa filed a complaint in the Superior Court in and for the County
9 of Los Angeles against RBTC and DOES 1-100, Case No. BC676932, alleging violations of
10 California Health & Safety Code § 25249.6, based on exposures to DINP contained in the covered
11 products sold in the State of California (the “**Complaint**”). On October 9, 2017, RBTC filed an
12 answer to the Complaint denying all allegations.

13 **1.8 No Admission**

14 RBTC denies the material, factual, and legal allegations contained in the Notice and
15 Complaint and maintains that all the products it has manufactured, sold, or distributed for sale in
16 California, including the Covered Products, have been, and are, in compliance with all laws,
17 including Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by
18 RBTC of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance
19 with this Consent Judgment constitute or be construed as an admission by RBTC of any fact,
20 finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by
21 RBTC. This section shall not, however, diminish or otherwise affect RBTC’s obligations,
22 responsibilities, and duties under this Consent Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
26 County of Los Angeles, that Defendant employs or has employed ten or more persons during time
27

28 ¹ The 60-Day Notice of Violation is Exhibit 1 to this Consent Judgment.

1 periods relevant to the allegations in the Complaint and that this Court has jurisdiction over the
2 Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the
5 Consent Judgment is signed by the Court.


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

7 **2.1 Product Warnings**

8 Defendant agrees, promises, and represents that within eighteen (18) months of the Effective
9 Date, or by April 1, 2019, whichever comes first, to the extent it ships or sells any Covered Product
10 that has not been reformulated as described in Section 2.2, to only manufacture, import, distribute,
11 sell, and/or offer for sale in California Covered Products with one of the clear and reasonable
12 warnings set forth in Proposition 65.

13 The warnings shall be provided in such a conspicuous and prominent manner that they will
14 assure the message is made available and likely to be read, seen, or heard by the consumer prior to
15 or at the time of the sale or purchase.

16 The Parties agree the following shall constitute compliance with Proposition 65 with respect
17 to any Covered Product not reformulated:

18 “  **WARNING:** This product can expose you to chemicals including diisononyl
19 phthalate (DINP) which are known to the State of California to cause cancer. For more information
20 go to www.P65Warnings.ca.gov.”

21 **2.2 Reformulation Standards**

22 Should Defendant choose to reformulate the Covered Products, the reformulation shall be as
23 follows: the Covered Products may contain DINP in concentrations less than or equal to 8700 parts
24 per million (“ppm”) (8.7 %) when analyzed pursuant to a scientifically reliable application of U.S.
25 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
26 scientifically reliable methodology. To the extent reformulated products contain any other phthalate
27 listed on the Proposition 65 list, the concentration of any such listed chemical will be no greater
28

1 than 1000 ppm.

2 **3. MONETARY SETTLEMENT TERMS**

3 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
4 Defendant shall make payments of the Initial Civil Penalty and Attorney’s fees and costs.

5 **3.2 Allocation of Payments.** The settlement payments shall be made payable and
6 allocated as follows:

7 **3.2.1 Initial Civil Penalty.** Defendant shall pay \$3,000 as an initial civil
8 penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
9 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
10 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the
11 OEHHA portion of the civil penalty payment in the amount of \$2,250 shall be made payable to
12 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
13 delivered as follows:

14 For United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

18 For Non-United States Postal Service Delivery:

19 Attn: Mike Gyurics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 1001 I Street, MS #19B
Sacramento, CA 95814

23 The Shefa portion of the civil penalty payment in the amount of \$750 shall be
24 made payable to Shefa LMV, Inc. and associated with taxpayer identification number
25 81-0907002. This payment shall be delivered to the Law Office of Daniel N.
26 Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.
27

1 **3.2.2 Attorney’s Fees and Costs.** A reimbursement of Shefa's attorney’s
2 fees and costs in the amount of \$24,000 payable to the “Law Office of Daniel N. Greenbaum,” and
3 associated with taxpayer identification number 46-4580172. This payment shall be delivered to the
4 Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

5 **3.3 Final Civil Payment.** If Defendant is unable to reformulate the Covered
6 Products within twenty-four (24) months of the Effective Date, or by October 1, 2019, whichever
7 comes first, Defendant will be required to pay a final penalty of \$3,000. The final civil penalty
8 payment shall be apportioned and delivered pursuant to the terms of Section 3.2.1 above.

9 **4. CLAIMS COVERED AND RELEASED**

10 **4.1 Shefa’s Public Release of RBTC and its Downstream Releasees**

11 This Consent Judgment is a full, final, and binding resolution between Shefa and RBTC of
12 any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
13 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
14 against RBTC, its parents, subsidiaries, affiliated entities under common ownership, manufacturers,
15 suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of
16 each of them, and each entity to whom RBTC directly or indirectly exports, distributes or sells the
17 Covered Products, including, without limitation, downstream distributors, wholesalers, customers,
18 retailers (including, without limitation, Fry’s Electronics, Inc. and its affiliates), franchisees,
19 cooperative members, and licensees (“**Releasees**”), based on failure to warn of alleged exposures to
20 DINP from Covered Products manufactured, sold, exported, or distributed for sale in California by
21 RBTC prior to the Effective Date. The release in this Section 4.1 applies to all Covered Products
22 that RBTC manufactured, exported, distributed, or sold prior to the Effective Date, regardless of the
23 date any other Releasee distributes or sells the Covered Products.

24 Upon entry of this Consent Judgment by the Court, going forward, RBTC’s compliance with
25 the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
26 by RBTC or any other Releasee with respect to DINP in Covered Products manufactured, sold, or
27 distributed for sale in California by RBTC on and after the Effective Date.

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

2 In further consideration of the promises and agreements herein contained, Shefa, on its own
3 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
4 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
5 legal action, and releases all claims that it may have against RBTC and Releasees, including,
6 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
7 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
8 fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DINP or any other
9 phthalate listed on the Proposition 65 list of a concentration no greater than 1000 ppm from
10 Covered Products manufactured, sold, or distributed for sale in California by RBTC prior to the
11 Effective Date. The releases in Section 4.2 are provided in Shefa’s individual capacity and are not
12 releases on behalf of the public.

13 **4.3 RBTC’s Release of Shefa**

14 RBTC, on its own behalf and on behalf of its past and current agents, representatives,
15 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
16 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
17 by Shefa and its attorneys and other representatives, whether in the course of investigating claims,
18 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered
19 Products.

20 **4.4 Release of Unknown Claims**

21 It is possible that other claims not known to the Parties arising out of the facts contained in
22 the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
23 discovered or developed. Shefa, on behalf of itself only, on the one hand, and RBTC, on the other
24 hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such
25 claims through and including the Effective Date, including all rights of action therefor. Shefa and
26 RBTC acknowledge that the claims released in Section 4 may include unknown claims, and
27 nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542,
28

1 which reads as follows:

2 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
3 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
4 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
5 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
6 **WITH THE DEBTOR.**

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

12 **5. COURT APPROVAL**

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

14 **6. SEVERABILITY**

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

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California
27 and apply within the State of California. DINP is listed pursuant to Proposition 65 as a chemical
28 that is known to the State of California to cause cancer and/or reproductive toxicity. In the event
that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or

1 as to the Covered Products, including without limitation the delisting of DINP, then RBTC may
2 provide written notice to Shefa of any asserted change in the law, and with the exception of
3 Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with
4 respect to, and to the extent that, the Covered Products are so affected. None of the terms of this
5 Consent Judgment shall have any application to Covered Products sold outside of the State of
6 California.

7 **8. NOTICE**

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

12 To RBTC:

13 Jack B. McCowan, Jr., Esq.
14 GORDON & REES LLP
15 275 Battery Street, Suite 2000
San Francisco, CA 94111

To Shefa:

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

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

18 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

22 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

25 **11. POST EXECUTION ACTIVITIES**

26 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),
27 Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.

1 Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to submit this
2 Consent Judgment to the Court with a motion seeking Court approval.

3 **12. MODIFICATION**

4 **12.1** In the event OEHHA establishes a safe harbor No-Significant Risk Level ("NSRL")
5 for DINP, which RBTC asserts would allow for the Covered Products to contain levels of DINP in
6 an amount greater than that set forth above in Section 2.2, RBTC may provide written notice to
7 Shefa of any such assertion and the Parties shall confer within 30 days to attempt to agree upon
8 modification of this Consent Judgment. Should such attempt at informal resolution of a
9 modification fail, and in the event RBTC still intends to change its reformulation obligations, RBTC
10 will provide written notice to Shefa of its intent to adopt a modified compliance standard. Upon
11 receipt of RBTC's notice, Shefa shall have the right seek enforcement of the terms and conditions
12 contained in the Consent Judgment by motion or any other available remedy at law, with the sole
13 issue to be adjudicated being the technical question of whether the NSRL would allow for a higher
14 DINP content in the Covered Products than that set forth in Section 2.2.

15 **12.2** This Consent Judgment may only be modified by a written instrument executed by
16 the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion.
17 Any motion to modify shall be served on all Parties and the Office of the Attorney General.

18 **13. DISPUTE RESOLUTION**

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

1 **14. AUTHORIZATION**

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

5
6 AGREED TO:

AGREED TO:

7
8 Date: 01/08/2018

Date: JANUARY 4, 2018

9
10
11 By: 
12 SHEFA LMV, INC.

By: 
KATINA XOURYA SR VP-FINANCE
By: 
JOHN P. KAVANAGH SR VP-RT

13
14 ROBERT BOSCH TOOL
15 CORPORATION
16
17

1 **[PROPOSED] JUDGMENT**

2
3 Please note that on _____, 2018 at _____, Plaintiff Shefa LMV Inc.’s (“Plaintiff”) Motion for
4 Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Robert Bosch
5 Tool Corporation, Inc. came for hearing before this Court in Department 16, the Honorable Rita Miller
6 presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

7 After full consideration of the points and authorities and related pleadings submitted, the Court
8 GRANTED Plaintiff’s motion pursuant to and in accordance with Health & Safety Code
9 §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following
10 findings pursuant to Health & Safety Code § 25249.7(f)(4):

- 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 reasonable.
16

17 The Settlement Agreement is hereby approved, and the clerk is directed to ENTER
18 JUDGMENT in accordance with the terms of the Settlement Agreement above.
19

20 _____
21 Date Superior Court Judge