

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>Harbor Freight Tools USA, Inc.</b>			
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>BC665582</b>		COURT NAME <b>Los Angeles County Superior Court</b>	
	SHORT CASE NAME <b>Shefa v. Harbor Freight</b>			
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformulation or Warning label</b>			
	PAYMENT: CIVIL PENALTY <b>\$4,000</b>	PAYMENT: ATTORNEYS FEES <b>\$21,500</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>8 / 10 / 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>

For Internal Use Only

**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.

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

7 Attorney for Plaintiff SHEFA LMV, INC.

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 SHEFA LMV, INC.,

12 Plaintiff,

13 vs.

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

16 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  
)

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  
28

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.  
28

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  
28

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



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

5 **8. NOTICE**

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

10 To Defendant:

11 Navi Dhillon  
12 MORRISON & FOERSTER LLP  
13 425 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

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

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

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

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

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

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

26 **11. POST EXECUTION ACTIVITIES**

27 **11.1** The Parties acknowledge that, pursuant to California Health & Safety Code  
28

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**

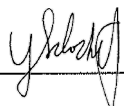
10 The undersigned are authorized to execute this Consent Judgment on behalf of their  
11 respective Parties and have read, understood and agree to all of the terms and conditions of this  
12 Consent Judgment.


13  
14 AGREED TO:

AGREED TO:

15  
16 Date: 8/10/2017

Date: 8/8/17

17  
18  
19 By: 

By: 

20 SHEFA LMV, INC.

HARBOR FREIGHT TOOLS USA,  
21 INC.

**ORDER AND JUDGMENT**

1  
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: \_\_\_\_\_

23  
24 \_\_\_\_\_  
25 Judge of the Superior Court