

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.

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 SHEFA LMV, INC.,

11 Plaintiff,

12 v.

13 CALIFORNIA EXOTIC NOVELTIES, LLC,
14 et al.,

15 Defendants.

Case No: BC679143

Hon. Dennis J. Landin
Dept. 51

[PROPOSED] CONSENT JUDGMENT

Action Filed: October 12, 2017
Trial Date: None Set

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[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 The parties to this [Proposed] Consent Judgment (“Consent Judgment”) are plaintiff Shefa
4 LMV, Inc. (“Shefa” or “Plaintiff”), and the defendant retailers of adult novelties who execute this
5 Consent Judgment. All defendants executing this consent judgment shall be referred to herein as a
6 “Settling Retailer Defendant” and collectively as “Settling Retailer Defendants.” Settling Retailer
7 Defendants and Plaintiff are the “Parties” to this Consent Judgment. Each Settling Retailer
8 Defendant is identified in an Exhibit A to this Consent Judgment.

9 **1.2 Plaintiff**

10 Plaintiff seeks to promote awareness of exposure to toxic chemicals and improve human
11 health by reducing or eliminating hazardous substances contained in consumer products.

12 **1.3 Settling Retailer Defendants**

13 Each Settling Retailer Defendant employs ten or more persons, is a person in the course of
14 doing business for purposes of Proposition 65, and has received a 60-Day Notice of Violation
15 alleging that it manufactures, distributes, or offers Covered Products (as further defined in Section
16 2.2 below) for sale in the State of California containing one or more of the Listed Chemicals (as
17 defined in Section 2.1 below), without the requisite health hazard warning, or has done so in the
18 past.

19 **1.4 General Allegations**

20 Plaintiff alleges that each Settling Retailer Defendants violated the Safe Drinking Water
21 and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.*
22 (“Proposition 65”) by exposing persons to one or more Listed Chemicals contained in certain adult
23 novelties without first providing a clear and reasonable warning regarding the risk of cancer and/or
24 reproductive harm from the Listed Chemicals.

25 **1.5 Sixty-Day Notices of Violation**

26 Commencing in late 2016 and 2017, 60-Day Notices of Violation were served on each
27 Settling Retailer Defendant alleging that the entities named in those notices violated Proposition
28 65 by exposing persons to one of more Listed Chemicals contained in certain adult novelties,

1 without first providing a clear and reasonable warning regarding the risk of cancer and/or
2 reproductive harm from the Listed Chemicals.

3 **1.6 Complaint**

4 On October 12, 2017, Plaintiff filed a complaint in the Superior Court of California for the
5 County of Los Angeles and Amendments to the Complaint on March 16, 2018, naming each
6 Settling Retailer Defendant and alleging Proposition 65 violations as to the Listed Chemicals
7 contained in the Covered Products applicable to each Settling Retailer Defendant (hereinafter
8 “Action” or “Complaint”).

9 **1.7 Product Description**

10 The products covered by this Consent Judgment are “Covered Products” as defined in
11 Sections 2.2 and 2.7 below.

12 **1.8 No Admission**

13 Nothing in this Consent Judgment is or shall be construed as an admission by Settling
14 Retailer Defendants of any fact, conclusion of law, issue of law or violation of law, nor shall
15 compliance with the Consent Judgment constitute or be construed as an admission by Settling
16 Retailer Defendants of any fact, conclusion of law, issue of law, or violation of law. Nothing in
17 this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense of
18 Settling Retailer Defendants may have in any other legal proceeding. This Consent Judgment is
19 the product of negotiation and compromise and is accepted by the Parties for purposes of settling,
20 compromising and resolving claims that are disputed in this Action.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, Settling Retailer Defendants stipulate that this
23 Court has jurisdiction over them as to the allegations contained in the Complaint, that venue is
24 proper in the County of Los Angeles, and that the Court has jurisdiction to enter and enforce the
25 provisions of this Consent Judgment.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
28 which this Consent Judgment is entered by the Court as to each Settling Retailer Defendant.

1 **2. DEFINITIONS**

2 **2.1** "Accessible Component" means any accessible part of the Covered Product that
3 can be mouthed, handled, or touches the body ("Accessible Component") during the ordinary and
4 customary conditions of purchase or use of the Covered Product.

5 **2.2** "Covered Products" means any Adult Novelty Product (as defined in Section 2.7
6 below) that contains one or more of the Listed Chemicals and is manufactured, distributed or sold
7 by a Settling Retailer Defendant (as defined in Section 2.5 below).

8 **2.3** "Listed Chemicals" means the following listed chemicals: Di[2-Ethylhexyl]
9 Phthalate (DEHP), Diisononyl Phthalate (DINP), Di-n-butyl Phthalate (DBP), Di-isodecyl
10 Phthalate (DIDP), Benzyl Butyl Phthalate (BBP), and Di-n-hexyl Phthalate (DnHP) each of which
11 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer,
12 birth defects, and/or other reproductive harm.

13 **2.4** "Phthalate Free" shall mean that each Accessible Component of each Covered
14 Product contains less than or equal to 1,000 parts per million (ppm) of DEHP, DINP, DBP, DIDP,
15 BBP, and DnHP when analyzed pursuant to U.S. EPA testing methodology 3580A and 8270C or
16 similar methodologies utilized by federal or state agencies for the purpose of determining
17 phthalate content in a solid substance.

18 **2.5** "Settling Retailer Defendant" means a defendant that executes this Consent
19 Judgment and is listed in Exhibit A to this Consent Judgment.

20 **2.6** "Knowingly" in reference to the sale of, or offering for sale of a Covered Product
21 shall mean when the Settling Retailer Defendant:

- 22 A. Sells or offers for sale the Covered Product under a brand or trademark that is
23 owned or licensed by the Settling Retailer Defendant, or;
24 B. Introduces a Listed Chemical into the Covered Product or causes a Listed
25 Chemical to be created in the Covered Product, or;
26 C. Obscures or alters warnings on the packaging of the Covered Product, or;
27 D. Has specific knowledge from a reliable source, including from a notice of
28 violation of Proposition 65, that an exposure to a Listed Chemical results from the

1 use or handling of a Covered Product, and sells that Covered Product more than 5
2 business days after acquiring the specific knowledge of the exposure.

3 2.7 "Adult Novelty Product" shall mean any article, including apparel or other items
4 that may be worn on or attached to the body, produced or marketed primarily for romantic, sexual
5 or erotic gratification, enhancement, stimulation, play, role playing, or related activities.

6 **3. INJUNCTIVE RELIEF**

7 **3.1 Reformulation Commitment**

8 After the Effective Date, Settling Retailer Defendants shall not Knowingly offer Covered
9 Products for sale in California unless such Covered Products are Phthalate Free, or comply with
10 the warning provisions set forth in Section 3.3 below. Settling Defendants may rely on their
11 suppliers' test results in order to determine whether Covered Products are Phthalate Free.

12 **3.2 Vendor Notification**

13 No more than thirty (30) days after a Settling Retailer Defendant executes this Consent
14 Judgment, that Settling Retailer Defendant shall provide the Phthalate Free concentration
15 standards of Section 2.4 to its then-current vendors of Covered Products that will be sold or
16 offered for sale to California consumers and shall instruct each vendor to use reasonable efforts to
17 provide Covered Products that are Phthalate Free. In addressing the obligation set forth in the
18 preceding sentence, Settling Retailer Defendants shall not employ statements that will encourage a
19 vendor to delay compliance with the Phthalate Free standard. Upon request, each Settling Retailer
20 Defendant shall provide Plaintiff with copies of such vendor notification and Plaintiff shall regard
21 such copies as confidential business information.

22 **3.3 Warnings**

23 Covered Products manufactured after the Effective Date that are not Phthalate Free shall
24 only Knowingly be sold by Retailer Defendants with either the following warning on the label, or
25 after the following warning has been provided to internet purchasers who designate a shipping
26 address in California:

27 **⚠ WARNING: Cancer and Reproductive Harm-www.P65warnings.ca.gov**

28 In lieu of the preceding warning, Settling Retailer Defendants may use any warning language and

1 method that complies with Title 27, California Code of Regulations, section 25600 *et seq.*, as
2 amended August 30, 2016 and subsequently thereafter.

3 **3.4 Covered Products in the Stream of Commerce**

4 The reformulation and warning requirements of Sections 3.1 and 3.3 do not apply to any
5 Covered Products in the stream of commerce as of the Effective Date.

6 **4. SETTLING RETAILER DEFENDANTS' MONETARY PAYMENTS**

7 **4.1 Payments by Settling Retailer Defendants**

8 Settling Retailer Defendants shall collectively pay \$32,541.00, which shall be divided as
9 follows: (i) \$5,250.00 as a civil penalty; and (ii) \$27,291.00 as reimbursement of Plaintiff's
10 attorney's fees and costs.

11 **4.2 Payment Procedures**

12 The settlement funds shall be made payable by checks, as follows: (a) "OEHHA" in an
13 amount equal to 75% of the civil penalty; (b) "Shefa LMV" in an amount equal to 25% of the civil
14 penalty; and (c) "Law Office of Daniel Greenbaum" in the amount set forth in section 4.1 for
15 reimbursement of Plaintiff's attorneys' fees and costs. The settlement checks shall be delivered to
16 Plaintiff's counsel at the address set forth in Section 10 within ten (10) business days after receipt
17 of Notice of Entry of the Consent Judgment.

18 **5. RELEASE OF ALL CLAIMS**

19 **5.1 Shefa's Release of Settling Retailer Defendants**

20 **5.1.1** This Consent Judgment is a full, final, and binding resolution between
21 Plaintiff, on behalf of itself and in the public interest, and Settling Retailer Defendants, their
22 parents, subsidiaries, and affiliated entities that are under common ownership, directors, officers,
23 shareholders, members, employees, and attorneys ("Defendant Releasees"), and each entity to
24 whom they directly or indirectly distribute or sell or in the past have distributed or sold Covered
25 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
26 cooperative members, licensors, and licensees ("Downstream Defendant Releasees") of any
27 violation of Proposition 65 that was or could have been asserted in the Complaint against Settling
28 Retailer Defendants, their Defendant Releasees, and Downstream Defendant Releasees, based on

1 the failure to warn about alleged exposure to Listed Chemicals contained in the Covered Products
2 that were sold by each Settling Retailer Defendant prior to the Effective Date.

3 **5.1.2** In further consideration of the promises and agreements herein contained,
4 the injunctive relief commitments set forth in Section 3, and for the payments to be made pursuant
5 to Section 4, Plaintiff on behalf of itself, its past and current agents, representatives, attorneys,
6 successors, and/or assignees, and in the public interest, hereby waives all rights to institute or
7 participate in, directly or indirectly, any form of legal action, and releases all claims, including,
8 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
9 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
10 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever (collectively
11 "claims"), against Settling Retailer Defendants, each of their Defendant Releasees, and each of
12 their Downstream Defendant Releasees. This release is limited to those claims that arise under
13 Proposition 65 with respect to Listed Chemicals in the Covered Products manufactured,
14 distributed or sold by each Settling Defendant, as such claims relate to the alleged failure to warn
15 under California Health & Safety Code section 25249.6 as to the Listed Chemicals in each Settling
16 Defendant's Covered Products.

17 **5.1.3** Plaintiff also, in its individual capacity only and *not* in its representative
18 capacity, provides a release herein on behalf of itself, its past and current agents, representatives,
19 attorneys, successors, and/or assignees, which shall be effective as a full and final accord and
20 satisfaction, and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'
21 fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or
22 unknown, suspected or unsuspected, arising out of alleged or actual exposure to the Listed
23 Chemicals in the Covered Products manufactured, distributed or sold by each Settling Defendant,
24 each of its Defendant Releasees, and, to the extent sold by any of them, each of its Downstream
25 Defendant Releasees.

26 **5.1.4** Compliance with the terms of this Consent Judgment by each Settling
27 Retailer Defendant constitutes compliance with Proposition 65 with respect to Listed Chemicals in
28 each Settling Retailer Defendant's Covered Products. Only Parties to this Consent Judgment may

1 enforce its terms. Any Defendant Releasee or Downstream Defendant Releasee may enforce and
2 assert as a defense any waiver, release, or agreement to dismiss provided by and upon entry of this
3 Consent Judgment.

4 **5.2 Settling Retailer Defendants' Release of Shefa**

5 Settling Retailer Defendants waive any and all claims against Shefa, its attorneys and other
6 representatives, for any and all actions taken, or statements made (or those that could have been
7 taken or made), by Shefa and its attorneys and other representatives, whether in the course of
8 investigating claims or otherwise seeking enforcement of Proposition 65 against Settling Retailer
9 Defendants in this matter, and/or with respect to the Covered Products.

10 **6. POST SETTLEMENT ACTIVITIES AND COURT APPROVAL**

11 **6.1** The Parties acknowledge that, pursuant to California Health & Safety Code
12 section 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment.
13 As part of the noticed motion, Plaintiff will seek approval of those fees and costs to be paid
14 pursuant to this Consent Judgment, representing a portion of the total fees and costs incurred by
15 Shefa's counsel with respect to the investigation, litigation, and enforcement of the coordinated
16 matters, including the fees and costs previously incurred in this action that have not otherwise been
17 recovered. In furtherance of obtaining such approval, the Parties and their respective counsel
18 agree to mutually employ their best efforts to support the entry of this Consent Judgment and
19 obtain approval of the Consent Judgment by the Court in a timely manner.

20 **6.2** If this Consent Judgment is not approved by the Court in its entirety, the Parties
21 shall meet and confer to determine whether to modify the terms of the Consent Judgment and to
22 resubmit it for approval. In meeting and conferring, the Parties agree to undertake any actions
23 reasonably necessary to amend and/or modify this Consent Judgment in order to further the
24 mutual intention of the Parties in entering into this Consent Judgment.

25 **6.3** If this Consent Judgment is not entered by the Court within one year of the date it
26 has been signed by the Parties, it shall be of no force or effect and shall never be introduced into
27 evidence or otherwise used in any proceeding for any purpose other than to determine the rights or
28 obligations of a Party as a result of the fact that the Consent Judgment was not approved.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed,
4 preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
5 Products, any Settling Retailer Defendant may provide written notice to Shefa of any asserted
6 change in the law, and shall have no further obligations pursuant to this Consent Judgment with
7 respect to, and to the extent that, the Covered Products are so affected. Nothing in this Consent
8 Judgment shall be interpreted to relieve Settling Retailer Defendants from any obligation to
9 comply with any pertinent state or federal toxics control laws.

10 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

11 This Consent Judgment may be executed in counterparts and by facsimile or portable
12 document format (.pdf), each of which shall be deemed an original, and all of which, when taken
13 together, shall constitute one and the same document.

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

15 Shefa agrees to comply with reporting form requirements referenced in California Health
16 & Safety Code section 25249.7(f) to the extent that they apply to this Consent Judgment.

17 **10. NOTICES**

18 When any Party is entitled to receive any notice under this Consent Judgment, the notice
19 shall be sent by certified mail or electronic mail to the following:

20 **For Settling Retailer Defendants:**

21 See Exhibit A.

22 **For Shefa:**

23 Daniel N. Greenbaum
24 Law Office of Daniel N. Greenbaum
25 7120 Hayvenhurst Ave., Suite 320
26 Van Nuys, CA 91406
27 dgreenbaum@greenbaumlawfirm.com

28 The Parties may modify the person and address to whom the notice is to be sent by sending
the other Party notice by certified mail and/or other verifiable form of written communication.

1 **11. MODIFICATION**

2 This Consent Judgment may be modified or amended only: (1) by written agreement of
3 the Parties and upon entry of a Stipulation and Order by the Court thereon; or (2) upon a
4 successful motion or application of any party which motion or application shall not be
5 unreasonably opposed unless a material term affecting the opposing party is at issue.

6 **12. ATTORNEYS' FEES**

7 Except as otherwise provided in this Consent Judgment, each Party shall bear its own
8 attorneys' fees and costs.

9 **13. OTHER TERMS**

10 **13.1** This Consent Judgment shall apply to and be binding upon Plaintiff and Settling
11 Retailer Defendants, and their respective divisions, subdivisions, and subsidiaries, and the
12 successors or assigns of any of them.

13 **13.2** This Consent Judgment contains the sole and entire agreement and understanding
14 of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any
15 and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
16 deemed merged. No representations, oral or otherwise, express or implied, other than those
17 specifically referred to in this Consent Judgment have been made by any Party with respect to the
18 subject matter of this Consent Judgment. No other agreements not specifically contained or
19 referenced in this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of
20 the Parties with respect to the subject matter of this Consent Judgment. No supplementation,
21 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
22 writing by the Party to be bound. No waiver of any of the provisions of this Consent Judgment
23 shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar,
24 nor shall such waiver constitute a continuing waiver.

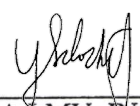

25 **13.3** Nothing in this Consent Judgment shall release, or in any way affect any rights that
26 Settling Retailer Defendants might have against any other party.

27 **13.4** The Parties, including their counsel, have participated in the preparation of this
28 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This

1 Consent Judgment was subject to revision and modification by the Parties and has been accepted
2 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
3 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
4 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
5 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
6 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
7 this regard, the Parties hereby waive California Civil Code section 1654.

8 **14. AUTHORITY TO EXECUTE**

9 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
10 Party he or she represents to stipulate to this Consent Judgment, to enter into and execute the
11 Consent Judgment on behalf of the Party represented, and to legally bind that Party.

12	AGREED TO:	AGREED TO:
13	Date: 11/14/2019	Date: 10/23/19
14	_____	_____
15	By: 	By: 
16	SHEFA LMV, INC.	_____

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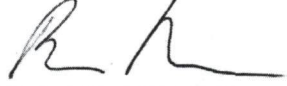
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12 **AGREED TO:**
13 Date: 11/14/2019

14
15 By: 
16 SHEFALMV, INC.

AGREED TO:
Date: 9/20/19

By: 
The Pleasure Chest, Ltd.

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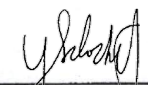
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AGREED TO:
Date: 11/14/2019

By: 
SHEFA LMV, INC.

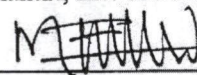
AGREED TO:
Date: 9/20/19
Romantix, Inc. dba Romantix.com
By: 
Name: MARK LABADIE
Title: CFO

EXHIBIT A

EXHIBIT A

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I. Name of Settling Defendant

PHE, Inc.

II. Person(s) to receive notices pursuant to the Consent Judgment

Chad Davis

Name

Marketing Director

Title

PHE, Inc.

Company

302 Meadowlands Drive

Address, Line 1

Hillsborough, NC 27278

Address, Line 2

cdavis@pheinc.com

Email

Jade Jurdi

Name

Attorney

Title

Scali Rasmuseen P.C.

Company

800 Wilshire Blvd., Suite 400

Address, Line 1

Los Angeles, CA 90036

Address, Line 2

jjurdi@scalilaw.com

Email

EXHIBIT A

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I. Name of Settling Defendant

The Pleasure Chest, Ltd.

II. Person(s) to receive notices pursuant to the Consent Judgment

Brian Robinson

Name

Owner

Title

The Pleasure Chest, Ltd.

Company

7733 Santa Monica Blvd.

Address, Line 1

West Hollywood, CA, 90046

Address, Line 2

brian@pleasurechest.com

Email

With a Copy to:

Ann Grimaldi and Jennifer K. Singh

Name

Title

Grimaldi Law Offices

Company

535 Mission Street, 14th Floor

Address, Line 1

San Francisco, CA 94105

Address, Line 2

jennifer@grimaldilawoffices.com

ann.grimaldi@grimaldilawoffices.com

Email

EXHIBIT A

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I. Name of Settling Defendant

Romantix, Inc. dba Romantix.com

II. Person(s) to receive notices pursuant to the Consent Judgment

Mark Labertew

Name

CFO

Title

Progressive Retail Management, Inc.

Company

4655 N. Colorado Blvd.

Address, Line 1

Denver, CO 80216

Address, Line 2

mlabertew@romantixexchange.com

Email

Robert S. Goldstein

Name

Title

Faegre Baker Daniels LLP

Company

1144 15th Street, Suite 3400

Address, Line 1

Denver, CO 80202

Address, Line 2

rob.goldstein@faegrebd.com

Email