

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

6 Attorney for Plaintiff SHEFA LMV, INC.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 SHEFA LMV, INC.,

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Plaintiff,

vs.

PRO-TEC ATHLETICS; and DOES 1 through
100, Inclusive,

Defendant.

Case No. RG18893496

**[PROPOSED] CONSENT JUDGMENT
AS TO MAVERICK SPORTS
MEDICINE, INC. D/B/A PRO-TEC
ATHLETICS**

Action Filed: February 16, 2018

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 Maverick Sports Medicine, Inc. d/b/a Pro-Tec
5 Athletics (“**Defendant**,” with Shefa and **Defendant** individually referred to as a “**Party**” and
6 collectively as the “**Parties**.”)

7 **1.2 Plaintiff**

8 Shefa is a public benefit, non-profit corporation 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 Defendant employs ten (10) or more persons and is a person in the course of doing business
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
14 Code §25249.6 *et seq.* (“**Proposition 65**”).

15 **1.4 Products Covered**

16 The products covered by this Consent Judgment are plastic or foam massager/recovery
17 items, including, but not limited to, Roller Massager with Trigger Point Release Grips;
18 UPC: 785702112007, that are manufactured, sold, or distributed for sale in California by Defendant
19 that contain Diisononyl Phthalate (“**DINP**”) (collectively, the “**Covered Products**”).

20 **1.5 General Allegations**

21 Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state
22 of California, the Covered Products without first providing a clear and reasonable warning required
23 by Proposition 65. DINP (CAS # 28553-12-0) is a chemical listed under Proposition 65 as a
24 chemical known to the state to cause cancer.

25 **1.6 Notice of Violation**

26 On March 02, 2017, Shefa served Defendant and the requisite public enforcement agencies
27 with a 60-Day Notice of Violation (the “**Notice**”) alleging that Defendant violated Proposition 65
28

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

4 **1.7 Complaint**

5 On February 16, 2018, Shefa filed the instant complaint in the Superior Court in and for the
6 County of Alameda against Defendant and DOES 1-100, alleging violations of California Health &
7 Safety Code § 25249.6, based on exposures to DINP contained in the Covered Products sold in the
8 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 Alameda, the Defendant agrees that they employs or have 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 approved and entered by the Court.
28


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

2 **2.1 Reformulation Standards**

3 As of the Effective Date, Defendant shall not manufacture for sale in California any Covered
4 Products unless such Covered Products contain DINP in concentrations less than or equal to 1000
5 parts per million (“ppm”) when analyzed pursuant to U.S. Environmental Protection Agency testing
6 methodologies 3580A and 8270C or any other scientifically reliable methodology for determining
7 the concentration of DINP in the Covered Products.

8 **2.2 Warning Standards**

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

16 “  **WARNING:** This product can expose you to chemicals, including Diisononyl
17 Phthalate (DINP), which are known to the State of California to cause cancer. For more
18 information go to www.P65Warnings.ca.gov.”

19 **2.3 Covered Products in the Stream of Commerce.**

20 Any Covered Products that have been distributed, shipped, or sold by Defendant prior to the
21 Effective Date, shall not be subject to the requirements of Section 2.1.

22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
24 Defendant shall make the Total Settlement Payment of **\$14,000.00** pursuant to the payment
25 schedule as listed below in Section 3.2.3.

26 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
27 separate checks made payable and allocated as follows:
28

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

8 For United States Postal Service Delivery:

9 Attn: Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010, MS #19B
13 Sacramento, CA 95812-4010

14 For Non-United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street, MS #19B
19 Sacramento, CA 95814

20 The Shefa portion of the civil penalty payment in the amount of \$500.00 shall be made
21 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
22 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
23 Ave, Suite 320, Van Nuys, CA 91406.

24 **3.2.2 Attorney’s Fees and Costs.** A reimbursement of Shefa's attorney’s
25 fees and costs in the amount of \$12,000.00 payable to the “Law Office of Daniel N. Greenbaum,”
26 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
27 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

28 **3.2.3 Payment Schedule:** Beginning thirty days after the Execution
Date of this Settlement Agreement, Defendant shall make the first \$2,000.00 settlement
payment with six (6) additional \$2,000.00 payments to occur on or before the 1st of each month

1 thereafter until the full \$14,000.00 settlement has been paid. The first \$2,000.00 settlement
2 payment shall be broken out as follows:

- 3 • **\$1,500.00 made payable to OEHHA**
- 4 • **\$500.00 made payable to Shefa LMV, Inc.**

5 **3.2.4** All subsequent \$2,000.00 payments shall be made payable to the
6 Law Office of Daniel N. Greenbaum per § 3.2.2.

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Public Release**

9 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant
10 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
11 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
12 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,
13 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and
14 each entity to whom Defendant directly or indirectly exports, distributes or sells the Covered
15 Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees,
16 cooperative members, and licensees, including but not limited to Dick's Sporting Goods, Inc.,
17 ("**Releasees**"), based on failure to warn of alleged exposures to DINP from Covered Products
18 manufactured, sold, or distributed for sale in California by Defendant prior to the Effective Date.
19 The release in this Section 4.1 applies to all Covered Products that Defendant manufactured,
20 distributed, or sold prior to the Effective Date, regardless of the date any other Releasee distributes
21 or sells the Covered Products.

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

25 **4.2 Shefa's Individual Release of Claims**

26 In further consideration of the promises and agreements herein contained, Shefa, on its own
27 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
28

1 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
2 legal action, and releases all claims that it may have against Defendant and Releasees, including,
3 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
4 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
5 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DINP from
6 Covered Products manufactured, sold, or distributed for sale by Defendant prior to the Effective
7 Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not releases on
8 behalf of the public.

9 **4.3 Defendant's Release of Shefa**

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

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

23 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
24 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
25 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
26 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
27 **WITH THE DEBTOR.**

28 Shefa understands and acknowledges that the significance and consequence of this waiver of
California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting

1 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not
2 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
3 Shefa will not be able to make any claim for those damages against Defendant or any of the
4 Releasees.

5 **5. COURT APPROVAL**

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

7 **6. GOVERNING LAW**

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

16 **7. NOTICE**

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

21 To Defendant:

22 Jeff Rodgers
23 PRO-TEC ATHLETICS
24 18080 NE 68th Street, Suite A-150
Redmond WA 98052

To Shefa:

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

25 Any Party may, from time to time, specify in writing to the other Party a change of address to which
26 all notices and other communications shall be sent.
27
28

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

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

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

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

8 **10. POST EXECUTION ACTIVITIES**

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

13 **11. MODIFICATION**

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

17 **12. DISPUTE RESOLUTION**

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

1 **13. 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: 5/16/18

9 Date: 5/16/2018

10
11 By:  _____

12 SHEFA LMV, INC.

13 By:  _____

14 DEFENDANT PRO-TEC ATHLETICS.
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1 **[PROPOSED] JUDGMENT**

2 Please note that on _____, 2018 at _____, Plaintiff Shefa LMV Inc.'s ("Plaintiff")
3 Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant
4 Pro-Tec Athletics came for hearing before this Court in Department ____ , the Honorable
5 _____ presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not]
6 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
18

19 _____
20 Date

Judge of the Superior Court