

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)				
	DEFENDANT(S) INVOLVED IN SETTLEMENT				
<b>CASE INFO</b>	COURT DOCKET NUMBER		COURT NAME		
	SHORT CASE NAME				
<b>REPORT INFO</b>	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
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>				
<b>FILER INFO</b>	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     **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 Pro Performance Sports LLC (“**Defendant**,” with  
5 Shefa and **Defendant** 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     Defendant**

11            Defendant employs ten (10) or more persons and is a person in the course of doing business  
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety  
13 Code §25249.6 *et seq.* (“**Proposition 65**”).

14            **1.4     General Allegations**

15            Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state  
16 of California jump ropes containing Di-[2-Ethylhexyl] Phthalate (“**DEHP**”) without first providing a  
17 clear and reasonable warning required by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical  
18 listed under Proposition 65 as a chemical known to the state to cause cancer or reproductive  
19 toxicity.

20            **1.5     Products Covered**

21            The products covered by this Consent Judgment are plastic jump rope products alleged to  
22 contain DEHP that are manufactured, sold, or distributed for sale in California by Defendant,  
23 including, but not limited to, SKLZ Jump Rope Conditioning Trainer (Model No. JROP-001 / UPC:  
24 849102018588) (collectively, the “**Covered Products**”).

25            **1.6     Notice of Violation**

26            On May 31, 2018, Shefa served Defendant and Dick’s Sporting Goods, Inc., and the requisite  
27 public enforcement agencies with a Sixty Day Notice of Violation (the “**Notice**”) alleging that  
28

1 Defendant violated Proposition 65 when it failed to warn its customers and consumers in California  
2 that the Covered Products expose users to DEHP. To the best of the Parties' knowledge, no public  
3 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On January 22, 2019, 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. Nothing  
17 in this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that  
18 Defendant may have in any other future legal proceeding. This section shall not, however, diminish  
19 or otherwise affect Defendant's obligations, responsibilities, and duties under this Consent  
20 Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
23 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the  
24 County of Los Angeles, the Defendant agrees that they employ, or have employed, ten or more  
25 persons during time periods relevant to the Complaint, and that this Court has jurisdiction over the  
26 Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.  
27  
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1           **1.10       Effective Date**

2           For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the  
3           Consent Judgment is approved and entered by the Court.

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

5           **2.1       Reformulation Standards**

6           As of the Effective Date, and subject to the exception listed in Section 2.2 below, Defendant shall  
7           not manufacture for sale in California any Covered Products unless such Covered Products contain  
8           DEHP in concentrations less than or equal to 1000 parts per million (“ppm”) when analyzed  
9           pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any  
10          other scientifically reliable methodology for determining the concentration of DEHP in the Covered  
11          Products.

12          **2.2       Warning Standards**

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

20           (a)       the text, **“WARNING This product can expose you to chemicals, including**  
21           **DEHP, which is known to the State of California to cause birth defects or other**  
22           **reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”**

23           accompanied by and placed to the right of a symbol consisting of a black exclamation point  
24           in a yellow equilateral triangle with a bold black outline sized to be no smaller than the  
25           word, “WARNING” as provided by regulations adopted on or about August 30, 2016; or

26           (b)       the text, **“WARNING Cancer and Reproductive Harm -**  
27  
28

1 **www.P65Warnings.ca.gov.”** accompanied by and placed to the right of a symbol consisting  
2 of a black exclamation point in a yellow equilateral triangle with a bold black outline sized  
3 to be no smaller than the word, “WARNING” as provided by regulations adopted on or  
4 about August 30, 2016.

5 The triangular warning symbol specified in Section 2.2(a) and 2.2(b) shall be in yellow with a black  
6 exclamation mark; *provided however*, the symbol may be printed in black and white if the Covered  
7 Product label is printed against a yellow background.

### 9 **2.3 Covered Products in the Stream of Commerce.**

10 Any Covered Products that have been distributed, shipped, or sold by Defendant prior to the  
11 Effective Date, shall not be subject to the requirements of Sections 2.1 and 2.2, and may be sold as  
12 is.

## 13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,  
15 Defendant shall make the settlement payment of \$17,000.00 (“**Total Settlement Payment**”).

16 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)  
17 separate checks made payable and allocated as follows:

18 **3.2.1 Civil Penalty.** Defendant shall pay \$2,000.00 as a civil penalty  
19 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in  
20 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of  
21 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the  
22 OEHHA portion of the civil penalty payment in the amount of \$1,500.00 shall be made payable to  
23 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be  
24 delivered as follows:

25 For United States Postal Service Delivery:

26 Attn: Mike Gyurics  
27 Fiscal Operations Branch Chief  
28 Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS #19B

1 Sacramento, CA 95812-4010

2 For Non-United States Postal Service Delivery:

3 Attn: Mike Gyurics  
4 Fiscal Operations Branch Chief  
5 Office of Environmental Health Hazard Assessment  
6 1001 I Street, MS #19B  
7 Sacramento, CA 95814

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

12 **3.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's  
13 fees and costs in the amount of \$15,000.00 payable to the "Law Office of Daniel N. Greenbaum,"  
14 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to  
15 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Public Release**

18 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant  
19 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of  
20 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,  
21 against Defendant, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,  
22 officers, employees, attorneys, and the predecessors, successors, or assigns of each of them, and  
23 each entity to whom Defendant (and Defendant's parents, subsidiaries, affiliated entities,  
24 manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors, successors,  
25 or assigns of each of them) directly or indirectly exports, distributes or sells the Covered Products,  
26 including, without limitation, distributors, wholesalers, customers, retailers, franchisees, cooperative  
27 members, and licensees, including but not limited to Dick's Sporting Goods, Inc., (collectively,  
28 "Releasees"), based on failure to warn of alleged exposures to DEHP from Covered Products  
manufactured, sold, or distributed for sale in California by Defendant prior to the Effective Date.

1 The release in this Section 4.1 applies to all Covered Products that Defendant manufactured,  
2 distributed, or sold prior to the Effective Date, regardless of the date any Releasees distribute or sell  
3 the Covered Products.

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

#### 7 **4.2 Shefa's Individual Release of Claims**

8 In further consideration of the promises and agreements herein contained, Shefa, on its own  
9 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or  
10 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
11 legal action, and releases all claims that it may have against Defendant and Releasees, including,  
12 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,  
13 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert  
14 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP from  
15 Covered Products manufactured, sold, or distributed for sale by Defendant prior to the Effective  
16 Date. The releases in this Section 4.2 applies to all Covered Products that Defendant manufactured,  
17 distributed, or sold prior to the Effective Date, regardless of the date any Releasees distribute or sell  
18 the Covered Products. Further, the releases in Section 4.2 are provided in Shefa's individual  
19 capacity and are not releases on behalf of the public.

#### 20 **4.3 Defendant's Release of Shefa**

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

#### 26 **4.4 Release of Unknown Claims**

27 It is possible that other claims not known to the Parties arising out of the facts contained in  
28



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

7 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
8 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**  
9 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**  
10 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
11 **WITH THE DEBTOR.**

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

18 **5. COURT APPROVAL**

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

20 **6. GOVERNING LAW**

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

1     **7.     NOTICE**

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

6     To Defendant:

7     Jonathan A. Muenkel, Esq.  
8     NorthStar Law Group  
9     2636 High Bluff Drive, Suite 400  
   San Diego, CA 92130

   To Shefa:

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

10  
11 Any Party may, from time to time, specify in writing to the other Party a change of address to which  
12 all notices and other communications shall be sent.

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

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

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

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

20     **10.    POST EXECUTION ACTIVITIES**

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

25     **11.    MODIFICATION**

26             This Consent Judgment may only be modified by a written instrument executed by the Party  
27 or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion  
28

1 to modify shall be served on all Parties and the Office of the Attorney General.

2 **12. DISPUTE RESOLUTION**

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

12 **13. AUTHORIZATION**

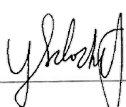
13 The undersigned are authorized to execute this Consent Judgment on behalf of their  
14 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
15 Consent Judgment.

17 AGREED TO:

AGREED TO:

18  
19 Date: 3/20/19

Date: 3-19-19

20  
21  
22 By: 

By: 

23 SHEFA LMV, INC.

24 DEFENDANT PRO PERFORMANCE  
25 SPORTS, LLC

1 **[PROPOSED] JUDGMENT**

2 Please note that on \_\_\_\_\_, 2019 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 Performance Sports, LLC came for hearing before this Court in Department 71, the Honorable  
5 Monica Bachner 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