

**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 /    /
	<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 LAW OFFICE OF DANIEL N. GREENBAUM  
2 Daniel N. Greenbaum, Esq. (SBN 268104)  
3 The Hathaway Building  
4 7120 Hayvenhurst Avenue, 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 Plaintiff SHEFA LMV, INC.

10 NORTON ROSE FULBRIGHT US LLP  
11 Will Troutman, Esq.  
12 555 South Flower Street, Forty-First Floor  
13 Los Angeles, California 90071  
14 Main: (213) 892-9208  
15 Facsimile: (213) 892-9494  
16 Email: william.troutman@nortonrosefulbright.com

17 Attorneys for DEFENDANTS

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF LOS ANGELES

20 SHEFA LMV, INC.,

21 Plaintiff,

22 vs.

23 PACIFIC COAST DISTRIBUTING, INC.;  
24 PETSMART, INC.; and DOES 1 through 100,  
25 Inclusive,

26 Defendants.

) Case No. BC685131  
) Dept. 31  
) Hon. Samantha Jessner

) **[PROPOSED] CONSENT JUDGMENT**  
) **AS TO PACIFIC COAST**  
) **DISTRIBUTING, INC. AND**  
) **PETSMART, INC.**

) Action Filed: November 30, 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 Pacific Coast Distributing, Inc. and PetSmart, Inc.  
5       ("**Defendants,**" with Shefa and **Defendants** individually referred to as a "**Party**" and collectively as  
6       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              Defendants employ ten or more persons and is a person in the course of doing business for  
13       purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
14       §25249.6 *et seq.* ("**Proposition 65**").

15              **1.4       Products Covered**

16              The products covered by this Consent Judgment are Defendants' private label aquarium  
17       products with plastic tubing, including, but not limited to, Topfin Medium Gravel Vacuum; SKU:  
18       5162806, manufactured, sold, or distributed for sale in California by Defendants (collectively, the  
19       "**Covered Products**").

20              **1.5       General Allegations**

21              Shefa alleges that Defendants manufacture, import, sell, or distribute, for sale in the state of  
22       California, aquarium products with plastic tubing that contain Di-[2-Ethylhexyl] Phthalate  
23       ("**DEHP**") without first providing a clear and reasonable warning required by Proposition 65.  
24       DEHP (CAS # 68515-48-0) is listed under Proposition 65 as a chemical known to the state to cause  
25       cancer or reproductive toxicity.

26              **1.6       Notice of Violation**

27              On May 8, 2017, Shefa served Defendants and the requisite public enforcement agencies  
28

1 with a 60-Day Notice of Violation alleging that Defendants violated Proposition 65 when it failed to  
2 warn its customers and consumers in California that Gravel Vacuums expose users to DEHP.

3 On May 31, 2018, Shefa served Defendants and the requisite public enforcement agencies  
4 with a supplemental 60-day Notice of Violation (the "Notice") alleging that Defendants violated  
5 Proposition 65 when it failed to warn its customers and consumers in California that the Covered  
6 Product expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has  
7 commenced and is diligently prosecuting the allegations set forth in the Notice.

#### 8 **1.7 Complaint**

9 On November 30, 2017 Shefa filed the instant complaint in the Superior Court in and for the  
10 County of Los Angeles against Defendants and DOES 1-100, alleging violations of California  
11 Health & Safety Code § 25249.6, based on exposures to DEHP contained in the Covered Products  
12 sold in the State of California (the "Complaint").

#### 13 **1.8 No Admission**

14 Defendants deny the material, factual, and legal allegations contained in the Notice and  
15 Complaint. Nothing in this Consent Judgment shall be construed as an admission by Defendants of  
16 any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this  
17 Consent Judgment constitute or be construed as an admission by Defendants of any fact, finding,  
18 conclusion of law, issue of law, or violation of law, the same being specifically denied by  
19 Defendants. This section shall not, however, diminish or otherwise affect Defendants' obligations,  
20 responsibilities, and duties under this Consent Judgment.

#### 21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate this Court has jurisdiction  
23 over Defendant as to the allegations in the Complaint, that venue is proper in the County of Los  
24 Angeles, the Defendants agree that they employ or have employed ten (10) or more persons during  
25 time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to enter  
26 and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

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

11          **2.2      Warning Standards**

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

19                “  **WARNING:** This product can expose you to chemicals, including Di-[2-  
20                Ethylhexyl] Phthalate (DEHP), which are known to the State of California to cause birth  
21                defects or other reproductive harm. For more information go to  
22                [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

1  
2 **3. MONETARY SETTLEMENT TERMS**

3 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,  
4 Defendants shall make the Total Settlement Payment of \$28,000.00.

5 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)  
6 separate checks made payable and allocated as follows:

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

14 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

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

23 The Shefa portion of the civil penalty payment in the amount of \$1,500.00 shall be made  
24 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.  
25 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst  
26 Ave, Suite 320, Van Nuys, CA 91406.

1                   **3.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's  
2 fees and costs in the amount of \$22,000.00 payable to the "Law Office of Daniel N. Greenbaum,"  
3 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to  
4 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

5       **4. CLAIMS COVERED AND RELEASED**

6           **4.1 Public Release**

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

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

23           **4.2 Shefa's Individual Release of Claims**

24           In further consideration of the promises and agreements herein contained, Shefa, on its own  
25 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or  
26 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
27 legal action, and releases all claims that it may have against Defendants and Releasees, including,  
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1 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,  
2 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert  
3 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP from  
4 Covered Products manufactured, purchased, sold, or distributed for sale by Defendants prior to the  
5 Effective Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not  
6 releases on behalf of the public.

#### 7           **4.3       Defendants' Release of Shefa**

8           Defendants, on their own behalf and on behalf of their past and current agents,  
9 representatives, attorneys, successors, and assignees, hereby waive any and all claims that they may  
10 have against Shefa and its attorneys and other representatives, for any and all statements made to  
11 Defendants by Shefa and its attorneys and other representatives in the course of investigating the  
12 claims set forth in the Complaint or otherwise seeking to enforce Proposition 65 against them in this  
13 matter.

#### 14           **4.4       Release of Unknown Claims**

15           It is possible that other claims not known to the Parties arising out of the facts contained in  
16 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be  
17 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment  
18 is expressly intended to cover and include all such claims through and including the Effective Date,  
19 including all rights of action therefor. Shefa acknowledges that the claims released in Sections 4.1  
20 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in  
21 doing so waives California Civil Code § 1542, which reads as follows:

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

27           Shefa understands and acknowledges that the significance and consequence of this waiver of  
28 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 Defendants 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 Defendants  
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 Defendants:

22 General Counsel  
23 PetSmart, Inc.  
24 19601 N. 27th Ave.  
Phoenix, AZ 85027

To Shefa:

Daniel N. Greenbau, Esq.  
LAW OFFICE OF DANIEL GREENBAUM  
7120 Hayvenhurst Ave., Suite 320  
Van Nuys CA 91406

25 With copy to:

26 Will Troutman, Esq.  
27 NORTON ROSE FULBRIGHT US LLP  
555 South Flower Street, Forty-First Floor  
28 Los Angeles, California 90071

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

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

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

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

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

**10. POST EXECUTION ACTIVITIES**

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

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

**11. MODIFICATION**

**11.1** In the event that any future settlement agreement or court approved consent judgment entered into by Shefa involving another party, any future court-approved consent judgment entered into by any enforcer of Proposition 65 involving another party, or the State of California adopts or sets out a reformulation or compliance standard that is less stringent than that in Section 2.1 above for DEHP, then upon written notice to Shefa, Defendants are entitled to a corresponding modification to the reformulation standard set forth in section 2.1 of this Consent Judgment, regarding the Covered Products.

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

12. DISPUTE RESOLUTION

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

13. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 10/18/2018

Date:

10/29/18

By:



SHEFA LMV, INC.

By:



DEFENDANT PACIFIC COAST  
DISTRIBUTING, INC.

1 AGREED TO:

2  
3 Date: 10/24/18

4  
5  
6 By: 

7 DEFENDANT PETSMART, INC.  
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1 **[PROPOSED] JUDGMENT**

2 Please note that on \_\_\_\_\_, 2018 at 8:30am, Plaintiff Shefa LMV Inc.'s ("Plaintiff")  
3 Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant  
4 Pacific Coast Distributing, Inc. and Defendant PetSmart, Inc. came for hearing before this Court in  
5 Department 31, the Honorable Samantha Jessner presiding. Counsel for Plaintiff did [not] appear;  
6 counsel for Defendant did [not] appear.

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

11 a. The injunctive relief required by the Settlement Agreement complies with Health &  
12 Safety Code § 25249.7;

13 b. The reimbursement of fees and costs to be paid pursuant to the Settlement  
14 Agreement is reasonable under California law; and

15 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.  
16  
17  
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19 \_\_\_\_\_  
20 Date

\_\_\_\_\_  
Judge of the Superior Court