

**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 1502  
(03-01)

**PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)**

**REPORT OF ENTRY OF JUDGMENT**

*Please print or type required information*

☐ Original Filing    ☐ Supplemental Filing    ☐ Corrected Filing

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN JUDGMENT				
<b>CASE INFO</b>	COURT DOCKET NUMBER			COURT NAME	
	SHORT CASE NAME				
<b>REPORT INFO</b>	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES		For Internal Use Only
	DATE SUBMITTED TO COURT / /		IS JUDGMENT PURSUANT TO SETTLEMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No		
			IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL / /		
	<b>COPY OF JUDGMENT MUST BE ATTACHED</b>				
<b>FILER INFO</b>	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER (    )	
	ADDRESS			FAX NUMBER (    )	
	CITY		STATE    ZIP		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 judgment 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.



20286532

**FILED**  
ALAMEDA COUNTY

JAN 16 2018

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

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Attorneys for Defendant NATIVE TRAILS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

SHEFA LMV, INC.,

Plaintiff,

vs.

ARIZONA TILE SUPPLY, INC.;  
STONEPEAK CERAMICS, INC.; MULIA,  
INC.; NATIVE TRAILS, INC.; LA  
FUENTE, LLC; LOWE'S COMPANIES,  
INC.; and DOES 1 to 50, Inclusive,

Defendants.

Case No.: RG17854993

~~The Honorable Brad Seligman~~  
~~Dept. 30~~

JUDGMENT PURSUANT TO  
~~PROPOSED~~ SETTLEMENT  
AGREEMENT AS TO NATIVE TRAILS,  
INC.

Action filed: March 29, 2017

BY FAX

11-6-17

NOV - 6 2017

1 **1. INTRODUCTION**

2 1.1 This Settlement Agreement (the "Settlement Agreement") is entered into by and  
3 between Shefa LMV Inc. ("Shefa") and Native Trails, Inc. ("Settling Defendant"), with Shefa and  
4 Settling Defendant each individually referred to as a "Party," and collectively as the "Parties."

5 1.2 The products covered by this Settlement Agreement are ceramic tile products  
6 manufactured, distributed, and/or sold by Settling Defendant that allegedly expose users to lead  
7 and/or lead compounds ("Lead" or "Pb"), including, but not limited to, the Talavera Asters Native  
8 Trails tile, with an identification number of SKU: TVR0336 (the "Covered Products").

9 1.3 Lead and lead compounds are hereinafter referred to as the "Listed Chemicals."

10 1.4 On or about March 30, 2016 and again on June 10, 2016, Shefa mailed a 60-Day  
11 Notice of Violation pursuant to Proposition 65 (The Safe Drinking Water and Toxic Enforcement  
12 Act of 1986, Health & Safety Code §§ 25249.5, *et seq.*) to Settling Defendant, the California  
13 Attorney General, the District Attorneys of every County in the State of California, and the City  
14 Attorneys for every City in the State of California with a population greater than 750,000.

15 1.5 On March 29, 2017, Shefa filed the Complaint in the instant action.

16 1.6 Shefa alleges that the 60-Day Notice of Violation alleged violations of Proposition  
17 65 with respect to exposure to the Listed Chemicals when consumers cut or grind the Covered  
18 Products sold, distributed, and/or manufactured by Settling Defendant.

19 1.7 Settling Defendant denies the alleged violations asserted against it in the Complaint  
20 and deny they have any liability under Proposition 65.

21 1.8 Settling Defendant further denies that normal use of the Covered Products will  
22 result in any exposure to the Listed Chemicals that would require a warning pursuant to  
23 Proposition 65.

24 1.9 Shefa alleges that: (i) this Court has jurisdiction over the allegations of violations  
25 contained in the operative Complaint applicable to Settling Defendant and personal jurisdiction  
26 over Settling Defendant as to the acts alleged in the Complaint; (ii) venue is proper in the County  
27 of Alameda; and (iii) this Court has jurisdiction to approve this Settlement Agreement as a full

1 and final settlement of all claims that were raised in the Complaint. For purposes of this Settlement  
2 Agreement only, the Settling Defendant does not contest those allegations.

3 1.10 Nothing in this Settlement Agreement is, or shall be construed, as an admission by  
4 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance  
5 with the Settlement Agreement constitute or be construed as an admission by the Parties of any  
6 fact, conclusion of law, issue of law, or violation of law.

7 1.11 Further, Settling Defendant denies the material, factual, and legal allegations  
8 contained in the 60-Day Notices and in the operative Complaint, and maintains all the products  
9 that Settling Defendant has imported, manufactured, distributed, wholesaled, or retailed for sale  
10 in California, including the Covered Products, have been and are in compliance with all laws,  
11 including but not limited to Proposition 65.

12 1.12 Except as expressly set forth herein, nothing in this Settlement Agreement shall  
13 prejudice, waive, or impair any right, remedy, argument, complaint, or defense the Parties may  
14 have in any other or future legal proceeding unrelated to this specific proceeding.

15 1.13 This Settlement Agreement is the product of negotiation and compromise and is  
16 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
17 this action.

18 1.14 The term "Effective Date" means the date on which this Settlement Agreement is  
19 approved and entered by the Court as discussed in Paragraph 9 of this Settlement Agreement.

## 20 2. INJUNCTIVE RELIEF

21 2.1 Commencing on the Effective Date, Defendant shall only sell or offer for sale in  
22 California Covered Products that are Compliant Products, or shall provide warnings in  
23 accordance with this Settlement Agreement.

24 2.2 "Compliant Products" are defined as those Covered Products containing the  
25 Listed Chemical in a concentration less than or equal to 100 parts per million ("ppm"). This  
26 reformulation standard is based upon levels set by the Consumer Products Safety Improvement  
27 Act (CPSIA); CPSIA for lead in non-metals is 100 ppm.

1       2.3    The 100 ppm standard reformulation will be based upon analysis for "total" lead,  
2 including the bisque and glaze combined in a representative aliquot of the tile. The basis for this  
3 analysis standard is when both elements are pulverized together when power tools are used, so  
4 both contribute to exposure.

5       2.4    In order to prove compliance with the above reformulation standard, Settling  
6 Defendant may use one (or all) of the three following methods of analysis:

7           2.4.1   **CPSC-CH-E1002-08.1 Method** (i.e. the CPSIA method) – correlating to  
8 the reformulation standard, the laboratory will use hydrofluoric acid to  
9 break down the tiles for analysis.

10          2.4.2   **EPA6200 Method** – the laboratory will use this method for total Pb  
11 analysis after pulverizing the sample in a cryo-mill to ~60 mesh so the  
12 material is homogenized to get actual concentration of Pb.

13          2.4.3   **Lithium borate fusion followed by ICP/MS** – after the sample is milled,  
14 the laboratory of choice would use this mineral industry method of  
15 analysis.

16       2.5    Whenever a clear and reasonable warning is required under Section 2.1 for  
17 Covered Product offered for sale in the State of California, it shall state one of the warnings  
18 described in Section 2.7 in such a conspicuous and prominent manner as to be likely to be read  
19 and understood by the consumer under customary conditions of purchase or use.

20       2.6    Nothing in this Settlement Agreement shall require (1) Settling Defendant to  
21 provide warnings on or with any Covered Products other than those it manufactures or sells in  
22 packaging bearing its name or trademark, or (2) Settling Defendant to provide any warnings  
23 other than the warnings identified in subparagraph 2.7.

24       2.7    The Parties agree that any of the following warnings shall constitute a Compliant  
25 Warning for the Listed Chemical in the Covered Products.

1 (a) the text, **"WARNING: This product contains a chemical known to the**  
2 **State of California to cause cancer, birth defects or other reproductive harm."** as  
3 provided by existing regulations; or

4 (b) the text, **"WARNING This product can expose you to chemicals,**  
5 **including lead and lead compounds, which is known to the State of California to**  
6 **cause cancer and reproductive harm. For more information go to**  
7 **www.P65Warnings.ca.gov."** accompanied by and placed to the right of a symbol  
8 consisting of a black exclamation point in a yellow equilateral triangle with a bold black  
9 outline sized to be no smaller than the word, **"WARNING"** as provided by regulations  
10 adopted on or about August 30, 2016; or

11 (c) the text, **"WARNING Cancer and Reproductive Harm -**  
12 **www.P65Warnings.ca.gov."** accompanied by and placed to the right of a symbol  
13 consisting of a black exclamation point in a yellow equilateral triangle with a bold black  
14 outline sized to be no smaller than the word, **"WARNING"** as provided by regulations  
15 adopted on or about August 30, 2016.

16 2.8 Nothing in this Settlement Agreement requires that warnings be provided for  
17 Covered Products sold for use outside the State of California.

18 2.9 The Parties understand and acknowledge that Proposition 65 permits warnings to  
19 be provided through mechanisms such as point-of-sale signs, which are not product labels and do  
20 not travel with products through interstate commerce. The use of other warning methods, such  
21 as labels and in-manual warnings under this Settlement Agreement, is consented to by the parties  
22 to the Settlement Agreement, and shall not be construed to mean those methods are the only  
23 lawful means of compliance with Proposition 65.

24 2.10 Settling Defendant shall use any (or all) of the following methods to provide the  
25 warnings required by this Settlement Agreement:

26 i. Inclusion in every Master Safety Data Sheet (MSDS);  
27  
28

- 1 ii. Inclusion on every box of tile (either by label or printing directly on to the
- 2 box);
- 3 iii. Providing a "pop-up" warning for online customers;
- 4 iv. In-store warning signs (see Section 2.11 below); or
- 5 v. Any other method that complies with the warning regulations by
- 6 regulations adopted on or about August 30, 2016.

7 2.11. **Warnings in-stores.** If Settling Defendant is required to provide a warning for a  
8 Covered Product under subparagraph 2.1, it may provide that warning in the form of an in-store  
9 warning sign for that Covered Product if all the following conditions are met:

10 a. **Placement.** Warning signs *must* be placed directly next to each Covered  
11 Product(s). Warning signs *may* also be placed at the entrance/exit, check-out counter,  
12 store aisles where the Covered Product(s) are sold.

13 b. **Size and Font.** Each warning sign must be clear, unambiguous, and  
14 printed in a font large enough to be read by the average consumer. Nothing in this sub-  
15 section shall be read to contradict the regulations governing the size and font of  
16 Proposition 65 warnings.

17 c. **Specificity.** Each warning sign must specify for which Covered Product it  
18 is being provided. This sign shall specify any (or all) of the following information: the  
19 product name, UPC, SKU, color, or any other features which will identify the Covered  
20 Product to customers. In addition, the sign may use an indication symbol, such as an  
21 arrow, to indicate the location of the Covered Product in relation to the warning sign.

22 2.12. The Parties agree that the specifications for Compliant Warnings in this  
23 Settlement Agreement are consistent with Proposition 65 and its regulations as of the date of this  
24 Settlement Agreement, and regulations adopted on or about August 30, 2016 to become effective  
25 August 30, 2018.

26 2.13. If modifications or amendments to Proposition 65 or its regulations after the  
27 Effective Date are inconsistent with, or provide warning specifications or options different from,

1 the specifications in this Settlement Agreement, Defendant may modify the content and delivery  
2 methods of its warnings to conform to the modified or amended provisions of Proposition 65 or  
3 its regulations.

4 **3. PAYMENTS**

5 3.1 Within five (5) business days of the Effective Date, Shefa shall notify Settling  
6 Defendant that the Settlement Agreement has become effective. Within ten (10) business days  
7 following the date of notice by Shefa to Settling Defendant of the Effective Date, Settling  
8 Defendant shall make a Total Settlement Payment of \$11,250.00 by delivering checks payable to  
9 "Shefa LMV, Inc." and "Law Office of Daniel N. Greenbaum" as set forth below to counsel for  
10 Shefa.

11 3.2 The funds paid by Settling Defendant shall be allocated as follows:

12 a. **Civil Penalty.** A civil penalty in the amount of \$1,000.00 payable to  
13 "Shefa LMV, Inc.," pursuant to Health & Safety Code § 25249.7(b), with  
14 such money to be apportioned and distributed by Shefa in accordance with  
15 Health & Safety Code § 25249.12 as follows: 25% to Shefa (\$250.00)  
16 and 75% to the State of California's Office of Environmental Health  
17 Hazard Assessment ("OEHHA") (\$750.00)

18 b. **Attorneys' Fees and Costs.** A reimbursement of Shefa's attorney's fees  
19 and costs in the amount of \$10,250.00 payable to the "Law Office of  
20 Daniel N. Greenbaum."

21 3.3 Shefa shall provide and deliver to Settling Defendant a W-9 for each payment  
22 noted above upon request.

23 **4. CLAIMS COVERED AND RELEASED**

24 4.1 **Full and Binding Resolution of Proposition 65 Allegations:** This Settlement  
25 Agreement is a full, final, and binding resolution between

26 (i) Shefa on behalf of itself and the public interest; and  
27

1 (ii) Settling Defendant and their affiliates, their former affiliates, any person or entity  
2 who directly or indirectly owns or controls, is owned or controlled by, or is under common  
3 ownership or control with Settling Defendant, and their current and past directors, officers,  
4 employees, and attorneys ("Defendant Releasees"); and each entity to whom (or from whom)  
5 any of them directly or indirectly distribute, receive for distribution, and/or sell the Covered  
6 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,  
7 cooperative members, licensors, and licensees ("Distributor Releasees"), of any violation of  
8 Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant,  
9 Defendant Releasees, and Distributor Releasees, based on failure to warn about an alleged  
10 exposure to Lead from the reasonably foreseeable use of the Covered Products shipped,  
11 distributed, or sold by Settling Defendant, Defendant Releasees, and Distributor Releasees prior  
12 to 120 days after the Effective Date.

13 **4.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,  
14 representatives, attorneys, and successors and/or assignees, and not in its representative capacity,  
15 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a  
16 bar to all Claims under Proposition 65 and any other statutory or common law, that are or may  
17 be asserted against Settling Defendant, Defendant Releasees, and Distributor Releasees, whether  
18 known or unknown, suspected or unsuspected, arising out of alleged exposures to, and/or failure  
19 to warn of alleged exposures to, Lead from the Covered Products shipped, distributed, or sold  
20 prior to 120 days after the Effective Date by Settling Defendant, Defendant Releasees, and  
21 Distributor Releasees.

22 **4.3 General Release:** It is possible that other Claims not known to the Parties which  
23 arise out of the facts alleged in the Notices and/or the Complaint will develop or be discovered.  
24 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and successors  
25 and/or assigns, and not in its representative capacity, acknowledges that this Settlement  
26 Agreement is expressly intended to cover and include all such Claims, including all rights of  
27 action therefor. Shefa has full knowledge of the contents of Civil Code § 1542. Shefa

1 acknowledges that the Claims released in Sections 4.1 and 4.2 include unknown Claims, and  
2 Shefa nevertheless waives Civil Code § 1542 as to any such unknown Claims. Civil Code §  
3 1542 reads as follows:

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

9 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and  
10 successors and/or assignees, and not in its representative capacity, acknowledges and  
11 understands the significance and consequences of this specific waiver of Civil Code § 1542.

12 4.4 Compliance with the terms of this Settlement Agreement by Settling Defendant  
13 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and  
14 Distributor Releasees with respect to any alleged failure to warn about Lead in Covered Products  
15 manufactured, distributed, or sold by Settling Defendant, Defendant Releasees, and Distributor  
16 Releasees 120 days after the Effective Date.

17 4.5 Nothing in this Section 4 affects Shefa's right to commence or prosecute an action  
18 pursuant to Proposition 65 against any person other than Settling Defendant, Defendant  
19 Releasees, or Distributor Releasees.

## 18 5. ENFORCEMENT

19 5.1 Shefa may, by motion or application for an order to show cause before the  
20 Superior Court of Alameda County, enforce the terms and conditions contained in this  
21 Settlement Agreement.

22 5.2 Prior to bringing any motion or application to enforce the requirements of this  
23 Settlement Agreement, Shefa shall provide Settling Defendant with a Notice of Violation and  
24 proof of purchase and a copy of any test results which purportedly support the Notice of  
25 Violation.

1 5.3 The Parties shall then meet and confer regarding the basis for the anticipated  
2 motion or application to resolve it informally, including providing Settling Defendant with a  
3 reasonable opportunity of at least sixty (60) days to cure any alleged violation.

4 5.4 Should such attempt at informal resolution fail, Shefa may file an enforcement  
5 motion or application.

6 **6. NOTICE**

7 6.1 When Shefa is entitled to receive any notice under this Settlement Agreement, the  
8 notice shall be sent by first class and electronic mail to:

9 Daniel N. Greenbaum  
10 Law Office of Daniel N. Greenbaum  
11 7120 Hayvenhurst Ave., Suite 320  
12 Van Nuys CA 91406  
13 dgreenbaum@greenbaumlawfirm.com

14 6.2 When Settling Defendant is entitled to receive any notice under this Settlement  
15 Agreement, the notice shall be sent by first class and electronic mail to:

16 SINSHEIMER JUHNKE MCIVOR & STROH, LLP  
17 David A. Juhnke, Esq.  
18 Ellen Drews, Esq.  
19 656 Santa Rosa Street, Suite 2A  
20 San Luis Obispo, CA 93401  
21 Email: Docket@SJMSLaw.com

22 6.3 Any Party may modify the person and address to whom the notice is to be sent by  
23 sending the other Party notice by electronic mail.

24 **7. MODIFICATION**

25 7.1 **Written Consent.** This Settlement Agreement may be modified from time to  
26 time by express signed written agreement of the Parties with the approval of the Court, or by an  
27 order of this Court upon motion and in accordance with law.

28 7.2 **Meet and Confer.** Any Party seeking to modify this Settlement Agreement shall  
attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
modify the Settlement Agreement.

1    **8.    COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

2            8.1    Shefa agrees to comply with the reporting form requirements referenced in Health  
3 and Safety Code § 25249.7(f).

4    **9.    COURT APPROVAL**

5            9.1    This Settlement Agreement shall become effective upon entry by the Court of  
6 judgment pursuant to Health & Safety Code §§ 25249.7.

7    **10.   OTHER TERMS**

8            10.1   No supplementation, modification, waiver, or termination of this Settlement  
9 Agreement shall be binding unless executed in writing by the Party to be bound thereby, except  
10 as provided by §§ 8.1 & 8.2.

11           10.2   No waiver of any of the provisions of this Settlement Agreement shall be deemed  
12 or shall constitute a waiver of any of the other provisions hereof whether similar, nor shall such  
13 waiver constitute a continuing waiver.

14           10.3   Nothing in this Settlement Agreement shall release, or in any way affect any  
15 rights Settling Defendant might have against any other party, whether or not that party is a  
16 Defendant Releasee or Distributor Releasee.

17           10.4   This Court shall retain jurisdiction of this matter to implement or modify the  
18 Settlement Agreement.

19           10.5   The Parties agree that, in any subsequent interpretation and construction of this  
20 Settlement Agreement, no inference, assumption, or presumption shall be drawn, and no  
21 provision of this Settlement Agreement shall be construed against any Party, since one of the  
22 Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the  
23 Settlement Agreement.

24           10.6   It is conclusively presumed that all the Parties participated equally in the  
25 preparation and drafting of this Settlement Agreement.  
26  
27  
28

11. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF  
SETTLEMENT AGREEMENT

11.1 This Settlement Agreement came before this Court upon the request of the  
Parties.

11.2 The Parties request the Court to review this Settlement Agreement and to make  
the following findings pursuant to Health & Safety Code § 25249.7(f)(4):

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

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

c. The civil penalty amount to be paid pursuant to Settlement Agreement is  
reasonable.

AGREED TO

Dated: 07/27/2017

FOR: SHEFA LMV, INC.

By: 

Its: Director

Dated: 7/26/17

FOR: NATIVE TRAILS, INC.

By: 

Its: President

~~PROPOSED STIPULATED JUDGMENT~~

Please note that on 1/16, 2018 ~~8/30/2018~~ Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Native Trails, Inc. <sup>was granted.</sup> ~~came for hearing before this Court in Department 2, the Honorable~~  
~~presiding Counsel for Plaintiff did [not] appear, counsel for Defendant did [not] appear.~~

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

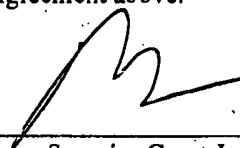
~~a. The injunctive relief required by the Settlement Agreement complies with Health & Safety Code § 25249.7~~

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

~~c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.~~

*In accordance with the Order of January 16, 2018, IT IS HEREBY ADJUDGED and DECREED that judgment is entered*  
~~The Settlement Agreement is hereby approved, and the clerk is directed to enter judgment in accordance with the terms of the Settlement Agreement above.~~

1/16/18  
Date

  
Superior Court Judge