

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

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

PARTIES TO THE ACTION	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN JUDGMENT				
CASE INFO	COURT DOCKET NUMBER		COURT NAME		
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER	
	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 / /		For Internal Use Only
	COPY OF JUDGMENT MUST BE ATTACHED				
FILER INFO	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.

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

6 Attorney for Plaintiff SHEFA LMV, INC.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 26 2018

Sherrin Carter, Executive Officer/Clerk
By: J. Richardson, Deputy
T. Richardson

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 SHEFA LMV, INC.,

11 Plaintiff,

12 vs.

13 MOREFLAVOR, INC. DBA
14 BREWMASTER; and DOES 1 through
10, Inclusive,

15 Defendants.

Case No. BC685121

Hon. Michael L. Stern
Dept. 62

**[PROPOSED] CONSENT JUDGMENT
AS TO MOREFLAVOR, INC. DBA
BREWMASTER**

Action filed: November 30, 2017

1 Settling Defendant; (ii) venue is proper in the County of Los Angeles; and (iii) this Court has
2 jurisdiction to enter this Consent Judgment.

3 1.9 Nothing in this Consent Judgment is or shall be construed as an admission by any
4 of the Parties of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
5 compliance with the Consent Judgment constitute or be construed as an admission by any of the
6 Parties of any fact, finding, conclusion of law, issue of law, or violation of law.

7 1.10 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
8 remedy, argument, or defense the Parties may have in any other legal proceeding.

9 1.11 This Consent Judgment is the product of negotiation and compromise and is
10 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
11 this action.

12 1.12 The term "Effective Date" means the date on which this Consent Judgment is
13 approved and entered by the Court.

14 1.13 Shefa shall file a dismissal as to the entire case within (thirty) 30 days after entry
15 of this Consent Judgment by the Court.

16 2. INJUNCTIVE RELIEF

17 2.1 **Warning Requirement.** Beginning on or as of the Effective Date, any Covered
18 Products that are manufactured more than thirty (30) days after the Effective Date, and which
19 Settling Defendant sells in California, markets or distributes for sale in California, or offers for
20 sale to a third party for retail sale in California, shall either: (1) contain only low lead brass¹ or
21 brass that contains zero amounts of lead ("Reformulated"); or (2) satisfy the warning
22 requirements set forth in this Section 2.

23 2.2 **Proposition 65 Warnings.** Covered Products that are not Reformulated are
24 compliant with Proposition 65 and this Consent Judgment if warnings are provided on the
25 product label, packaging, including the packing slip or invoice for products shipped directly to

26 _____
27 ¹ Brass alloy containing 0.25% or less lead is known as "low lead" brass, as opposed to the more
typical alloy which contains 5% lead.

1 **3.2.1 Civil Penalty.** Defendant shall pay \$5,000.00 as a civil penalty
2 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be
3 apportioned in accordance with Health & Safety Code § 25249.12 (25% to Shefa and
4 75% to the State of California's Office of Environmental Health Hazard Assessment
5 ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment in the
6 amount of \$3,750.00 shall be made payable to OEHHA and associated with taxpayer
7 identification number 68-0284486. This payment shall be 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
21 \$1,750.00 shall be made payable to Shefa LMV, Inc. and associated with
22 taxpayer identification number 81-0907002. This payment shall be delivered
23 by Settling Defendant to the Law Office of Daniel N. Greenbaum, 7120
24 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

25 **3.2.2 Attorney's fees and Costs.** A reimbursement of Shefa's attorney's fees
26 and costs in the amount of \$18,500.00 payable to the "Law Office of Daniel N.
27 Greenbaum," and associated with taxpayer identification number 46-4580172. This
28 payment shall be delivered by Settling Defendant to the Law Office of Daniel N.
Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

4. CLAIMS COVERED AND RELEASED

1 under Proposition 65, Bus. & Prof. Code §§ 17200 *et seq.*, or any other statutory or common
2 law, that are or may be asserted against Settling Defendant, Defendant Releasees, and
3 Distributor Releasees, whether known or unknown, suspected or unsuspected, arising out of
4 alleged exposures to, and/or failure to warn of alleged exposures to, lead or lead compounds in
5 Covered Products manufactured, imported, shipped, distributed, offered for sale, and/or sold by
6 Settling Defendant prior to thirty (30) days after the Effective Date.

7 4.4 **General Release:** It is possible that other Claims not known to the Parties arising
8 out of the facts alleged in the Notice or the Complaint will develop or be discovered. Shefa, on
9 behalf of itself, its past and current agents, representatives, attorneys, and successors and/or
10 assigns, and *not* in its representative capacity, acknowledges that this Consent Judgment is
11 expressly intended to cover and include all such Claims, including all rights of action therefor.
12 Shefa has full knowledge of the contents of Civil Code § 1542. Shefa acknowledges that the
13 Claims released in Sections 4.1, 4.2 and 4.3 include unknown Claims, and Shefa nevertheless
14 waives Civil Code § 1542 as to any such unknown Claims. Civil Code § 1542 reads as follows:

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

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

21 4.5 Compliance with the terms of this Consent Judgment by Settling Defendant shall
22 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
23 Distributor Releasees with respect to any alleged failure to warn about lead or lead compounds
24 in Covered Products manufactured, imported, shipped, distributed, offered for sale, and/or sold
25 by Settling Defendant more than thirty (30) days after the Effective Date.

1 4.6 Nothing in this Section 4 affects Shefa's right to commence or prosecute an action
2 under Proposition 65 against any person other than Settling Defendant, Defendant Releasees, or
3 Distributor Releasees.

4 **5. ENFORCEMENT**

5 5.1 The Parties may, by motion or application for an order to show cause before the
6 Superior Court of Los Angeles County, enforce the terms and conditions contained in this
7 Consent Judgment.

8 5.2 Prior to bringing any motion or application to enforce the requirements of Section
9 2 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
10 and a copy of any test results, which purportedly support the Notice of Violation.

11 5.3 Prior to bringing any motion or application to enforce any of the terms and
12 conditions contained in this Consent Judgment, the Parties shall meet and confer regarding the
13 basis for the anticipated motion or application in an attempt to resolve it informally, including
14 providing Settling Defendant with a reasonable opportunity of at least thirty (30) days to cure
15 any alleged violation.

16 5.4 Should such attempts at informal resolution fail, Shefa may file an enforcement
17 motion or application.

18 **6. ATTORNEYS' FEES**

19 6.1 Except as otherwise provided in this Consent Judgment, each Party shall bear its
20 own attorneys' fees and costs.

21 6.2 Nothing in this Section 6 shall preclude a Party from seeking an award of
22 sanctions pursuant to law.

23 **7. NOTICE**

24 7.1 When Shefa is entitled to receive any notice under this Consent Judgment, the
25 notice shall be sent by first class and electronic mail to:

26 Daniel N. Greenbaum
27 Law Office of Daniel N. Greenbaum

1 7120 Hayvenhurst Ave., Suite 320
2 Van Nuys CA 91406
3 dgreenbaum@greenbaumlawfirm.com

4 7.2 When Settling Defendant is entitled to receive any notice under this Consent
5 Judgment, the notice shall be sent by electronic mail to:

6 Mr. Dan Lipscomb
7 MoreFlavor, Inc. DBA Brewmaster
8 701 Willow Pass Road, Suite 1
9 Pittsburg, CA 94565
10 danl@moreflavor.com

11 With a courtesy copy to:

12 Stuart Block, Esq.
13 STICE & BLOCK
14 2335 Broadway, Suite 201
15 Oakland CA 94612
16 Email: sblock@sticeblock.com

17 7.3 Any Party may modify the person and address to whom the notice is to be sent by
18 sending the other Party notice by electronic mail.

19 **8. MODIFICATION**

20 8.1 **Written Consent.** This Consent Judgment may be modified from time to time by
21 express written agreement of the Parties with the approval of the Court, or by an order of this
22 Court upon motion and in accordance with law.

23 8.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
24 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
25 modify the Consent Judgment.

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

27 9.1 Shefa agrees to comply with the reporting form requirements referenced in Health
28 and Safety Code § 25249.7(f).

10. COURT APPROVAL

10.1 This Consent Judgment shall become effective upon entry by the Court.

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AGREED TO:


Dated: 1/26/18

SHEFA LMV, INC.

By:  _____

Dated: 1/24/18

MOREFLAVOR, INC. DBA BREWMASTER

By:  _____

1 **ORDER AND JUDGMENT**

2 Please note that on ~~3-26~~, 2018 at ~~8:30A~~ Plaintiff Shefa LMV Inc.'s ("Plaintiff")
3 Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to
4 MoreFlavor, Inc. DBA Brewmaster, came on for hearing before this Court in Department 62, the
5 Honorable Michael L. Stern presiding. Counsel for Plaintiff did [not] appear; counsel for
6 Defendant did [not] appear.

7 After full consideration of the points and authorities and related pleadings submitted, the
8 Court 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 Agreement
14 is reasonable under California law; and
- 15 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.
16

17 The Settlement Agreement is hereby approved, and the clerk is directed to enter
18 judgment in accordance with the terms of the Settlement Agreement above.

19 MAR 26 2018

20 Dated: _____

21 **MICHAEL L. STERN**

22 _____
23 Judge of the Superior Court