State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

FORM JUS 1502 (03-01) Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

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 ☐ Supplement	ntal Filing		
	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN JUDGMENT				
PARTIES TO THE ACTION					
ж о	COURT DOCKET NUMBER		COURT NAME		
CASE	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER	Á l'O	
R	DATE SUBMITTED TO COURT	IS JUDGMENT PURSUANT TO SETTLEMENT?	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERA	AI S	
l PC	/ /	☐ Yes ☐ No	/ / /		
8	СОРУ О	For Internal Use Only			
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	CONFORMED COPY		
3	7120 Hayvenhurst Avenue, Suite 320 Van Nuys, CA 91406	ORIGINAL FILED Superior Court of California Caunty of Las Angeles		
٦	Telephone: (818) 809-2199			
4	Facsimile: (424) 243-7689	MAR 2 6 2018		
5	Email: dgreenbaum@greenbaumlawfirm.c	Sherri n. Garter, executive dilicer/Clerk By: J. Kuchandson, Deputy		
6	Attorney for Plaintiff SHEFA LMV, INC.	T. Richardson		
7	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
8	FOR THE COUNTY OF LOS ANGELES			
10	SHEFA LMV, INC.,	Case No. BC685121		
11	Plaintiff,	Hon. Michael L. Stern		
12	vs.	Dept. 62		
13	MOREFLAVOR, INC. DBA	[PROPOSED] CONSENT JUDGMENT		
14	BREWMASTER; and DOES 1 through 10, Inclusive,	AS TO MOREFLAVOR, INC. DBA BREWMASTER		
15	Defendants.			
16		Action filed: November 30, 2017		
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# (7)	[PROPOSED] CONSENT JUDGMENT	AS TO MOREFLAVOR, INC. DBA BREWMASTER		

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The products covered by this Consent Judgment are brass hardware fittings and 1.2 products manufactured, distributed and/or sold by Settling Defendant that contain lead and/or lead compounds ("Lead" or "Pb"), including, but not limited to, Brewmaster OxyWand

MoreFlavor, Inc. DBA Brewmaster ("Settling Defendant") (collectively the "Parties").

The parties to this Consent Judgment are Shefa LMV, Inc. ("Shefa") and

Oxygenation System, FE392A and the In-Line Check/Ball Valve D1870 (collectively, the

"Covered Products").

On or about April 6, 2017, Shefa mailed a 60-Day Notice of Violation under 1.3

Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety

Code §§ 25249.5, et seq.) ("Notice") to Settling Defendant, the California Attorney General, the

District Attorneys of every County in the State of California, and the City Attorneys for every

City in the State of California with a population greater than 750,000.

The Notice alleges violations of Proposition 65 with respect to the presence of 1.4

Lead in certain of the Covered Products sold, distributed and/or manufactured by Settling

Defendant.

On or about November 30, 2017, Shefa filed the Complaint in the instant matter 1.5

("Complaint") alleging Proposition 65 violations as to the Covered Products sold in California

by Settling Defendant.

Settling Defendant denies the material, factual, and legal allegations contained in 1.6

the Notice and Complaint, including all claims of alleged violations asserted against it in the

Complaint, and denies that it has any liability under Proposition 65.

Settling Defendant maintains that all of the products that it has manufactured, 1.7

imported, distributed, sold, and/or offered for sale in California, including the Covered Products,

have been, and are, in compliance with all laws.

For purposes of this Consent Judgment only, the Parties stipulate that: (i) this 1.8

Court has jurisdiction over the allegations contained in the operative Complaint applicable to

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

- 1.9 Nothing in this Consent Judgment is or shall be construed as an admission by any of the Parties of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by any of the Parties of any fact, finding, conclusion of law, issue of law, or violation of law.
- 1.10 Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any other legal proceeding.
- 1.11 This Consent Judgment is the product of negotiation and compromise and is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in this action.
- 1.12 The term "Effective Date" means the date on which this Consent Judgment is approved and entered by the Court.
- 1.13 Shefa shall file a dismissal as to the entire case within (thirty) 30 days after entry of this Consent Judgment by the Court.

2. INJUNCTIVE RELIEF

- 2.1 Warning Requirement. Beginning on or as of the Effective Date, any Covered Products that are manufactured more than thirty (30) days after the Effective Date, and which Settling Defendant sells in California, markets or distributes for sale in California, or offers for sale to a third party for retail sale in California, shall either: (1) contain only low lead brass¹ or brass that contains zero amounts of lead ("Reformulated"); or (2) satisfy the warning requirements set forth in this Section 2.
- 2.2 Proposition 65 Warnings. Covered Products that are not Reformulated are compliant with Proposition 65 and this Consent Judgment if warnings are provided on the product label, packaging, including the packing slip or invoice for products shipped directly to

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.

consumers in California, or affixed to the product itself, in accordance with Sections 2.3 and 2.4. For Covered Products that are sold by third-party retailers in California, Settling Defendant may provide labels with the requisite warning to the third-party retailer with instructions for attaching the labels to the Covered Products before they are sold or offered for retail sale in California. Settling Defendant shall also include a warning, in accordance with applicable provisions of Sections 2.3 and 2.4, on its website for any Covered Products.

2.3 Product Labeling. Warnings that are provided through one or more of the methods described in Section 2.2 shall state:

"WARNING: This product contains lead and/or lead compounds, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm."

- 2.4 Warning Placement. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning must be at least the same size as the largest of any other health or safety warnings appearing on the product label, as applicable, of such product. To the extent any subsequent revisions to Proposition 65 or its implementing regulations require or allow for additional or different warning language, Settling Defendant may revise the above warning to comply with such new law or regulations.
- 2.5 **Sell Through Period.** Settling Defendant will have sixty (60) days following the Effective Date to sell any inventory of Covered Products that are not Reformulated and that do not comply with the warning requirements above.

3. SETTLEMENT PAYMENTS

- 3.1 Payment from Defendant. Within ten (10) business days of the Effective Date, Defendant shall make the Total Settlement Payment of \$23,500.00 by delivering checks, as set forth below, to counsel for Shefa.
- 3.2 Allocation of Payments. The Total Settlement Payment shall be paid in three
 (3) separate checks made payable and allocated as follows:

3.2.1 Civil Penalty. Defendant shall pay \$5,000.00 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment in the amount of \$3,750.00 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

The Shefa portion of the civil penalty payment in the amount of \$1,750.00 shall be made payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002. This payment shall be delivered by Settling Defendant to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3.2.2 Attorney's fees and Costs. A reimbursement of Shefa's attorney's fees and costs in the amount of \$18,500.00 payable to the "Law Office of Daniel N. Greenbaum," and associated with taxpayer identification number 46-4580172. This 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

- 4.1 Full and Binding Resolution of Proposition 65 Allegations: This Consent Judgment is a full, final, and binding resolution between:
 - (i) Shefa on behalf of itself and the public interest; and
- (ii) Settling Defendant and each of its parents, subsidiaries, affiliates ("affiliate" means a person or entity who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, Settling Defendant), former affiliates, and its current and past directors, officers, shareholders, employees and attorneys ("Defendant Releasees"), and each entity to whom (or from whom) any of them directly or indirectly distribute, receive for distribution and/or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, including, but not limited to, Home Brew Mart, Inc., d/b/a Ballast Point Brewing Co., franchisers, cooperative members, licensors, and licensees ("Distributor Releasees"); of any violation of Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant, Defendant Releasees, and/or Distributor Releasees, based on failure to warn about alleged exposure to lead or lead compounds contained in Covered Products manufactured, imported, shipped, distributed, offered for sale and/or sold by Settling Defendant prior to thirty (30) days after the Effective Date.

4.2 Shefa's Public Release of Proposition 65 Claims

Shefa, on behalf of itself and the public interest, releases Settling Defendant, Defendant Releasees, and Distributor Releasees for any violations arising under Proposition 65 based on any alleged exposure to lead or lead compounds from Covered Products manufactured, imported, shipped, distributed, offered for sale, and/or sold by Settling Defendant prior to thirty (30) days after the Effective Date.

4.3 Individual Release: Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assignees, and **not** in its representative capacity, hereby provides a release that shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands (collectively referred to herein as "Claims")

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

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS 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.

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

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

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

5. ENFORCEMENT

- 5.1 The Parties may, by motion or application for an order to show cause before the Superior Court of Los Angeles County, enforce the terms and conditions contained in this Consent Judgment.
- 5.2 Prior to bringing any motion or application to enforce the requirements of Section 2 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase and a copy of any test results, which purportedly support the Notice of Violation.
- 5.3 Prior to bringing any motion or application to enforce any of the terms and conditions contained in this Consent Judgment, the Parties shall meet and confer regarding the basis for the anticipated motion or application in an attempt to resolve it informally, including providing Settling Defendant with a reasonable opportunity of at least thirty (30) days to cure any alleged violation.
- 5.4 Should such attempts at informal resolution fail, Shefa may file an enforcement motion or application.

6. ATTORNEYS' FEES

- 6.1 Except as otherwise provided in this Consent Judgment, each Party shall bear its own attorneys' fees and costs.
- 6.2 Nothing in this Section 6 shall preclude a Party from seeking an award of sanctions pursuant to law.

7. NOTICE

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

Daniel N. Greenbaum Law Office of Daniel N. Greenbaum

10.2 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Shefa shall prepare and file such motion, and Settling Defendant shall not oppose it.

11. OTHER TERMS

- 11.1 This Consent Judgment shall apply to and be binding upon Shefa, Settling Defendant, its affiliates, and successors or assigns of any of them.
- 11.2 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.
- 11.3 There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein.
- 11.4 No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.
- 11.5 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.
- 11.6 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.
- 11.7 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.
- 11.8 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
- 11.9 This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel.

11.10 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.

11.11 Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive Civil Code § 1654.

12. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable or no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered Products, then Settling Defendant may provide written notice to Shefa of any asserted change in law, and shall have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

13. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF CONSENT JUDGMENT

- 13.1 This Consent Judgment will be brought before this Court upon the request of the Parties. The Parties request the Court to review this Consent Judgment and to make the following findings pursuant to Health & Safety Code § 25249.7(f)(4):
 - a. The injunctive relief required by the Consent Judgment complies with Health & Safety Code § 25249.7;
 - The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is reasonable under California law; and
 - c. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.

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5	Dated: 1/26/18 SHEFA LMV, INC.
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10	Dated: 1/24/18 MOREFLAVOR, INC. DBA BREWMASTER
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28	Page 12 [PROPOSED] CONSENT JUDGMENT AS TO MOREFLAVOR, INC. DBA BREWMASTER
	[FAUTURED] CONSENT RODOMENT AS TO MORELLA FOR, INC. DDA DREWMASTER

ORDER AND JUDGMENT

Please note that on 3-24, 2015 at 8:3244 Plaintiff Shefa LMV Inc.'s ("Plaintiff")

Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to

MoreFlavor, Inc. DBA Brewmaster, came on for hearing before this Court in Department 62, the

Honorable Michael L. Stern 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;
- 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.

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

MAR 2 6 2018
Dated:

AICHAEL L. STERN

Judge of the Superior Court

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