

SETTLEMENT AGREEMENT

BETWEEN

SHEFA LMV, LLC,

STATE INDUSTRIES, INC.

AND

ACE HARDWARE CORPORATION

Shefa LMV, LLC ("SHEFA"), STATE INDUSTRIES, INC. ("State Industries") and ACE HARDWARE CORP. ("ACE Hardware"), (SHEFA, State Industries and ACE Hardware collectively referred to as, the "Parties") enter into this agreement ("Settlement Agreement") for the purpose of avoiding prolonged and costly litigation to settle SHEFA's allegations that State Industries and ACE Hardware violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the "Effective Date").

**1.0 Introduction**

1.1 SHEFA is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 State Industries previously sold, at various times, Temperature and Pressure (T&P) and Drain Valves, including but not limited to Water Heater Valves, UPC #: 020363104597 (referred to throughout as the "Covered Products") to various customers including ACE Hardware. The Covered Products are limited to those originally sold by State Industries prior to the Effective Date.

1.3 SHEFA alleges that Covered Products contain Lead and Lead Compounds and

that State Industries did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code § 25249.5, et seq.* ("Proposition 65")).

1.4 On February 27, 1987, the Governor of California added Lead to the list of chemicals known to the State to cause developmental, female and male reproductive toxicity.

1.5 On October 1, 1992, the Governor of California added Lead and Lead Compounds to the list of chemicals known to the State to cause cancer.

1.6 These additions took place more than twelve (12) months before SHEFA served its "Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" which is further described below.

1.7 Lead and Lead Compounds is referred to hereafter as the "Listed Chemical."

1.8 On or about January 16, 2014, SHEFA served ACE Hardware; State Industries Inc.; and A. O. Smith Water Products Co., as well as certain relevant public enforcement agencies with documents entitled "Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" regarding Covered Products containing the Listed Chemical. State Industries is a wholly owned subsidiary of A. O. Smith Corporation ("A. O. Smith").

1.9 The Sixty-Day Notice (referred to as "Notice") alleged that the noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemical.

1.10 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute").

1.11 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.

1.12 Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by State Industries or ACE Hardware, their retailers, officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

1.13 Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that SHEFA, State Industries or ACE Hardware may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

## **2.0 Releases**

2.1 Excluding only SHEFA's ability to file a Complaint pursuant to Section 15, this Settlement Agreement is a full, final, and binding resolution between SHEFA on the one hand and (a) State Industries, ACE Hardware and their owners, parents, subsidiaries, affiliates, sister and related companies, including but not limited to any other subsidiary or entity affiliated with A. O. Smith, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively "Releasees") and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,

cooperative members, licensees, and all of such entities' owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns ("Downstream Releasees"), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the Covered Products manufactured, shipped, and/or otherwise distributed by State Industries prior to the Effective Date, even if sold by ACE Hardware or any Downstream Releasees after the Effective Date.

2.2 SHEFA, its past and current agents, representatives, attorneys, successors, and/or assignees, acting in their individual capacity and not in its representative capacity, hereby waive and release with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees), whether known or unknown, suspected or unsuspected, accrued or not yet accrued (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Products manufactured, shipped, and/or otherwise distributed by State Industries prior to the Effective Date, even if sold by ACE Hardware or any Downstream Releasees after the Effective Date, including without limitation any claims related to Releasees' and/or Downstream Releasees'

alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

2.3 SHEFA acknowledges that it is familiar with Section 1542 of Civil Code, which provides 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 only, acknowledges that the Claims released herein may include unknown claims and it expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. SHEFA acknowledges and understands the significance and consequences of this specific waiver of Civil Code Section 1542.

### **3.0 State Industries's Duties**

3.1 State Industries agrees, promises, and represents that after the Effective Date, State Industries shall provide warnings on such Covered Products that comply with Proposition 65.

3.2 The Parties agree that product labeling stating that "California Proposition 65 Warning: This product contains a chemical known to the state of California to cause cancer, birth defects or other reproductive harm." shall constitute compliance with Proposition 65 with respect

to Paragraph 3.1.

#### 4.0 **Payments**

4.1 State Industries agrees to pay a total of twenty seven thousand five hundred dollars (\$27,500.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: Seventeen thousand and five hundred dollars (\$17,500.00) of such payment shall be paid to Law Office of Daniel N. Greenbaum, as SHEFA's attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to State Industries's attention. The check shall be delivered to: Daniel N. Greenbaum, 14752 Otsego Street, Sherman Oaks, California 91403. By the Effective Date, Law Office of Daniel N. Greenbaum shall provide State Industries with its EIN.

4.1.2 Penalty: State Industries shall issue two (2) separate checks for a total amount of ten thousand dollars (\$10,000.00) as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of seven thousand five hundred dollars (\$7,500.00), representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC in the amount of two thousand five hundred dollars (\$2,500.00), representing 25% of the total penalty.

4.1.3 The OEHHA payment shall be delivered to: Office of Environmental Health Hazard Assessment, Attn.: Mike Gyrics, Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95812-4010. The payment to Shefa shall be delivered to:

Daniel N. Greenbaum, 14752 Otsego Street, Sherman Oaks, California 91403.

4.1.4 Tax Forms: Additionally, two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$7,500.00. The second 1099 shall be issued in the amount of \$2,500.00 to SHEFA and delivered to: Daniel N. Greenbaum, 14752 Otsego Street, Sherman Oaks, California 91403.

## **5.0 Authority to Enter Into Settlement Agreement**

5.1 SHEFA represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind SHEFA to this Settlement Agreement.

5.2 State Industries represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind State Industries to this Settlement Agreement.

5.3 ACE Hardware represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind SHEFA to this Settlement Agreement.

## **6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California**

6.1 SHEFA shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

## **7.0 Execution in Counterparts and Facsimile**

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document.

7.2 A facsimile or portable document format (PDF) signature shall be as valid as the original.

## **8.0 Entire Agreement**

8.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the settlement of this matter, and all related prior discussions, negotiations, commitments, and understandings between the Plaintiff and the Releasees.

8.2 No other agreements, oral or otherwise, exist to bind any of the Parties.

## **9.0 Modification of Settlement Agreement**

9.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

## **10.0 Application of Settlement Agreement**

10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, SHEFA and the Releasees and Downstream Releasees identified in Section 2 above.

## **11.0 Enforcement of Settlement Agreement**

11.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 11.2 and 11.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

11.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against State Industries or ACE Hardware by SHEFA, unless the party seeking enforcement or



alleging violation notifies the other party of the specific acts alleged to breach this Settlement Agreement at least 90 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 11.3 below. Any notice must contain (a) the name and serial number of the product, (b) specific dates when the product was sold after the Effective Date in California without a warning that complies with Proposition 65, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

11.3 Within thirty (30) days of receiving the notice described in Section 11.2, the receiving party shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to State Industries, or (2) refute the allegation of a violation of this Settlement Agreement. Should the parties be unable to resolve the dispute, any party may seek relief under Section 11.1.

## **12.0 Notification Requirements**

12.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For SHEFA:

Daniel N. Greenbaum, Esq.  
Law Office of Daniel N. Greenbaum  
14752 Otsego Street  
Sherman Oaks, CA 91403

For State Industries:

Paul R. Dana

President of APCOM, a Division  
of State Industries, Inc.  
125 SE Pkwy  
Franklin, TN 37064

For ACE Hardware:  
Attn: Legal Dept.  
2200 Kensington Court  
Oak Brook, IL 60523

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

### **13.0 SEVERABILITY**

13.1 If subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

### **14.0 GOVERNING LAW**

14.1 The Terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

14.2 In the event that Proposition 65 is repealed, preempted or otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then State Industries shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, any Covered Products that are so affected.

14.3 This Settlement Agreement shall apply to and be binding upon the Parties and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

14.4 The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties.

14.5 This Settlement Agreement 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.

14.6 Each Party to this Settlement Agreement 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 Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

#### 15.0 CONSENT JUDGMENT


15.1 In the event that anyone appears and attempts to make a claim against State Industries, A. O. Smith, ACE Hardware, or Downstream Releasee or any of their subsidiaries or affiliates, alleging that such entity violated Proposition 65 in the manufacture, distribution or sale of any Covered Product, State Industries or ACE Hardware may send SHEFA a written request for SHEFA within 12 months after the Effective Date to draft and file a complaint, to incorporate the terms of this Settlement Agreement into a proposed consent judgment that provides a release in the public interest for the released Products, and to seek court approval of the consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, the parties agree to reasonably cooperate, and to use their best efforts and that of their counsel to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner. SHEFA shall be entitled to reasonable attorney fees, not to exceed \$10,000, and costs associated with pursuing a consent judgment from the requesting party.

AGREED TO:

Dated: 9/16/14

SHEFA LMV, LLC

By:



Alisa Fried  
Managing Member

Dated:

STATE INDUSTRIES

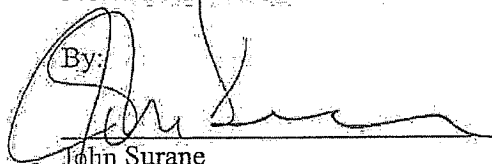
By:

Paul Dana  
President of APCOM, a Division of State  
Industries

Dated: 9/29/2014

ACE HARDWARE CORP.

By:



John Surane  
Executive Vice President, Ace Hardware Corp.

AGREED TO:

Dated:

SHEFA LMV, LLC

By: \_\_\_\_\_

Dated:

STATE INDUSTRIES

By:



Paul Dana  
President of APCOM, a Division of State  
Industries

Dated:

ACE HARDWARE CORP.

By:

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John Surane  
Executive Vice President, Ace Hardware Corp.