

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) <b>Shefa LMV LLC</b>				
	DEFENDANT(S) INVOLVED IN SETTLEMENT <b>PetEdge, Inc. d/b/a Top Pet Products</b>				
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>N/A</b>		COURT NAME <b>N/A</b>		
	SHORT CASE NAME <b>Shefa LMV LLC v. PetEdge, Inc. d/b/a Top Pet Products</b>				
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformulation and/or warning</b>				
	PAYMENT: CIVIL PENALTY <b>\$2,850</b>		PAYMENT: ATTORNEYS FEES <b>\$9,950</b>	PAYMENT: OTHER <b>0</b>	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" 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>07/19/2014</b>	For Internal Use Only
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>				
<b>FILER INFO</b>	NAME OF CONTACT <b>Daniel Greenbaum</b>				
	ORGANIZATION <b>Law Office of Daniel N. Greenbaum</b>			TELEPHONE NUMBER <b>((310)) 200-2631</b>	
	ADDRESS <b>14752 Otsego Street</b>			FAX NUMBER <b>((310)) 243-7689</b>	
	CITY <b>Sherman Oaks</b>	STATE <b>CA</b>	ZIP <b>91403-0000</b>	E-MAIL ADDRESS <b>danielgreenbaumesq@gmail.com</b>	

**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.

# SETTLEMENT AGREEMENT

BETWEEN

SHEFA LMV, LLC

AND

PETEDGE, INC.

Shefa LMV, LLC ("SHEFA"), a California limited liability company, and PETEDGE, INC. d/b/a TOPS PET PRODUCTS, a Massachusetts corporation with principal offices located at 100 Cummins Center, Suite 307B, Beverly, Massachusetts (hereto referred to as "TPP"), (SHEFA and TPP 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 TPP 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 TPP previously sold, at various times, certain liquid pet soaps and pet shampoos identified in the Notice as defined in Sections 1.6 and 1.7 below (referred to throughout as the "Covered Products"). The Covered Products are limited to those sold by TPP only or the Downstream Releasees as defined herein.

1.3 SHEFA alleges that Covered Products contain Cocamide Diethanolamine ("Cocamide DEA") and that TPP 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 June 22, 2012, the Governor of California added Cocamide DEA to the list of chemicals subject to Proposition 65 labeling requirements. These additions took place more than twelve (12) months before SHEFA served on TPP 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.

1.5 Cocamide DEA is referred to hereafter as the "Listed Chemical".

1.6 On or about February 27, 2014, SHEFA served TPP, Amazon.com, Inc.; SB Natural Products; zshoppingnetwork.com; Umbria Ollii Srl Via G. Agnelli; Miles Kimball; Ken Alta, Inc.; Hobe Laboratories, Inc.; Auromere, Inc.; and Pyranha, Inc., 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.

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

1.8 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").

1.9 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.

1.10 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 TPP, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

1.11 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 or TPP may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute, the claims released herein, or the Covered Products.

## **2.0 Mutual Release**

2.1 This Settlement Agreement is a full, final, and binding resolution between SHEFA, acting in its individual capacity, and on behalf of its managers, members, officers, employees, agents, representatives, attorneys, successors and assigns, on the one hand, and (a) Petedge, Inc., and its owners, parent companies, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively, the "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, included but not limited to Amazon.com, Inc. (collectively, the "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/or Downstream Releasees alleging a violation of Proposition 65 including but not limited to 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 prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date.

2.2 The Covered Products are limited to those sold by TPP or any of the Downstream Releasees. SHEFA, its past and current managers, members, officers, employees, agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases 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) (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 sold up to the Effective Date, including without limitation to the extent that such claims relate 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, its past and current agents, representatives, attorneys, successors, and/or assignees, in its individual and not representative capacity, 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.

### **3.0 TPP's Obligations**

3.1 After the Effective Date, TPP shall reformulate to exclude Cocamide DEA in the Covered Products or properly label any Covered Products manufactured after the Effective Date and offered for sale in California.

3.2 As of the Effective Date, to the extent it ships or sells any Covered Products in existing inventory that have not been reformulated, it will provide proper warning labels on such Covered Products that comply with Proposition 65.

3.3 The labels shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase.

3.4 Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

3.5 TPP shall provide Proposition 65 warnings on the products as follows: “**WARNING:** This product contains a chemical known to the State of California to cause cancer.” The word "WARNING" shall be in bold. TPP may elect to include the words "Wash hands after handling" on the warning but it is not required to do so.

3.6 TPP shall provide such warnings with the unit package of the products. Such warnings shall be prominently affixed to or printed on each product's label or package. The font of the warning shall be at least the same size as the font of other safety warnings, if any, on the product container.

#### **4.0 Payments**

4.1 TPP agrees, to pay a total of Twelve Thousand Eight Hundred Dollars (\$12,800.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: Nine thousand nine hundred and fifty dollars (\$9,950.00) 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 TPP'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 TPP with its EIN.

4.1.2 Penalty: TPP shall issue two (2) separate checks for a total amount of two thousand eight hundred and fifty dollars (\$2,850.00) 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 two thousand one hundred thirty seven and 50/100 dollars (\$2,137.50), representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC in the amount of seven hundred twelve and 50/100 dollars (\$712.50), representing 25% of the total penalty. 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.

4.1.3 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 \$2,137.50. The second 1099 shall be issued in the amount of \$712.50 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 TPP represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind TPP 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. 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 entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings.

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.

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 TPP by SHEFA, unless the party seeking enforcement or alleging violation notifies the other party in writing, served by means providing for third-party proof of delivery of said notice, 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 to TPP must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation, (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 30 days of receiving the notice described in Section 11.2, TPP 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 TPP, or (2) refute the information provided under Section 11.2. 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 TPP:

Burns & Levinson LLP, as counsel for Petedge, Inc.  
c/o Anatoly M. Darov, Esq.  
125 Summer Street  
Boston, MA 02110

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 TPP 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 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 Other Provisions**


15.1 The undersigned have read, understand and agree to all of the terms and conditions of this Settlement Agreement.

15.2 Except as explicitly provided herein, each Party is to bear its own fees and costs.

AGREED TO:

Dated: 7/19/14

SHEFA LMV, LLC

By:   
Name: Alisa Fried  
Title: Managing Member

Dated:

TOPS PETS PRODUCTS

By: \_\_\_\_\_  
Mark Dow, CFO

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AGREED TO:

Dated:

SHEFA LMV, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated:

TOPS PETS PRODUCTS

By:  \_\_\_\_\_  
Mark Dow, CFO

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