

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

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV, LLC			
	DEFENDANT(S) INVOLVED IN SETTLEMENT Magdalene, Inc. dba Thistle Farms			
CASE INFO	COURT DOCKET NUMBER n/a		COURT NAME n/a	
	SHORT CASE NAME n/a			
REPORT INFO	INJUNCTIVE RELIEF Reformulation to exclude Cocamide DEA			
	PAYMENT: CIVIL PENALTY 4000		PAYMENT: ATTORNEYS FEES 8000	PAYMENT: OTHER 0
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input checked="" 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 06 / 30 / 2014
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum			
	ORGANIZATION Law Office of Daniel N. Greenbaum		TELEPHONE NUMBER ((310)) 200-2631	
	ADDRESS 14752 Otsego Street		FAX NUMBER ((424)) 243-7689	
	CITY Sherman Oaks	STATE CA	ZIP	E-MAIL ADDRESS danielgreenbaumesq@gmail.com

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
MAGDALENE, INC. d/b/a THISTLE FARMS**

Shefa LMV, LLC ("SHEFA") and Magdalene, Inc. d/b/a Thistle Farms (hereto referred to as "Thistle"), (SHEFA and THISTLE 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 THISTLE 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 THISTLE previously sold, at various times, Liquid Soaps and Shampoos, including but not limited to the products described in **Exhibit A** attached hereto (referred to throughout as the "Covered Products"). The Covered Products are limited to those sold by THISTLE only.

1.3 SHEFA alleges that Covered Products contain Cocamide Diethanolamine ("Cocamide DEA") and that THISTLE 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 known to the State to cause cancer. 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.

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

1.6 On or about April 17, 2014, SHEFA served THISTLE, Amazon.com, Inc.; Je Veux LLC; Minerals Health and Nature products from the Dead Sea Ltd.; and Pur Minerals; 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 THISTLE and the other noticed parties 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 THISTLE, 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 THISTLE may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

2.0 Release

2.1 This Settlement Agreement is a full, final, and binding resolution between SHEFA, acting in its individual capacity, and not its representative capacity, on the one hand, and (a) THISTLE, and its owners, parents, subsidiaries, affiliates, sister and related companies, 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 individual retailers identified in **Exhibit B** ("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 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 THISTLE. SHEFA, its past and current 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 THISTLE's Duties

3.1 THISTLE agrees, promises, and represents that after the Effective Date THISTLE

shall reformulate any Covered Products manufactured after the Effective Date and offered for sale in California to exclude Cocamide DEA in the Covered Products.

3.2 THISTLE agrees, promises, and represents that, 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 warnings on such Covered Products that comply with Proposition 65.

3.3 The warnings 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 The Parties agree that product labeling stating that "**WARNING: This product contains chemicals known to the State of California to cause cancer**" shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in existing inventory that had not been reformulated and were distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

4.0 Payments

4.1 THISTLE agrees, to pay a total of twelve thousand dollars (\$12,000.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: Eight thousand dollars (\$8,000.00) 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 THISTLE'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 THISTLE with its EIN.

4.1.2 Penalty: THISTLE shall issue two (2) separate checks for a total amount of four thousand dollars (\$4,000.00) 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 three thousand dollars (\$3,000.00), representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC in the amount of one thousand dollars (\$1,000.00), 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 \$3,000.00. The second 1099 shall be issued in the amount of \$1,000.00 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 THISTLE represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind THISTLE 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 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. 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 THISTLE 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 to THISTLE 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, THISTLE 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 THISTLE, 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 THISTLE:
Richard Lodge
Bass Berry + Sims
150 Third Avenue South
Suite 2800
Nashville, TN 37201

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 THISTLE 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 Shefa and Harbor 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 Authorization

15.1 Each signatory to this Settlement Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement on behalf of the Party represented and legally bind that Party.


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

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


AGREED TO:

Dated: 6/30/2014

SHEFA LMV, LLC

By: 
[name]

Approved as to form:

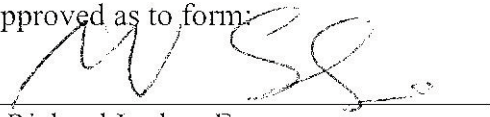

Daniel Greenbaum, Esq.
Attorney for Shefa LMV, LLC

Dated:

MAGDALENE, INC. D/B/A THISTLE
FARMS

By: 
Cary Rayson
Executive Director

Approved as to form:


J. Richard Lodge, Esq.
Attorney for Magdalene, Inc. d/b/a Thistle
Farms

13207235.1

Exhibit A

Bar Codes for Shower Gel – Standard 8 oz.

Lavender	Bar code # 859852003192
Citrus Vanilla	Bar code # 859852003215
Lemon Sage	Bar code # 859852003185
Tuscan Earth	Bar code # 859852003208
Tea Tree Mint	Bar code # 859852003222
Unscented	Bar code # 859852003239
Geranium	Bar code # 859852003246

Bar Codes for Shower Gel – Spa Kits 4 oz.

Lavender	Bar code # 897528001707
Tuscan Earth	Bar code # 897528001813

Bar Codes for Shower Gel – Summer Survival Kits 4 oz.

Geranium	Bar code # 897528001837
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Exhibit B (2 pages)

Vendor

Accessories For Hope
All God's Children
All Hands In
Bayou Book Co.
Beci's Bags & Baskets
Bellevue Massage
Bellevue Medispa
Belmont Bookstore
Better Way Imports
Bodywise Nutrition Center
Book Warehouse
Bookshop of Saint Michael
Bound For Freedom
Brown Dog Market
Cathedral Bookshop St. Mark's
Charlie Thigpen's Garden Gallery
Christ Church Bookstore- CT
Christ Church Bookstore- VA
Church of the Advent
Cindy Goldsmith Interiors
Coco Italian Market
Cody Gallaway Studios Intermezzo
Comfort Goods LLC
Compass Church
Dailey Method
Deb's Emporium
Delicate Fortress Creations
Dogwood Shop/Peatree Rd. UMC
Eclipse Trading Post
Eden Seminary Bookstore
Elizabeth College State
Emma's Flowers
Emmanuel Episcopal Church
Episcopal Bookstore- Memphis
Episcopal Bookstore- Washington
Episcopal High School
Fire Finch
Freedom Boutique
Frist Center
Gateway to Discover
Gatherings
Global Village
Good Bookstore
Green Door Gourmet
Green Goods for the Home

Vendor

Hairs to You LLC
Healing Touch Bookstore/Sterling Drug
Heavenly Hope Ministries
Hendersonville Produce
Holy Cross/ Monk's Cell
Holy Innocents/ Episcopal Church
Honduras Coffee Shop
Hot Pink
Hudson Group
Hunter Lea Gallery
In Exchange/Tulane University
In His Image Designs
Isaiah's Threads
Just Love Coffee Roasters
Kanuga Conferences
Kentucky Markethouse
Knowing Harmony
LaBellezza Salon
Labyrinth Wellness Center
Latitude Fair Trade
Lemon Fair
LeMoyne-Owen College
Lions Den Bookstore
Little Market
Love Mercy
Lucky Girl
Magdalene St. Louis
Main Street Marketplace of Dickson
Maranata Bible Conference
Martha's
Maryville Christian School
Melanie's Gifts & Arts
Mercantile on Main
My Sister's House
Nash Trunk & Bag
Nashville Convention & Visitors Bureau
Nashville Nails
Naturally gifted
Od's Car Wash
OLS Cosmetics French Shop
Our Giving Tree
Our Lady of the Prairie Retreat
Our Unique Gifts
Page & Pallete
Page After Page

Vendor

Peace of Quiche
Peacock Lane
Pear Tree Avenue
Perfect Potion
Polunary Permanent Makeup
Providence Auto Group
Purple Tree
Queen Bee Healthy & Well
Rebecca Lindley
Red Camel Superstore
Reeves Sain
ReSource Book & Global Gifts
Rethreaded
Sacred Garden Bookstore- Holy Trinity
Salon La Belle Maison
Salvation Army
Sands Florist
Scarritt Bennett Gifts
Second Presbyterian Church
Segway of Tennessee Tours
Semplice
Serendipity
Sheraton Music City Hotel
Sheridan Lutheran Church
Shop at Grace Cathedral
Simply Fair Trade
Sister's Keeper
Soza Market
Sprirt Works
Square One Salon
St. Andrew's Episcopal Church
St. Anne's Bookstore TX
St. Batholomew's
St. David's Episcopal Church
St. John's Bookstore- FL
St. John's Cathedral Bookstore
St. John's Episcopal Church (Browse & Buy)
St. John's Episcopal Church- Montgomery
St. Paul's Episcopal
St. Stephen's Episcopal
St. Stephen's Episcopal-VA
Studio 518
Swag
Symmetry
TN Museum Store

Vendor

Tree of Life
Trinity Episcopal Cathedral
Turnip Truck
Twice Blessed Charity
Union Presbyterian Seminary
Upper Room Chapel Bookstore
UT Bookstore
Verbendas of Gatlinburg
Villages of Africa
Viva Bookstore
Watercolors and Beyond
Wax Pot Studio
Well Coffeehouse
Whites Mercantile
Word of Life Christian Bookstore
Wren's Nest Center for Wellbeing
Yeiser Art Center
Your Core Being

Bags etc.

BK2 Source

Emily Magli