

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>Emergency Essentials LLC</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. Emergency Essentials LLC</b>				
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Warning and/or Reformulation</b>				
	PAYMENT: CIVIL PENALTY <b>\$750</b>		PAYMENT: ATTORNEYS FEES <b>\$2,750</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 / 16 / 2014</b>	<i>For Internal Use Only</i>
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>				
<b>FILER INFO</b>	NAME OF CONTACT <b>Daniel N. Greenbaum</b>				
	ORGANIZATION <b>Law Office of Daniel Greenbaum</b>			TELEPHONE NUMBER <b>((310)) 200-2631</b>	
	ADDRESS <b>14752 Otsego Street</b>			FAX NUMBER <b>((424)) 243-7689</b>	
	CITY <b>Sherman Oaks</b>		STATE ZIP <b>CA 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

This Settlement Agreement (“Agreement”) is entered into by and between Shefa LMV, LLC (“Shefa”) and Emergency Essentials, LLC (“Essentials”), with Shefa and Essentials individually referred to as a “Party” and collectively as the “Parties.”

### **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 Essentials employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

1.3 Shefa alleges that Essentials manufactures, imports, sells or distributes for sale in California, liquid soaps and shampoos that contain Cocamide Diethanolamine (“Cocamide DEA”) without first providing the clear and reasonable exposure warning required by Proposition 65. Cocamide DEA is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer. Cocamide DEA is referred to herein as the “Listed Chemical.”

As set forth herein, Essentials denies these allegations and contends that Proposition 65 requires no warning in connection with the sale of its liquid soaps and shampoos in California.

1.4 The products covered by this Agreement are liquid soaps and shampoos containing Cocamide DEA that are manufactured, sold, or distributed for sale in California by Essentials, including but not limited to *freshscent*<sup>™</sup> All-In-One Shave Lotion Shampoo & Body Wash (the “Covered Products”).

1.5 On or about May 29, 2014, Shefa served Essentials and others, including certain relevant public enforcement agencies, with a document titled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” (the “Notice”). The Notice alleges that Essentials and the other noticed parties violate Proposition 65 by failing to warn consumers in California that use of certain products, including the Covered Products, results in exposures to the Listed Chemical. To the best of the Parties’ knowledge, no public enforcer has commenced prosecuting the allegations contained in the Notice.

1.6 Essentials denies the material, factual, and legal allegations contained in the Notice and maintains that the Covered Products sold or distributed for sale in California have been, and are, in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Essentials of any fact, finding, conclusion of law, issue of law, or violation of law. Nor shall compliance with this Agreement be construed as or constitute an admission by Essentials of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Essentials.

1.7 For purposes of this Agreement, the term “Effective Date” shall mean July 18, 2014.

## **2.0 Injunctive Relief**

2.1 Within 120 of the Effective Date, Essentials shall not sell or offer for sale in California Covered Products that contain Cocamide DEA as an intentionally added ingredient in the product and/or any part of the product formulation, unless such Covered Products are sold or shipped with the warning set forth in Section 2.2

2.2 Each warning required by Section 2.1 shall be prominently placed upon a product’s label or other labeling with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display, as to render it likely to be read

and understood by an ordinary individual under customary conditions of purchase or use. Each warning shall be provided in a manner that the consumer or user understands to which specific product the warning applies, so as to minimize the risk of consumer confusion.

Essentials 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. The font of the warning shall be at least the same size as the font of any other safety warnings on the product, its label or labeling.

2.3 Liability for Covered Products that were manufactured and distributed for sale in California prior to 120 days after the Effective Date shall be subject to the release of liability set forth below, without regard to when such Covered Products were, or are in the future, sold to consumers.

### **3.0 Monetary Payments**

3.1 In settlement of the claims referred to in this Agreement, Essentials shall pay civil penalties in the amount of \$750 and expert and attorney fees and costs in the amount of \$2,750. No other penalties or fees and costs shall be paid by Essentials, and the Parties acknowledge and agree that expect as explicitly provided in this section, each Party is to bear its own fees and costs in this matter.

3.2 The penalty payment of \$750 shall be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Shefa. To this end, within ten (10) business days of receiving a fully executed copy of the Agreement, Essentials shall issue (a) one check made payable to

OEHHA in the amount of \$562.50, and (b) one check made payable to Shefa LMV, LLC in the amount of \$187.50.

The OEHHA payment shall be delivered by regular mail to: Office of Environmental Health Hazard Assessment, Attn.: Mike Gyrics, Fiscal Operations Branch Chief, P.O. Box 4010, Sacramento, California 95812-4010. The payment to Shefa shall be delivered by regular mail to: Daniel N. Greenbaum, 14752 Otsego Street, Sherman Oaks, California 91403.

3.3 As reimbursement for Shefa's reasonable expert and attorney fees and costs incurred in prosecuting the instant action, and for all work performed through execution of this Agreement, Essentials shall issue a check made payable to Law Office of Daniel N. Greenbaum in the amount of \$2,750 within ten (10) business days of receiving a fully executed copy of the Agreement. The payment to Law Office of Daniel N. Greenbaum shall be delivered by regular mail to: Daniel N. Greenbaum, 14752 Otsego Street, Sherman Oaks, California 91403.

#### **4.0 Release**

4.1 This Settlement Agreement is a full, final, and binding resolution between Shefa, acting in its individual capacity, on the one hand, and Essentials, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, agents, predecessors, successors, and assigns (collectively "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 regarding exposing persons to the Listed Chemical and/or the failure to warn about exposure to the Listed Chemical arising in connection with Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Releasees after the Effective Date.

4.2 Shefa, its past and current agents, representatives, attorneys, successors, related entities, and/or assigns, 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 attorney fees) (collectively "Claims"), against 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' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

4.3 Shefa acknowledges that it is familiar with California Civil Code section 1542, 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 California Civil Code section 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.

## **5.0 Enforcement of Settlement Agreement**

5.1 Any party may file suit before the Los Angeles County Superior Court, consistent with the provisions of Sections 5.2 and 5.3, to enforce the terms and conditions contained in this Agreement.

5.2 No action to enforce this Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Essentials by Shefa, unless the party seeking enforcement or alleging violation notifies the other party of the specific acts alleged to breach this 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 5.3 below. Any notice to Essentials 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.

5.3 Within 30 days of receiving the notice described in Section 5.2, Essentials 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 Essentials, or (2) refute the information provided under Section 5.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 5.1.

## **6.0 Notification Requirements**

6.1 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, California 91403

For Essentials:

Levi W. Heath  
Barnes & Thornburg LLP  
2029 Century Park East, Suite 300  
Los Angeles, California 90067

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

**7.0 Severability**

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

**8.0 Authority to Enter Into Settlement Agreement**

8.1 Shefa represents that its signatory to this Agreement has full authority to enter into and legally bind Shefa to this Agreement and all terms thereunder.

8.2 Essentials represents that its signatory to this Agreement has full authority to enter into and legally bind Essentials to this Agreement and all terms thereunder.

**9.0 Entire Agreement**

9.1 This 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.

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

## **10.0 Governing Law**

10.1 The terms of this Agreement shall be governed by the laws of the State of California. 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 Essentials shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, any Covered Products that are so affected.

## **11.0 Miscellaneous**

11.1 Shefa shall report this Agreement to the Office of the Attorney General within five (5) days of the Parties' execution of this Agreement.

11.2 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 California Civil Code section 1654.

11.3 This 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.

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

11.5 The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment.

Dated: July 14, 2014

SHEFA LMV, LLC

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

Dated: July \_\_\_\_, 2014

EMERGENCY ESSENTIALS, LLC

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

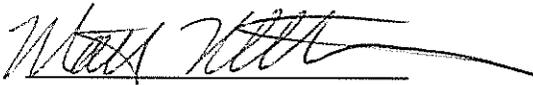
Dated: July \_\_\_\_, 2014

SHEFA LMV, LLC

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

Dated: July 16, 2014

EMERGENCY ESSENTIALS, LLC

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