

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 The Village Company				
CASE INFO	COURT DOCKET NUMBER N/A		COURT NAME N/A		
	SHORT CASE NAME N/A				
REPORT INFO	INJUNCTIVE RELIEF Reformulation and/or Warning Label				
	PAYMENT: CIVIL PENALTY \$6,000	PAYMENT: ATTORNEYS FEES \$23,000	PAYMENT: OTHER 0.00		
	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 10 / 27 / 2015	
	COPY OF SETTLEMENT MUST BE ATTACHED				For Internal Use Only
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum				
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199		
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698		
	CITY Van Nuys	STATE ZIP CA 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.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
THE VILLAGE COMPANY, LLC

Shefa LMV, LLC ("Shefa") and The TVC Company, LLC (hereto referred to as "TVC"), (Shefa and TVC 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 as set forth in that Proposition 65 60-Day Notice Letter dated August 28, 2014 ("Notice Letter") and as otherwise set forth herein. 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 alleges it 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 Shefa alleges TVC sold shampoo products identified as Mr. Bubble Foam Soap (referred to throughout as the "Covered Products") to California consumers.

1.3 For purposes of this Agreement, "Covered Products" also includes any other soaps, and shampoos, including additional formulations, manufactured, distributed or sold by or on behalf of TVC.

1.4 Shefa alleges in the Notice Letter that Covered Products contain Diethanolamine

("DEA").

1.5 Shefa alleges that TVC did not provide a warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code § 25249.5, et seq.* ("Proposition 65")). TVC denies that it was obligated to provide such warning.

1.6 On June 22, 2012, the State of California added DEA to the list of chemicals known to the State to cause cancer.

1.7 DEA is referred to hereinafter as the "Listed Chemical".

1.8 Prior to, and following receipt of the Notice Letter, TVC caused its Covered Products to be reformulated such that the Covered Products no longer contain DEA as an ingredient.

1.9 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties concerning the allegations in the Notice Letter (the "Dispute").

1.10 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 allegations in the Notice Letter nor any allegations of violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine.

1.11 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 TVC, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, or by any distributors or retailers selling Covered Products, 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 or TVC may have against one another in any other future legal proceeding as to allegations unrelated to the Dispute or to the other 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) TVC, 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 and licensees ("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 in connection with the Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Releasees or Downstream Releasees after the Effective Date.

2.2 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, 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.

2.4 This release and waiver shall not bar any future claims by Shefa where the alleged violations first arise after the Effective Date and where such alleged violations

concern listed chemicals other than DEA.

3.0 TVC's Duties

3.1 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products that have not been reformulated, it will provide warnings on such Covered Products that comply with Proposition 65.

3.2 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.

3.3 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.

3.4 The Parties agree that if any of the specific product identified by name in Section 1.2 remain in the stream of commerce and in California retail locations after the Effective Date, they may be sold by persons other than TVC without a warning under Proposition 65.

4.0 Payments

4.1 TVC agrees, to pay a total of \$29,000.00 within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: \$23,000.00 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 TVC's attention. The check shall be delivered to: Daniel N.

Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406. By the Effective Date, Law Office of Daniel N. Greenbaum shall provide TVC with its EIN.

4.1.2 Penalty: TVC shall issue two (2) separate checks for a total amount of \$6,000.00) 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 \$4,500.00, representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC in the amount of \$1,500.00, representing 25% of the total penalty.

4.1.3 The OEHHA payment shall be delivered to: Office of Environmental Health Hazard Assessment, Attn.: Mike Gyurics, Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95812-4010. The payment to Shefa, along with a copy of the OEHHA payment, shall be delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

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 \$4,500.00. The second 1099 shall be issued in the amount of \$1,500.00 to Shefa and delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

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 TVC represents that its signatory to this Settlement Agreement has full authority to

enter into and legally bind TVC 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 Alameda,

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 The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

11.3 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 TVC 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 11.5 below.

11.4 Any notice to TVC must contain (a) the name of the Covered Product, (b) specific dates when the Covered Product allegedly was manufactured, or distributed or directly sold by TVC in California after the Effective Date, (c) the store or other place at which the Covered Product was available for sale to California consumers, and (d) any other evidence or other support for the allegations in the notice.

11.5 Within 30 days of receiving the notice described in Section 11.2, TVC shall either (1) recover the offending product or (2) refute the information provided under Section 11.2.

11.6 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
7120 Hayvenhurst Avenue
Suite 320
Van Nuys, CA 91406

For TVC:

Robert L. Hines, Esq.
Farella Braun + Martell LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104

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 TVC 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 TVC 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 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 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.

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AGREED TO:

Dated: 10/27/2015

SHEFA LMV, LLC

By: 

Name: Alisa Fried

Title: Managing Member

Dated: 10/27/2015

THE TVC COMPANY, LLC

By: 

Name: Paul Norton

Title: CEO