

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 Frank J. Martin Co.				
CASE INFO	COURT DOCKET NUMBER N/A		COURT NAME N/A		
	SHORT CASE NAME N/A				
REPORT INFO	INJUNCTIVE RELIEF Warning Label				
	PAYMENT: CIVIL PENALTY \$1,750	PAYMENT: ATTORNEYS FEES \$8,250	PAYMENT: OTHER 0.00		
	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 5 / 20 / 2016	
	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 CA	ZIP 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, INC AND FRANK J. MARTIN CO.

Shefa LMV, Inc. ("SHEFA") and Frank J. Martin Co. ("FJM"), (SHEFA and FJM 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 FJM 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 FJM sold, at various times, brass padlocks, including but not limited to Olympus Lock BP125LS (referred to throughout as the "Covered Products") to various customers.

1.3 SHEFA alleges that Covered Products contain Lead and Lead Compounds and that FJM 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 March 15, 2016, SHEFA served FJM, as well as certain relevant public enforcement agencies with documents entitled "60 Day Notice of Violation – Sent in Compliance with California Health & Safety Code §25249.7(d)" regarding Covered Products containing the Listed Chemical.

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 FJM, 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 or FJM 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 This Settlement Agreement is a full, final, and binding resolution between SHEFA on the one hand and (a) FJM and their owners, parents, subsidiaries, affiliates, sister and related companies, including but not limited to any other subsidiary or entity affiliated with FJM, 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 Amazon.com, Inc., 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 FJM prior to the Sell Through Date. For purposes of this settlement agreement, the "Sell Through Date" shall be defined as six (6) months following 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 FJM prior to the Effective Date, even if sold by 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 include any unknown claims and it expressly waives and relinquishes any and all rights and benefits regarding any

such unknown claims 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 Frank J. Martin Co.'s Duties

3.1 FJM agrees, promises, and represents that by the Sell Through Date, FJM shall provide warnings on such Covered Products that comply with Proposition 65. The Sell Through period is necessary to provide warnings on all Covered Products and allow FJM to exhaust existing inventory and modify its product labels to include the required warnings.

3.2 The Parties agree that product labeling stating: "**WARNING:** This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm" shall constitute compliance with Proposition 65 with respect to Paragraph 3.1.

4.0 Payments

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

4.1.1 Attorneys' Fees and Costs: \$8,250.00 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 FJM's attention. The check shall be delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Ave., Suite 320, Van Nuys CA 91406. By the Effective Date, Law Office of Daniel N. Greenbaum shall provide FJM with its EIN.

4.1.2 Penalty: FJM shall issue two (2) separate checks for a total amount of \$1,750.00 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 \$1,312.50, representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC in the amount of \$437.50, 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, 7120 Hayvenhurst Ave., 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 \$1,312.50. The second 1099 shall be issued in the amount of \$437.50 to SHEFA and delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Ave., 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 FJM represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind FJM 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 FJM 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 FJM, 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
7120 Hayvenhurst Ave., Suite 320,
Van Nuys CA 91406

For Frank J. Martin Co.:

Kamran Javandel, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111

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 FJM 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 POST-SETTLEMENT COOPERATION

15.1 In the event that anyone appears and attempts to make a claim against FJM or any 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, SHEFA agrees to reasonably cooperate, and to use its best efforts and that of its counsel to support FJM's opposition to such a claim.

AGREED TO:

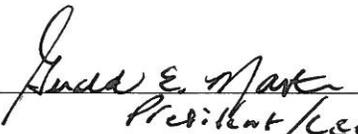
Dated: 5/20/2016

SHEFA LMV, INC.

By: 

Dated: *MAY 20, 2016*

FRANK J. MARTIN CO.

By: 
President/CEO