

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 Inc. | | | | |
| | DEFENDANT(S) INVOLVED IN SETTLEMENT BuildDirect.com Technologies, Inc. | | | | |
| CASE INFO | COURT DOCKET NUMBER N/A | | | COURT NAME N/A | |
| | SHORT CASE NAME Shefa v. BuildDirect | | | | |
| REPORT INFO | INJUNCTIVE RELIEF Warning Labels | | | | |
| | PAYMENT: CIVIL PENALTY \$2,000 | | PAYMENT: ATTORNEYS FEES \$13,000 | | PAYMENT: OTHER 0.00 |
| | WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="radio"/> Yes <input checked="" type="radio"/> No | | IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL | | DATE SETTLEMENT SIGNED 12 / 30 / 2016 |
| | COPY OF SETTLEMENT MUST BE ATTACHED | | | | |
| 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, INC AND BUILDIRECT.COM TECHNOLOGIES INC.

Shefa LMV, Inc. (“SHEFA”) and BuildDirect.com Technologies Inc. (“BuildDirect”), (SHEFA and BuildDirect collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) to avoid prolonged and costly litigation to settle SHEFA’s allegations that BuildDirect violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which all Parties fully execute it (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 BuildDirect previously sold, at various times, tiles, including but not limited to Hammersmith Subway Tile (referred to throughout as the “Covered Products”) to various customers. The Covered Products are limited to those sold by BuildDirect.

1.3 SHEFA alleges that Covered Products expose consumers to Lead and Lead Compounds and that BuildDirect did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (California 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 “60-Day Notice of Violation” pursuant to Proposition 65 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 30, 2016, SHEFA served BuildDirect, as well as certain relevant public enforcement agencies with documents entitled “60 Day Notice of Violation” alleging that the Covered Products contain the Listed Chemical.

1.9 On or about June 10, 2016, SHEFA served BuildDirect, as well as certain relevant public enforcement agencies with a supplemental “60-Day Notice of Violation” – alleging that the Covered Products contain the Listed Chemical.

1.10 The original and supplemental 60-Day Notices (referred to as “Notices”) alleged that BuildDirect violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemical.

1.11 The Parties enter 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”).

1.12 By entering into 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.

1.13 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 BuildDirect, its retailers, officers, directors,

shareholders, employees, agents, or parents, subsidiaries, or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

2.0 Releases

2.1 This Settlement Agreement is a full, final, and binding resolution between SHEFA on the one hand and (a) BuildDirect and its owners, parents, subsidiaries, affiliates, sister and related companies, including but not limited to any other subsidiary or entity affiliated with BuildDirect, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively “Releasees”) and (b) all entities from whom Releasees obtain the Covered Products and 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 all of such entities’ owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (“Additional 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 Additional Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising in connection with the Covered Products manufactured, shipped, and/or otherwise distributed by BuildDirect prior to the Effective Date, even if sold by any Additional Releasees after the Effective Date.

2.2 SHEFA and its past and current agents, representatives, attorneys, successors, and/or assignees, acting in their individual capacity and not in their 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 Additional Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted with respect of any Covered Products manufactured, shipped, and/or otherwise distributed by BuildDirect prior to the Effective Date, even if sold by any Additional Releasees after the Effective Date, including without limitation any claims related to Releasees' and Additional Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees and Additional 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 California 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 may include unknown claims and it 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. SHEFA acknowledges and understands the significance and consequences of this

specific waiver of California Civil Code section 1542.

3.0 BuildDirect's Duties

3.1 BuildDirect agrees, promises, and represents that after the Effective Date, BuildDirect shall provide warnings on such Covered Products in compliance with Proposition 65.

3.2 The Parties agree that a warning stating that "WARNING: This product contains chemicals 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 BuildDirect agrees to pay a total of \$15,000.00 within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: \$13,000.00 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 BuildDirect'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 BuildDirect with its EIN.

4.1.2 Civil Penalty: BuildDirect shall issue two (2) separate checks for a total amount of \$2,000.00 as civil penalties pursuant to California Health & Safety Code section 25249.12: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$1,500.00, representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC in the amount of \$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 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 \$1,500.00. The second 1099 shall be issued in the amount of \$500.00 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 BuildDirect represents that its signatory to this Settlement Agreement has full authority to enter and legally bind BuildDirect to this Settlement Agreement.

6.0 Report of the Settlement Agreement to the Office of the Attorney General

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 SHEFA and BuildDirect.

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, the Releasees and the Additional 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 11.3 and 11.4 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 BuildDirect, the Releasees or the Additional Releasees 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 ninety (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 11.4 below.

11.4 Any notice by SHEFA 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.

11.5 Within thirty (30) days of receiving the notice described in Section 11.3, 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 BuildDirect, or (2) refute the allegation of a violation of this Settlement Agreement.

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 Ave., Suite 320,
Van Nuys CA 91406
dgreenbaum@greenbaumlawfirm.com

For BuildDirect:

Peg Carew Toledo
PEG CAREW TOLEDO, LAW CORPORATION
3001 Douglas Blvd., Suite 340
Roseville, CA 95661
peg@toledolawcorp.com

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 If Proposition 65 is repealed, preempted or otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then BuildDirect 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 section 1654.

AGREED TO:

Dated: December 30, 2016

SHEFA LMV, INC.

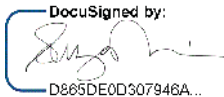
By: _____

Israel Schochet

Print Name

Dated: December ____, 2016
12/30/2016

BUILDDIRECT.COM TECHNOLOGIES, INC.

By: _____

Suzanne Mercier

Print Name