

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 Arizona Tile Supply, Inc. | | | | |
| CASE INFO | COURT DOCKET NUMBER RG17854993 | | | COURT NAME Alameda County Superior Court | |
| | SHORT CASE NAME Shefa v. Arizona Tile | | | | |
| REPORT INFO | INJUNCTIVE RELIEF Reformulation or Warning label | | | | |
| | PAYMENT: CIVIL PENALTY \$2,000 | | PAYMENT: ATTORNEYS FEES \$15,500 | | For Internal Use Only |
| | PAYMENT: OTHER 0.00 | | DATE SETTLEMENT SIGNED 12 / 11 / 2017 | | |
| | 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 | | |
| 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.

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9 Attorney for Plaintiff SHEFA LMV, INC.

10 PACIFIC TRIAL ATTORNEYS
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12 4100 Newport Place, Suite 800
13 Newport Beach, CA 92660
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17 Attorneys for Defendant ARIZONA TILE, INC.

18
19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF ALAMEDA
21

22 SHEFA LMV, INC.,

23 Plaintiff,

24 vs.

25 ARIZONA TILE SUPPLY, INC.;
26 STONEPEAK CERAMICS, INC.; MULIA,
27 INC.; NATIVE TRAILS, INC.; LA
28 FUENTE, LLC; LOWE'S COMPANIES,
INC.; and DOES 1 to 50, Inclusive,

Defendants.

Case No.: RG17854993

*The Honorable Robert McGuiness
Dept. 22*

**SETTLEMENT AGREEMENT
AS TO ARIZONA TILE, INC.**

Action filed: March 29, 2017

1 1. INTRODUCTION

2 1.1 This Settlement Agreement (the "Settlement Agreement") is entered into by and
3 between Shefa LMV Inc. ("Shefa") and Arizona Tile, Inc. ("Settling Defendant"), with Shefa and
4 Settling Defendant each individually referred to as a "Party," and collectively as the "Parties."

5 1.2 The products covered by this Settlement Agreement are ceramic tile products
6 manufactured, distributed, and/or sold by Settling Defendant that expose users to lead and/or lead
7 compounds ("Lead" or "Pb"), including, but not limited to, the H-Line Pumice 3"x6" and the
8 Clementine Posa 8"x8" (the "Covered Products").

9 1.3 Lead and lead compounds are hereinafter referred to as the "Listed Chemicals."

10 1.4 On or about March 30, 2016 and again on June 10, 2016, Shefa mailed a 60-Day
11 Notice of Violation pursuant to Proposition 65 (The Safe Drinking Water and Toxic Enforcement
12 Act of 1986, Health & Safety Code §§ 25249.5, *et seq.*) to Settling Defendant, the California
13 Attorney General, the District Attorneys of every County in the State of California, and the City
14 Attorneys for every City in the State of California with a population greater than 750,000.

15 1.5 On March 29, 2017, Shefa filed the Complaint in the instant action.

16 1.6 Shefa alleges that the 60-Day Notice of Violation alleged violations of Proposition
17 65 with respect to exposure to the Listed Chemicals when consumers cut or grind the Covered
18 Products sold, distributed, and/or manufactured by Settling Defendant.

19 1.7 Settling Defendant denies the alleged violations asserted against it in the Complaint
20 and deny they have any liability under Proposition 65.

21 1.8 Settling Defendant further denies the normal use of the Covered Products will result
22 in any exposure to the Listed Chemicals that would require a warning pursuant to Proposition 65.

23 1.9 For purposes of this Settlement Agreement only, the Parties stipulate: (i) this Court
24 has jurisdiction over the allegations of violations contained in the operative Complaint applicable
25 to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts alleged in
26 the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this Court has jurisdiction
27 to approve this Settlement Agreement.

1 1.10 Nothing in this Settlement Agreement is, or shall be construed, as an admission by
2 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
3 with the Settlement Agreement constitute or be construed as an admission by the Parties of any
4 fact, conclusion of law, issue of law, or violation of law.

5 1.11 Nothing in this Settlement Agreement shall prejudice, waive, or impair any right,
6 remedy, argument, or defense the Parties may have in any other legal proceeding.

7 1.12 Further, Settling Defendant denies the material, factual, and legal allegations
8 contained in the 60-Day Notices and in the operative Complaint, and maintains all the products
9 that Settling Defendant has imported, manufactured, distributed, wholesaled, or retailed for sale
10 in California, including the Covered Products, have been and are in compliance with all laws,
11 including but not limited to Proposition 65.

12 1.13 Nothing herein shall be construed as an admission by Settling Defendant of any
13 fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement Agreement
14 constitute or be construed as an admission by Settling Defendant of any fact, finding, conclusion,
15 issue of law, or violation of law.

16 1.14 Except as expressly set forth herein, nothing in this Settlement Agreement shall
17 prejudice, waive, or impair any right, remedy, argument, complaint, or defense the Parties may
18 have in any other or future legal proceeding unrelated to this specific proceeding.

19 1.15 This Settlement Agreement is the product of negotiation and compromise and is
20 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
21 this action.

22 1.16 The term "Effective Date" means the date on which this Settlement Agreement is
23 approved and entered by the Court.

24 2. INJUNCTIVE RELIEF

25 2.1 Commencing on the Effective Date, Defendant shall provide warnings in
26 accordance with this Settlement Agreement.

27 2.2 Nothing in this Settlement Agreement shall require (1) Settling Defendant to
28 provide warnings on or with any Covered Products other than those it manufactures or sells in

1 packaging bearing its name or trademark, or (2) Settling Defendant to provide any warnings
2 other than the warnings identified in subparagraph 2.7.

3 2.3 **Warnings:** The Parties agree that the following warning shall constitute a
4 Compliant Warning for the Listed Chemical in the Covered Products:

5 2.3.1 the text, **“WARNING: All ceramic and porcelain products may expose**
6 you to lead and lead compounds, which are known to the State of
7 California to cause cancer and reproductive harm. For more information
8 go to www.P65Warnings.ca.gov.”

9 2.3.2 This is accompanied by and placed to the right of a symbol consisting of a
10 black exclamation point in a yellow equilateral triangle with a bold black
11 outline sized to be no smaller than the word, **“WARNING”** as provided by
12 regulations adopted on or about August 30, 2016.

13 2.4 **Methods of Warning.** The Parties understand and acknowledge that Proposition
14 65 permits warnings to be provided through mechanisms such as point-of-sale signs, which are
15 not product labels and do not travel with products through interstate commerce. The use of other
16 warning methods, such as labels and in-manual warnings under this Settlement Agreement, is
17 consented to by the parties to the Settlement Agreement, and shall not be construed to mean
18 those methods are the only lawful means of compliance with Proposition 65. Settling Defendant
19 shall use any (or all) of the following methods to provide the warnings required by this
20 Settlement Agreement:

21 2.4.1 Inclusion in every Master Safety Data Sheet (MSDS);

22 2.4.2 Inclusion on each box of tile (either by label or direct printing on the box);

23 2.4.3 Providing a “pop-up” warning for online customers;

24 2.4.4 In store warning signs (see Section 2.5 below); or

25 2.4.5 Any other method that complies with the warning regulations by
26 regulations adopted on or about August 30, 2016.

1 2.5 **Locations of in store warnings.** If Settling Defendant is required to provide a
2 warning for a Covered Product under subparagraph 2.1, it may provide that warning in the form
3 of an in-store warning sign for that Covered Product if all the following conditions are met:

4 2.5.1 **Placement.** Warning signs *must* be placed at the Reception Desk *and* the
5 Order Desk of all Arizona Tile Showrooms located in California.

6 2.5.2 **Size and Font.** Each warning sign must be clear, unambiguous, and
7 printed in a font large enough to be read by the average consumer.
8 Nothing in this sub-section shall be read to contradict the regulations
9 governing the size and font of Proposition 65 warnings.

10 2.6 The Parties agree that the specifications for Compliant Warnings in this
11 Settlement Agreement are consistent with Proposition 65 and its regulations as of the date of this
12 Settlement Agreement, and regulations adopted on or about August 30, 2016 to become effective
13 August 30, 2018.

14 2.7 If modifications or amendments to Proposition 65 or its regulations after the
15 Effective Date are inconsistent with, or provide warning specifications or options different from,
16 the specifications in this Settlement Agreement, Defendant may modify the content and delivery
17 methods of its warnings to conform to the modified or amended provisions of Proposition 65 or
18 its regulations.

19 2.8 **Use instruction:** In addition to the warning sign described in Sections 2.7-2.11
20 above, the Parties agree that the following use instruction shall be placed at the Order Desk of all
21 Arizona Tile Showrooms located in California:

22 2.8.1 the text, “**WARNING:** All ceramic and porcelain products should be cut
23 with a wet tile saw and wearing mask. DO NOT cut ceramic or porcelain
24 products with a dry tile saw or grinder.”

25 2.8.2 the size and font of the use instruction shall be the same as the size and
26 font contained in the warning sign.

27 2.9 Nothing in this Settlement Agreement requires that warnings be provided for
28 Covered Products sold for use outside the State of California.

1 **3. PAYMENTS**

2 3.1 Within ten (10) business days following the Effective Date, Settling Defendant
3 shall make a Total Settlement Payment of \$17,500.00 by delivering checks payable to "Shefa
4 LMV, Inc." and "Law Office of Daniel N. Greenbaum" as set forth below to counsel for Shefa.

5 3.2 The funds paid by Settling Defendant shall be allocated as follows:

6 a. **Civil Penalty.** A civil penalty in the amount of \$2,000.00 payable to
7 "Shefa LMV, Inc.," pursuant to Health & Safety Code § 25249.7(b), with
8 such money to be apportioned and distributed by Shefa in accordance with
9 Health & Safety Code § 25249.12 as follows: 25% to Shefa (\$500.00)
10 and 75% to the State of California's Office of Environmental Health
11 Hazard Assessment ("OEHHA") (\$1,500.00).

12 b. **Attorneys' Fees and Costs.** A reimbursement of Shefa's attorney's fees
13 and costs in the amount of \$15,500.00 payable to the "Law Office of
14 Daniel N. Greenbaum."

15 3.3 Shefa shall provide and deliver to Settling Defendant a W-9 for each payment
16 noted above upon request.

17 **4. CLAIMS COVERED AND RELEASED**

18 4.1 **Full and Binding Resolution of Proposition 65 Allegations:** This Settlement
19 Agreement is a full, final, and binding resolution between

20 (i) Shefa on behalf of itself and the public interest; and

21 (ii) Settling Defendant and their affiliates, their former affiliates, any person or entity
22 who directly or indirectly owns or controls, is owned or controlled by, or is under common
23 ownership or control with Settling Defendant, and their current and past directors, officers,
24 employees, and attorneys ("Defendant Releasees"), and each entity to whom (or from whom)
25 any of them directly or indirectly distribute, receive for distribution, and/or sell the Covered
26 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
27 cooperative members, licensors, and licensees ("Distributor Releasees"), of any violation of
28 Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant,

1 Defendant Releasees, and Distributor Releasees, based on failure to warn about an alleged
2 exposure to Lead from the reasonably foreseeable use of the Covered Products shipped,
3 distributed, or sold by Settling Defendant, Defendant Releasees, and Distributor Releasees prior
4 to 120 days after the Effective Date.

5 **4.2 Individual Release:** Shefa, on behalf of itself, its past and current agents,
6 representatives, attorneys, and successors and/or assignees, and not in its representative capacity,
7 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a
8 bar to all Claims under Proposition 65 and any other statutory or common law, that are or may
9 be asserted against Settling Defendant, Defendant Releasees, and Distributor Releasees, whether
10 known or unknown, suspected or unsuspected, arising out of alleged exposures to, and/or failure
11 to warn of alleged exposures to, Lead from the Covered Products shipped, distributed, or sold
12 prior to 120 days after the Effective Date by Settling Defendant, Defendant Releasees, and
13 Distributor Releasees.

14 **4.3 General Release:** It is possible that other Claims not known to the Parties which
15 arise out of the facts alleged in the Notices and/or the Complaint will develop or be discovered.
16 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and successors
17 and/or assigns, and not in its representative capacity, acknowledges that this Settlement
18 Agreement is expressly intended to cover and include all such Claims, including all rights of
19 action therefor. Shefa has full knowledge of the contents of Civil Code § 1542. Shefa
20 acknowledges that the Claims released in Sections 4.1 and 4.2 include unknown Claims, and
21 Shefa nevertheless waives Civil Code § 1542 as to any such unknown Claims. Civil Code §
22 1542 reads as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
24 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
25 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
26 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
27 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.
28

1 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and
2 successors and/or assignees, and not in its representative capacity, acknowledges and
3 understands the significance and consequences of this specific waiver of Civil Code § 1542.

4 4.4 Compliance with the terms of this Settlement Agreement by Settling Defendant
5 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
6 Distributor Releasees with respect to any alleged failure to warn about Lead in Covered Products
7 manufactured, distributed, or sold by Settling Defendant, Defendant Releasees, and Distributor
8 Releasees 120 days after the Effective Date.

9 4.5 Nothing in this Section 4 affects Shefa's right to commence or prosecute an action
10 pursuant to Proposition 65 against any person other than Settling Defendant, Defendant
11 Releasees, or Distributor Releasees.

12 5. ENFORCEMENT

13 5.1 Shefa may, by motion or application for an order to show cause before the
14 Superior Court of Alameda County, enforce the terms and conditions contained in this
15 Settlement Agreement.

16 5.2 Prior to bringing any motion or application to enforce the requirements of this
17 Settlement Agreement, Shefa shall provide Settling Defendant with a Notice of Violation and
18 proof of purchase and a copy of any test results which purportedly support the Notice of
19 Violation.

20 5.3 The Parties shall then meet and confer regarding the basis for the anticipated
21 motion or application to resolve it informally, including providing Settling Defendant with a
22 reasonable opportunity of at least sixty (60) days to cure any alleged violation.

23 5.4 Should such attempt at informal resolution fail, Shefa may file an enforcement
24 motion or application.

25 6. NOTICE

26 6.1 When Shefa is entitled to receive any notice under this Settlement Agreement, the
27 notice shall be sent by first class and electronic mail to:
28

1 Daniel N. Greenbaum
2 Law Office of Daniel N. Greenbaum
3 7120 Hayvenhurst Ave., Suite 320
4 Van Nuys CA 91406
5 dgreenbaum@greenbaumlawfirm.com

6 6.2 When Settling Defendant is entitled to receive any notice under this Settlement
7 Agreement, the notice shall be sent by electronic mail to:

8 Tyler Woods, Esq.
9 PACIFIC TRIAL ATTORNEYS
4100 Newport Place, Suite 800
Newport Beach, CA 92660
Email: twoods@pacifictrialattorneys.com

10 6.3 Any Party may modify the person and address to whom the notice is to be sent by
11 sending the other Party notice by electronic mail.

12 **7. MODIFICATION**

13 7.1 **Written Consent.** This Settlement Agreement may be modified from time to
14 time by express signed written agreement of the Parties with the approval of the Court, or by an
15 order of this Court upon motion and in accordance with law.

16 7.2 **Meet and Confer.** Any Party seeking to modify this Settlement Agreement shall
17 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
18 modify the Settlement Agreement.

19 **8. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

20 8.1 Shefa agrees to comply with the reporting form requirements referenced in Health
21 and Safety Code § 25249.7(f).

22 **9. COURT APPROVAL**

23 9.1 This Settlement Agreement shall become effective upon entry by the Court of
24 judgment pursuant to Health & Safety Code §§ 25249.7.

25 **10. OTHER TERMS**

26 10.1 No supplementation, modification, waiver, or termination of this Settlement
27 Agreement shall be binding unless executed in writing by the Party to be bound thereby, except
28 as provided by ¶¶ 8.1 & 8.2.

1 10.2 No waiver of any of the provisions of this Settlement Agreement shall be deemed
2 or shall constitute a waiver of any of the other provisions hereof whether similar, nor shall such
3 waiver constitute a continuing waiver.

4 10.3 Nothing in this Settlement Agreement shall release, or in any way affect any
5 rights Settling Defendant might have against any other party, whether or not that party is a
6 Defendant Releasee or Distributor Releasee.

7 10.4 This Court shall retain jurisdiction of this matter to implement or modify the
8 Settlement Agreement.

9 10.5 The Parties agree that, in any subsequent interpretation and construction of this
10 Settlement Agreement, no inference, assumption, or presumption shall be drawn, and no
11 provision of this Settlement Agreement shall be construed against any Party, since one of the
12 Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the
13 Settlement Agreement.

14 10.6 It is conclusively presumed that all the Parties participated equally in the
15 preparation and drafting of this Settlement Agreement.

16 **11. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
17 **SETTLEMENT AGREEMENT**

18 11.1 This Settlement Agreement came before this Court upon the request of the
19 Parties.

20 11.2 The Parties request the Court to review this Settlement Agreement and to make
21 the following findings pursuant to Health & Safety Code § 25249.7(f)(4):

22 a. The injunctive relief required by the Settlement Agreement complies with
23 Health & Safety Code § 25249.7;

24 b. The reimbursement of fees and costs to be paid pursuant to the Settlement
25 Agreement is reasonable under California law; and


26 c. The civil penalty amount to be paid pursuant to Settlement Agreement is
27 reasonable.
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AGREED TO:

Dated: 12/11/2017


FOR: SHEFA LMV, INC.

By: 

Its: Director

Dated:

FOR: ARIZONA TILE, INC.

By: 

Its: PRESIDENT