

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 Stonepeak Ceramics, 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 \$5,000		PAYMENT: ATTORNEYS FEES \$25,000		For Internal Use Only
	PAYMENT: OTHER 0.00		DATE SETTLEMENT SIGNED 10 31 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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Attorneys for Defendant STONEPEAK CERAMICS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

SHEFA LMV, INC.,

Plaintiff,

vs.

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

Defendants.

Case No.: RG17854993

The Honorable Brad Seligman
Dept. 30

**[PROPOSED] STIPULATED CONSENT
JUDGMENT AND SETTLEMENT
AGREEMENT AS TO STONEPEAK
CERAMICS, INC.**

Action filed: March 29, 2017

1 **1. INTRODUCTION**

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

6 1.2 The products covered by this Settlement Agreement are ceramic tile products
7 manufactured, distributed, and/or sold by Settling Defendant that expose users to lead and/or
8 lead compounds ("Lead" or "Pb"), including, but not limited to, the Aspen Sunset 12"x12" tile
9 with an identification number of UPC: 843674074423 (the "Covered Products").

10 1.3 Lead and lead compounds are hereinafter referred to as the "Listed Chemicals."

11 1.4 On or about March 30, 2016 and again on June 10, 2016, Shefa mailed a 60-Day
12 Notice of Violation pursuant to Proposition 65 (The Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health & Safety Code §§ 25249.5, *et seq.*) to Settling Defendant, the
14 California Attorney General, the District Attorneys of every County in the State of California,
15 and the City Attorneys for every City in the State of California with a population greater than
16 750,000.

17 1.5 On March 29, 2017, Shefa filed the Complaint in the instant action.

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

21 1.7 Settling Defendant denies the alleged violations asserted against it in the
22 Complaint and deny it has any liability under Proposition 65.

23 1.8 Settling Defendant further denies the normal use of the Covered Products will
24 result in any exposure to the Listed Chemicals and that if any exposure did occur denies that
25 such an exposure would require a warning pursuant to Proposition 65.

26 1.9 For purposes of this Settlement Agreement only, the Parties stipulate: (i) this
27 Court has jurisdiction over the allegations of violations contained in the operative Complaint

1 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts
2 alleged in the Complaint; (ii) venue is proper in the County of Alameda; and (iii) this Court has
3 jurisdiction to approve this Settlement Agreement.

4 1.10 Nothing in this Settlement Agreement is, or shall be construed, as an admission
5 by Settling Defendant of any fact, finding, conclusion of law, issue of law, or violation of law,
6 nor shall compliance with the Settlement Agreement constitute or be construed as an admission
7 by the Parties, jointly or individually, of any fact, finding, conclusion of law, issue of law, or
8 violation of law.

9 1.11 Further, Settling Defendant denies the material, factual, and legal allegations
10 contained in the 60-Day Notices and in the operative Complaint, and maintains all the products
11 that Settling Defendant has imported, manufactured, distributed, wholesaled, or retailed for sale
12 in California, including the Covered Products, have been and are in compliance with all laws,
13 including but not limited to Proposition 65.

14 1.12 Except as expressly set forth herein, nothing in this Settlement Agreement shall
15 prejudice, waive, or impair any right, remedy, argument, complaint, or defense the Parties may
16 have in any other or future legal proceeding unrelated to this specific proceeding.

17 1.13 This Settlement Agreement is the product of negotiation and compromise and is
18 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
19 disputed in this action.

20 1.14 The term "Effective Date" means the date on which this Settlement Agreement is
21 approved and entered by the Court.

22 **2. INJUNCTIVE RELIEF**

23 2.1 Commencing by no later than April 30, 2018 or sixty days after the Effective
24 Date, whichever is later, Defendant shall only distribute to or offer for sale in California Covered
25 Products that are Compliant Products, or shall provide warnings in accordance with this
26 Settlement Agreement. This requirement does not apply to Covered Products manufactured or
27 already in the stream of commerce before this date.

2.2 “Compliant Products” are defined as those Covered Products containing the Listed Chemical in a concentration less than or equal to 200 parts per million (“ppm”) (“Lead Standard”). This reformulation standard is based upon levels set by the Consumer Products Safety Improvement Act (CPSIA); CPSIA for lead in non-metals children’s products and the extrapolated exposure which may occur during the cutting or grinding of the Covered Products during the normal use of the Covered Products. The parties recognize that the Covered Products are not “children’s products,” as that term is used in the CPSIA.

2.3 The Lead Standard will be based upon analysis for “total” lead, including the bisque and glaze combined in a representative aliquot of the tile. The basis for this analysis standard is when both elements are pulverized together in the same manner as when power tools are used, so both portions of the tile contribute to representative sample.

2.4 In order to prove compliance with the above reformulation standard, Settling Defendant may use one (or all) of the three following methods of analysis, and may average any multiple test results from the same production lot of a particular style:

2.4.1 **CPSC-CH-E1002-08.2 Method** (i.e. the CPSIA method) –correlating to the reformulation standard, the laboratory will use hydrofluoric acid to break down the tiles for analysis, or a substantially similar method as approved by the Consumer Products Safety Commission (CPSC) or similar state or federal agency for measuring lead content in ceramic consumer products.

2.4.2 **EPA6200 Method** – the laboratory will use this method for total Pb analysis after pulverizing the sample in a cryo-mill to ~60 mesh so the material is homogenized to get actual concentration of Pb.

2.4.3 **Lithium borate fusion followed by ICP/MS** – after the sample is milled, the laboratory of choice would use this mineral industry method of analysis.

2.5 Whenever a clear and reasonable warning is required under Section 2.1 for Covered Product offered for sale in the State of California, it shall state one of the warnings described in Section 2.7 in such a conspicuous and prominent manner as to be likely to be read and understood by the consumer prior to or at the time of the sale or purchase or pursuant to the provisions in Section 2.10.

2.6 Nothing in this Settlement Agreement shall require (1) Settling Defendant to provide warnings on or with any Covered Products other than those it manufactures, distributes or sells in packaging bearing its name or trademark, or (2) Settling Defendant to provide any warnings other than the warnings identified in subparagraph 2.7.

2.7 The Parties agree that any of the following warnings shall constitute a Compliant Warning for the Listed Chemical in the Covered Products:

(a) the text, **“WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.”**

as provided by existing regulations; or

(b) the text, **“WARNING This product can expose you to chemicals including lead and lead compounds, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.”** accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, “WARNING” as provided by regulations adopted on or about August 30, 2016; or

(c) the text, **“WARNING Cancer and Reproductive Harm - www.P65Warnings.ca.gov.”** accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, “WARNING” as provided by regulations adopted on or about August 30, 2016; or

(d) the text: **“WARNING: The dust created from cutting or grinding this product can expose you to chemicals including lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. Avoid breathing dust created during cutting or grinding tiles during installation and wash hands after cutting tiles. For more information go to www.P65Warnings.ca.gov.”** accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, “WARNING” as provided by regulations adopted on or about August 30, 2016.

2.8 Nothing in this Settlement Agreement requires that warnings be provided for Covered Products distributed or sold for use outside the State of California.

2.9 The Parties understand and acknowledge that Proposition 65 permits warnings to be provided through mechanisms such as point-of-sale signs, which are not product labels and do not travel with products through interstate commerce. The use of other warning methods, such as labels and in-manual warnings under this Settlement Agreement, is consented to by the parties to the Settlement Agreement, and shall not be construed to mean those methods are the only lawful means of compliance with Proposition 65.

2.10 Settling Defendant shall use any (or all) of the following methods to provide the warnings required by this Settlement Agreement:

- i. Inclusion in every Material Safety Data Sheet (MSDS);
- ii. Inclusion on every box of tile (either by label or printing directly on to the box);
- iii. Providing a warning for online purchasers that will be seen before the product is sold to a customer with a California delivery address, such as a “pop-up” or a clearly marked hyperlink using the word “WARNING”;
- iv. In store warning signs (see Section 2.11 below); or

1 v. Any other method that complies with the warning regulations by
2 regulations adopted on or about August 30, 2016.

3 2.11 **Warnings in-stores.** If Settling Defendant is required to provide a warning for a
4 Covered Product under subparagraph 2.1, it may provide that warning in the form of an in-store
5 warning sign for that Covered Product if **all** the following conditions are met:

6 a. **Placement.** Warning signs *must* be placed directly next to each Covered
7 Product(s). Warning signs *may* also be placed at the entrance/exit, check-out counter,
8 store aisles where the Covered Product(s) are sold.

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

13 c. **Specificity.** Each warning sign must specify for which Covered Product it
14 is being provided. This sign shall specify any (or all) of the following information: the
15 product name, UPC, SKU, color, or any other features which will identify the Covered
16 Product to customers. In addition, the sign may use an indication symbol, such as an
17 arrow, to indicate the location of the Covered Product in relation to the warning sign.

18 2.12 The Parties agree that the specifications for Compliant Warnings in this
19 Settlement Agreement are consistent with Proposition 65 and its regulations as of the date of this
20 Settlement Agreement, and regulations adopted on or about August 30, 2016 to become effective
21 August 30, 2018.

22 2.13 If modifications or amendments to Proposition 65 or its regulations after the
23 Effective Date are inconsistent with, or provide warning specifications or options different from,
24 the specifications in this Settlement Agreement, Defendant may modify the content and delivery
25 methods of its warnings to conform to the modified or amended provisions of Proposition 65 or
26 its regulations.

2.14 Nothing in this Settlement Agreement places the requirement for providing Compliant Warnings on any independent retailer or on any seller that is not a corporate affiliate of Settling Defendant.

3. PAYMENTS

3.1 Within ten (10) business days following the Effective Date, Settling Defendant shall make a Total Settlement Payment of \$30,000.00 by delivering checks payable to "Shefa LMV, Inc." and "Law Office of Daniel N. Greenbaum" as set forth below to counsel for Shefa.

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

- a. **Civil Penalty.** A civil penalty in the amount of \$5,000.00 payable to "Shefa LMV, Inc.," pursuant to Health & Safety Code § 25249.7(b), with such money to be apportioned and distributed by Shefa in accordance with Health & Safety Code § 25249.12 as follows: 25% to Shefa (\$1,250.00) and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") (\$3,750.00).
- b. **Attorneys' Fees and Costs.** A reimbursement of Shefa's attorney's fees and costs in the amount of \$25,000.00 payable to the "Law Office of Daniel N. Greenbaum."

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

4. CLAIMS COVERED AND RELEASED

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

- (i) Shefa on behalf of itself and the public interest; and
- (ii) Settling Defendant and its parents, subsidiaries, affiliated entities under common (full or partial) ownership, its former affiliates, any person or entity who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with Settling Defendant, and their current and past directors, officers, employees, shareholders, agents, and

attorneys and the predecessors, successors and assigns of each (“Defendant Releasees”), and each entity to whom (or from whom) any of them directly or indirectly distribute, receive for distribution, and/or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees, including but not limited to Lowe’s Companies, Inc., and the predecessors, successors and assigns of each (“Downstream Releasees”), for any violation of Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant, Defendant Releasees, and Distributor Releasees, based on failure to warn about an alleged exposure to Lead from the reasonably foreseeable use of the Covered Products shipped, distributed, or sold by Settling Defendant, Defendant Releasees, and Downstream Releasees prior to 120 days after the Effective Date.

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

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

1 Shefa nevertheless waives Civil Code § 1542 as to any such unknown Claims. Civil Code §
2 1542 reads as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
4 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
5 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
6 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
7 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

11 4.4 Compliance with the terms of this Settlement Agreement by Settling Defendant
12 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
13 Downstream Releasees with respect to any alleged failure to warn about Lead in Covered
14 Products manufactured, distributed, or sold by Settling Defendant, Defendant Releasees, and
15 Downstream Releasees after the Effective Date.

16 4.5 Nothing in this Section 4 affects Shefa's right to commence or prosecute an action
17 pursuant to Proposition 65 against any person other than Settling Defendant, Defendant
18 Releasees, or Downstream Releasees.

19 5. ENFORCEMENT

20 5.1 Shefa may, by motion or application for an order to show cause before the
21 Superior Court of Alameda County, enforce the terms and conditions contained in this
22 Settlement Agreement.

23 5.2 Prior to bringing any motion or application to enforce the requirements of this
24 Settlement Agreement, Shefa shall provide Settling Defendant with a Notice of Violation and
25 proof of purchase and a copy of any test results which purportedly support the Notice of
26 Violation.

27 5.3 The Parties shall then meet and confer regarding the basis for the anticipated
28 motion or application to resolve it informally, including providing Settling Defendant with a
reasonable opportunity of at least sixty (60) days to cure any alleged violation.

1 5.4 Should such attempt at informal resolution fail, Shefa may file an enforcement
2 motion or application.

3 **6. NOTICE**

4 6.1 When Shefa is entitled to receive any notice under this Settlement Agreement, the
5 notice shall be sent by first class and electronic mail to:

6 Daniel N. Greenbaum
7 Law Office of Daniel N. Greenbaum
8 7120 Hayvenhurst Ave., Suite 320
9 Van Nuys CA 91406
10 dgreenbaum@greenbaumlawfirm.com

11 6.2 When Settling Defendant is entitled to receive any notice under this Settlement
12 Agreement, the notice shall be sent by first class mail to:

13 Leonard Pesce
14 STONEPEAK CERAMICS, INC.
15 314 W. Superior Street
16 Chicago, IL 60610

17 And with a copy sent by first class and electronic mail to:

18 Lauren M. Michals, Esq.
19 NIXON PEABODY LLP
20 One Embarcadero Center, 18th Floor
21 San Francisco, California, 94111-3600
22 Email: lmichals@nixonpeabody.com

23 Charles R. Bernardini, Esq.
24 NIXON PEABODY LLP
25 70 West Madison, Suite 3500
26 Chicago, IL 60602-4224
27 Email: crbernardini@nixonpeabody.com

28 6.3 Any Party may modify the person and address to whom the notice is to be sent by
29 sending the other Party notice by electronic mail and with a copy by first class mail or overnight
30 mail.

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successors, provided, however, that no right or obligation hereunder shall be assignable to any other entities than these without the express written consent of the other party.

12.4 Nothing in this Settlement Agreement shall release, or in any way affect any rights Settling Defendant might have against any other party, whether or not that party is a Defendant Releasee or Downstream Releasee.

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

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

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

12. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF SETTLEMENT AGREEMENT

12.1 This Settlement Agreement came before this Court upon the request of the Parties.

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

- a. The injunctive relief required by the Settlement Agreement complies with Health & Safety Code § 25249.7;
- b. The reimbursement of fees and costs to be paid pursuant to the Settlement Agreement is reasonable under California law; and
- c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.

IT IS SO AGREED TO:

Dated: 10/31/2017

FOR: SHEFA LMV, INC.

By: 

Its: Director

Dated:

FOR: STONEPEAK CERAMICS, INC.

By: 

Its: CEO

[PROPOSED] JUDGMENT

Please note that on _____, 2017 at _____, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant Stonepeak Ceramics, Inc. came for hearing before this Court in Department __, the Honorable _____ presiding. Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

After full consideration of the points and authorities and related pleadings submitted, the Court GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following findings pursuant to Health & Safety Code § 25249.7(f)(4):

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

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

c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.

The Settlement Agreement is hereby approved, and the clerk is directed to enter judgment in accordance with the terms of the Settlement Agreement above.

Date _____

Superior Court Judge