

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 Native Trails, 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 \$1,000		PAYMENT: ATTORNEYS FEES \$10,250		For Internal Use Only
	PAYMENT: OTHER 0.00		DATE SETTLEMENT SIGNED 7 27 2017		
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
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 NATIVE TRAILS, 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] SETTLEMENT
AGREEMENT AS TO NATIVE TRAILS,
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 Native Trails, 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 allegedly expose users to lead
7 and/or lead compounds ("Lead" or "Pb"), including, but not limited to, the Talavera Asters Native
8 Trails tile, with an identification number of SKU: TVR0336 (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 that normal use of the Covered Products will
22 result in any exposure to the Listed Chemicals that would require a warning pursuant to
23 Proposition 65.

24 1.9 Shefa alleges that: (i) this Court has jurisdiction over the allegations of violations
25 contained in the operative Complaint applicable to Settling Defendant and personal jurisdiction
26 over Settling Defendant as to the acts alleged in the Complaint; (ii) venue is proper in the County
27 of Alameda; and (iii) this Court has jurisdiction to approve this Settlement Agreement as a full

1 and final settlement of all claims that were raised in the Complaint. For purposes of this Settlement
2 Agreement only, the Settling Defendant does not contest those allegations.

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

7 1.11 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 1.12 Except as expressly set forth herein, nothing in this Settlement Agreement shall
13 prejudice, waive, or impair any right, remedy, argument, complaint, or defense the Parties may
14 have in any other or future legal proceeding unrelated to this specific proceeding.

15 1.13 This Settlement Agreement is the product of negotiation and compromise and is
16 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
17 this action.

18 1.14 The term "Effective Date" means the date on which this Settlement Agreement is
19 approved and entered by the Court as discussed in Paragraph 9 of this Settlement Agreement.

20 **2. INJUNCTIVE RELIEF**

21 2.1 Commencing on the Effective Date, Defendant shall only sell or offer for sale in
22 California Covered Products that are Compliant Products, or shall provide warnings in
23 accordance with this Settlement Agreement.

24 2.2 "Compliant Products" are defined as those Covered Products containing the
25 Listed Chemical in a concentration less than or equal to 100 parts per million ("ppm"). This
26 reformulation standard is based upon levels set by the Consumer Products Safety Improvement
27 Act (CPSIA); CPSIA for lead in non-metals is 100 ppm.

1 2.3 The 100 ppm standard reformulation will be based upon analysis for “total” lead,
2 including the bisque and glaze combined in a representative aliquot of the tile. The basis for this
3 analysis standard is when both elements are pulverized together when power tools are used, so
4 both contribute to exposure.

5 2.4 In order to prove compliance with the above reformulation standard, Settling
6 Defendant may use one (or all) of the three following methods of analysis:

7 2.4.1 **CPSC-CH-E1002-08.1 Method** (i.e. the CPSIA method) –correlating to
8 the reformulation standard, the laboratory will use hydrofluoric acid to
9 break down the tiles for analysis.

10 2.4.2 **EPA6200 Method** – the laboratory will use this method for total Pb
11 analysis after pulverizing the sample in a cryo-mill to ~60 mesh so the
12 material is homogenized to get actual concentration of Pb.

13 2.4.3 **Lithium borate fusion followed by ICP/MS** – after the sample is milled,
14 the laboratory of choice would use this mineral industry method of
15 analysis.

16 2.5 Whenever a clear and reasonable warning is required under Section 2.1 for
17 Covered Product offered for sale in the State of California, it shall state one of the warnings
18 described in Section 2.7 in such a conspicuous and prominent manner as to be likely to be read
19 and understood by the consumer under customary conditions of purchase or use.

20 2.6 Nothing in this Settlement Agreement shall require (1) Settling Defendant to
21 provide warnings on or with any Covered Products other than those it manufactures or sells in
22 packaging bearing its name or trademark, or (2) Settling Defendant to provide any warnings
23 other than the warnings identified in subparagraph 2.7.

24 2.7 The Parties agree that any of the following warnings shall constitute a Compliant
25 Warning for the Listed Chemical in the Covered Products:
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1 (a) the text, **“WARNING: This product contains a chemical known to the**
2 **State of California to cause cancer, birth defects or other reproductive harm.”** as
3 provided by existing regulations; or

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

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

16 2.8 Nothing in this Settlement Agreement requires that warnings be provided for
17 Covered Products sold for use outside the State of California.

18 2.9 The Parties understand and acknowledge that Proposition 65 permits warnings to
19 be provided through mechanisms such as point-of-sale signs, which are not product labels and do
20 not travel with products through interstate commerce. The use of other warning methods, such
21 as labels and in-manual warnings under this Settlement Agreement, is consented to by the parties
22 to the Settlement Agreement, and shall not be construed to mean those methods are the only
23 lawful means of compliance with Proposition 65.

24 2.10 Settling Defendant shall use any (or all) of the following methods to provide the
25 warnings required by this Settlement Agreement:

26 i. Inclusion in every Master Safety Data Sheet (MSDS);
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- ii. Inclusion on every box of tile (either by label or printing directly on to the box);
- iii. Providing a “pop-up” warning for online customers;
- iv. In store warning signs (see Section 2.11 below); or
- v. Any other method that complies with the warning regulations by regulations adopted on or about August 30, 2016.

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

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

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

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

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

2.13 If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from,

1 the specifications in this Settlement Agreement, Defendant may modify the content and delivery
2 methods of its warnings to conform to the modified or amended provisions of Proposition 65 or
3 its regulations.

4 **3. PAYMENTS**

5 3.1 Within five (5) business days of the Effective Date, Shefa shall notify Settling
6 Defendant that the Settlement Agreement has become effective. Within ten (10) business days
7 following the date of notice by Shefa to Settling Defendant of the Effective Date, Settling
8 Defendant shall make a Total Settlement Payment of \$11,250.00 by delivering checks payable to
9 "Shefa LMV, Inc." and "Law Office of Daniel N. Greenbaum" as set forth below to counsel for
10 Shefa.

11 3.2 The funds paid by Settling Defendant shall be allocated as follows:

- 12 a. **Civil Penalty.** A civil penalty in the amount of \$1,000.00 payable to
13 "Shefa LMV, Inc.," pursuant to Health & Safety Code § 25249.7(b), with
14 such money to be apportioned and distributed by Shefa in accordance with
15 Health & Safety Code § 25249.12 as follows: 25% to Shefa (\$250.00)
16 and 75% to the State of California's Office of Environmental Health
17 Hazard Assessment ("OEHHA") (\$750.00)
- 18 b. **Attorneys' Fees and Costs.** A reimbursement of Shefa's attorney's fees
19 and costs in the amount of \$10,250.00 payable to the "Law Office of
20 Daniel N. Greenbaum."

21 3.3 Shefa shall provide and deliver to Settling Defendant a W-9 for each payment
22 noted above upon request.

23 **4. CLAIMS COVERED AND RELEASED**

24 4.1 **Full and Binding Resolution of Proposition 65 Allegations:** This Settlement
25 Agreement is a full, final, and binding resolution between

- 26 (i) Shefa on behalf of itself and the public interest; and
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(ii) Settling Defendant and their affiliates, their 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, and attorneys ("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 ("Distributor Releasees"), of 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 Distributor 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 Distributor 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 shipped, distributed, or sold prior to 120 days after the Effective Date by Settling Defendant, Defendant Releasees, and Distributor 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

1 acknowledges that the Claims released in Sections 4.1 and 4.2 include unknown Claims, and
2 Shefa nevertheless waives Civil Code § 1542 as to any such unknown Claims. Civil Code §
3 1542 reads as follows:

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

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

12 **4.4** Compliance with the terms of this Settlement Agreement by Settling Defendant
13 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
14 Distributor Releasees with respect to any alleged failure to warn about Lead in Covered Products
15 manufactured, distributed, or sold by Settling Defendant, Defendant Releasees, and Distributor
16 Releasees 120 days after the Effective Date.

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

20 **5. ENFORCEMENT**

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

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

1 5.3 The Parties shall then meet and confer regarding the basis for the anticipated
2 motion or application to resolve it informally, including providing Settling Defendant with a
3 reasonable opportunity of at least sixty (60) days to cure any alleged violation.

4 5.4 Should such attempt at informal resolution fail, Shefa may file an enforcement
5 motion or application.

6 **6. NOTICE**

7 6.1 When Shefa is entitled to receive any notice under this Settlement Agreement, the
8 notice shall be sent by first class and electronic mail to:

9 Daniel N. Greenbaum
10 Law Office of Daniel N. Greenbaum
11 7120 Hayvenhurst Ave., Suite 320
12 Van Nuys CA 91406
13 dgreenbaum@greenbaumlawfirm.com

14 6.2 When Settling Defendant is entitled to receive any notice under this Settlement
15 Agreement, the notice shall be sent by first class and electronic mail to:

16 SINSHEIMER JUHNKE MCIVOR & STROH, LLP
17 David A. Juhnke, Esq.
18 Ellen Drews, Esq.
19 656 Santa Rosa Street, Suite 2A
20 San Luis Obispo, CA 93401
21 Email: Docket@SJMSLaw.com

22 6.3 Any Party may modify the person and address to whom the notice is to be sent by
23 sending the other Party notice by electronic mail.

24 **7. MODIFICATION**

25 7.1 **Written Consent.** This Settlement Agreement may be modified from time to
26 time by express signed written agreement of the Parties with the approval of the Court, or by an
27 order of this Court upon motion and in accordance with law.

28 7.2 **Meet and Confer.** Any Party seeking to modify this Settlement Agreement shall
attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
modify the Settlement Agreement.

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

2 8.1 Shefa agrees to comply with the reporting form requirements referenced in Health
3 and Safety Code § 25249.7(f).

4 **9. COURT APPROVAL**

5 9.1 This Settlement Agreement shall become effective upon entry by the Court of
6 judgment pursuant to Health & Safety Code §§ 25249.7.

7 **10. OTHER TERMS**

8 10.1 No supplementation, modification, waiver, or termination of this Settlement
9 Agreement shall be binding unless executed in writing by the Party to be bound thereby, except
10 as provided by ¶¶ 8.1 & 8.2.

11 10.2 No waiver of any of the provisions of this Settlement Agreement shall be deemed
12 or shall constitute a waiver of any of the other provisions hereof whether similar, nor shall such
13 waiver constitute a continuing waiver.

14 10.3 Nothing in this Settlement Agreement shall release, or in any way affect any
15 rights Settling Defendant might have against any other party, whether or not that party is a
16 Defendant Releasee or Distributor Releasee.

17 10.4 This Court shall retain jurisdiction of this matter to implement or modify the
18 Settlement Agreement.

19 10.5 The Parties agree that, in any subsequent interpretation and construction of this
20 Settlement Agreement, no inference, assumption, or presumption shall be drawn, and no
21 provision of this Settlement Agreement shall be construed against any Party, since one of the
22 Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the
23 Settlement Agreement.

24 10.6 It is conclusively presumed that all the Parties participated equally in the
25 preparation and drafting of this Settlement Agreement.

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

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


11.2 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.

AGREED TO:

Dated: 07/27/2017


FOR: SHEFA LMV, INC.

By: 

Its: Director

Dated: 7/26/17

FOR: NATIVE TRAILS, INC.

By: 

Its: President

[PROPOSED] STIPULATED 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 Native Trails, 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