

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 Schluter Systems LP			
CASE INFO	COURT DOCKET NUMBER N/A		COURT NAME N/A	
	SHORT CASE NAME N/A			
REPORT INFO	INJUNCTIVE RELIEF Warning labels			
	PAYMENT: CIVIL PENALTY \$4,000		PAYMENT: ATTORNEYS FEES \$17,000	
			PAYMENT: OTHER 0.00	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input checked="" 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 9 / 9 / 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 SCHLUTER SYSTEMS LP

Shefa LMV, Inc. ("SHEFA") and Schluter Systems LP ("SCHLUTER"), (SHEFA and SCHLUTER 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 SCHLUTER 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 SCHLUTER previously sold, at various times, brass profiles and related tile edging trim products, including but not limited to, brass metal profiles and related tile edging trim, to various customers. The Covered Products subject to this Settlement Agreement are brass metal profiles and related tile edging trim products (referred to throughout as the "Covered Products").

1.3 SHEFA alleges that Covered Products contain Lead and Lead Compounds and that SCHLUTER did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (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 June 27, 2016, SHEFA served SCHLUTER, 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 (the "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 SCHLUTER, 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 SCHLUTER 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 Excluding only SHEFA's ability to file a Complaint pursuant to Section 3.5, this Settlement Agreement is a full, final, and binding resolution between SHEFA on the one hand and (a) SCHLUTER and their owners, parents, subsidiaries, affiliates, sister and related companies, including but not limited to any other subsidiary or entity affiliated with SCHLUTER, 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 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 SCHLUTER prior to the Effective Date, even if by any Downstream Releasees after 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 SCHLUTER 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 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 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 Schluter Systems LP's Duties

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

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

3.3 The Parties intend and agree that this Settlement Agreement shall be given full effect for the purposes of precluding Shefa's individual (not representative) claims regarding the Covered Products against Schluter, the Releasees, and the Downstream Releasees under Proposition 65 and as covered under the above release.

3.4 **Conversion to Consent Judgment.** The Parties hereby acknowledge that the stated position of the California Attorney General regarding "conversion" to Consent Judgment after entering into an out of court settlement agreement is to oppose such action. Nevertheless, if

requested in writing by Schluter, SHEFA will review all facts and law in order to determine the propriety of filing a complaint, rescinding this Settlement Agreement, and entering into a new Consent Judgment. If SHEFA determines that such action (i.e. “conversion”) does fall into the narrow exception to the rule against “conversion,” the SHEFA will promptly file a complaint and seek approval of this Settlement Agreement through a court approved Consent Judgment pursuant to Health and Safety Code §25249.7, or as may be otherwise allowed by law, and SHEFA shall reasonably cooperate with Schluter and use its best efforts and that of its counsel to support the entry of the consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California.

3.5 Pursuant to California Civil Procedure §1021 and §1021.5, Schluter shall reimburse SHEFA and its counsel for their reasonable attorney’s fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00).

3.6 No fees under this paragraph will be due and owing to SHEFA and its counsel unless a written request in made by Schluter to have SHEFA file a complaint and seek a consent judgment.

3.7 Such additional fees shall be paid by Schluter pursuant to the terms of any said Consent Judgment.

4.0 Payments

4.1 SCHLUTER agrees to pay a total of Twenty One Thousand Dollars (\$21,000.00) within fifteen (15) business days of the Effective Date by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: Seventeen Thousand Dollars (\$17,000.00) 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 SCHLUTER'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 SCHLUTER with its EIN.

4.1.2 Penalty: SCHLUTER shall issue two (2) separate checks for a total amount of Four Thousand Dollars (\$4,000.00) 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 Three Thousand Dollars (\$3,000.00), representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC in the amount of One Thousand Dollars (\$1,000.00), representing 25% of the total penalty.

4.1.3 The OEHHA payment shall be delivered to: Office of Environmental Health Hazard Assessment, Attn.: Mike 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 Three Thousand Dollars (\$3,000.00). The second 1099 shall be issued in the amount of One Thousand Dollars (\$1,000.00) 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 SCHLUTER represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind SCHLUTER 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 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 SCHLUTER 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 SCHLUTER, 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 Schluter Systems LP

C. J. Madonna, Esq.
Schluter Systems L.P.
194 Pleasant Ridge Rd.
Plattsburgh, New York 12901-5841

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 SCHLUTER 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.

[Signature Page Follows]

AGREED TO:

Dated: 9/9/16

SHEFA LMV, INC.

By: 

Dated: 9/8/2016

SCHLUTER SYSTEMS L.P.

By: W. Hudry, CEO