

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 Airgas, Inc.			
CASE INFO	COURT DOCKET NUMBER N/A		COURT NAME N/A	
	SHORT CASE NAME N/A			
REPORT INFO	INJUNCTIVE RELIEF Warning label			
	PAYMENT: CIVIL PENALTY \$2,000		PAYMENT: ATTORNEYS FEES \$9,500	
			PAYMENT: OTHER 0.00	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" 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 3 / 7 / 2017	
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 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

AIRGAS, INC.

Shefa LMV, INC. (“Shefa”), on the one hand, and Airgas USA, LLC, incorrectly identified as Airgas, Inc., (“AIRGAS”), on the other hand (collectively the “Parties”), enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle Shefa's allegations that AIRGAS 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 asserts it 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 AIRGAS previously sold, at various times, antifreeze and coolants, including but not limited to, Radnor Cooling Fluid (the “Covered Products”).

1.3 The Covered Products are limited to those sold by AIRGAS and Releasees and Downstream Releasees as defined in paragraph 2.1 of this Settlement Agreement.

1.4 Shefa alleges that the Covered Products expose consumers to ethylene glycol and that AIRGAS 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”)).

1.5 On June 19, 2015, the Governor of California added Ethylene Glycol (ingested) to the list of chemicals known to the State to cause reproductive toxicity.

1.6 These additions took place more than one year 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 Ethylene Glycol (ingested) is referred to hereafter as the “Listed Chemical.”

1.8 On or about July 15, 2016, Shefa served AIRGAS, other noticed parties and certain relevant public enforcement agencies, with documents entitled “Sixty-Day Notice Of Violation” regarding Covered Products containing the Listed Chemical under Proposition 65.

1.9 The Sixty-Day Notice (the “Notice”) alleged AIRGAS and the other 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 AIRGAS denies the material, factual, and legal allegations contained in the Notice.

1.12 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.

1.13 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.

1.14 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 AIRGAS, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

1.15 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 AIRGAS may have against one another in any other pending legal proceeding as to

allegations unrelated to the Dispute or claims released herein.

2.0 Release

2.1 This Settlement Agreement is a full, final, and binding resolution between Shefa, acting in its individual capacity, and not its representative capacity, on the one hand, and (a) AIRGAS, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns, including, but not limited to, Airgas, Inc. and Airgas Safety, Inc. (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 and licensees (collectively “Downstream Releasees”), and (c) all entities from whom Releasees purchased, or otherwise received or obtained, Covered Products, including, but not limited to, Kemper Systems (collectively “Upstream 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, Downstream Releasees, and Upstream 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 prior to the Effective Date, even if sold by Downstream Releasees or Upstream Releasees after the Effective Date.

2.2 The Covered Products are limited to those sold by AIRGAS, Releasees, Downstream Releasees, and Upstream Releasees as defined in paragraph 2.1 of this Settlement Agreement. Shefa, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases 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) (collectively "Claims"), against Releasees and/or Downstream Releasees and/or Upstream 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 sold up to the Effective Date, including without limitation to the extent that such claims relate to Releasees' and/or Downstream Releasees' and/or Upstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees, Downstream Releasees, and/or Upstream 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, its past and current agents, representatives, attorneys, successors, and/or assignees, in its individual and not representative capacity, 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.

3.0 AIRGAS's Duties

3.1 AIRGAS agrees, promises, and represents that within 90 (ninety) days after the Effective Date, AIRGAS shall take all practicable efforts to ensure a warning, as described in paragraph 3.4 of this Agreement, is applied to existing inventory sold through Releasees in California.

3.2 AIRGAS agrees, promises, and represents that, within 90 (ninety) days of the

Effective Date, to the extent it ships or sells in California any Covered Products in existing inventory that have not been reformulated, it will provide warnings on such Covered Products that comply with Proposition 65.

3.3 The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase.

3.4 The Parties agree product labeling that states: "**WARNING: This Product contains a chemical known to the State of California to cause reproductive harm,**" shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products distributed and/or sold by Releasees or Downstream Releasees or Upstream Releasees after the Effective Date.

4.0 Payments

4.1 AIRGAS agrees to pay a total of \$11,500.00 within thirty (30) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Attorneys' Fees and Costs: Nine Thousand Five Hundred Dollars (\$9,500.00) 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 AIRGAS' attention. The check shall be delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406 (EIN 46-4580172).

4.1.2 Penalty: AIRGAS shall issue two (2) separate checks for a total amount of Two Thousand dollars (\$2,000.00) 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 One Thousand Five Hundred Dollars (\$1,500.00), representing 75% of the total penalty; and (b) one check to Shefa LMV, Inc. in the amount of Five Hundred Dollars (\$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 Avenue, 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 Avenue, 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 AIRGAS represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind AIRGAS to this Settlement Agreement.

6.0 Report of the Settlement 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 Fax or portable document format (PDF) signatures 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 entire subject matter hereof, and all related prior

discussions, negotiations, commitments, and understandings.

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 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, AIRGAS, the Releasees and Downstream Releasees.

11.0 Enforcement of Settlement Agreement

11.1 Any party may file suit before the Superior Court of the County of Alameda, 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.

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 AIRGAS 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.

11.3 Any notice to AIRGAS must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without warning, (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.

11.4 Within 30 days of receiving the notice described in Section 11.2, AIRGAS 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 AIRGAS, or (2) refute the information provided under Section 11.2.

11.5 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 LMV Inc.:

Daniel N. Greenbaum, Esq.
Law Office of Daniel N. Greenbaum
7120 Hayvenhurst Avenue
Suite 320
Van Nuys, CA 91406

For Airgas USA, LLC:

Brian M. Ledger, Esq.
GORDON & REES LLP
633 W. 5th Street, 52nd Floor
Los Angeles CA 90071

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 AIRGAS 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 Shefa and

AIRGAS and their respective, divisions, subdivisions, and subsidiaries, successors and assigns.

14.4 The Parties and their counsel have participated in the preparation of this Settlement Agreement and it 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.

15.0 AUTHORIZATION

15.1 Each signatory to this Settlement Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement on behalf of the Party represented and legally bind that Party.


15.2 The undersigned have read, understand and agree to all of the terms and conditions of this Settlement Agreement.

15.3 Except as explicitly provided herein, each Party is to bear its own fees and costs.

AGREED TO:


Dated: 3/7/2017

SHEFA LMV, INC.

By: 

Dated: 3/7/2017

AIRGAS USA, LLC

By: 
Robert F. Hecht, Deputy General Counsel & Assistant Secretary