

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 Kahoot Products, Inc. & Kahoot Products, Inc. d/b/a Yarn Valet				
CASE INFO	COURT DOCKET NUMBER N/A		COURT NAME N/A		
	SHORT CASE NAME Shefa v. Kahoot Products, Inc.				
REPORT INFO	INJUNCTIVE RELIEF Reformulation and/or Warning Labels				
	PAYMENT: CIVIL PENALTY \$1,000	PAYMENT: ATTORNEYS FEES \$10,000	PAYMENT: OTHER 0.00		
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input 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 2 / 15 / 2017	For Internal Use Only
	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 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

KAHOOT PRODUCTS, INC. &

KAHOOT PRODUCTS, INC. D/B/A YARN VALET

This Settlement Agreement is entered into by and between Shefa LMV, INC. (hereto referred to as "Shefa"), on the one hand, and Kahoot Products, Inc. ("Kahoot") and Kahoot Products, Inc. d/b/a Yarn Valet (hereto referred to as "Defendants"), on the other hand. Shefa and Defendants are collectively referred to herein as the "Parties."

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 nonprofit public benefit corporation 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 Plaintiff alleges that Kahoot Products, Inc., Yarn Valet, Hobby Lobby Stores, Inc., and Jo-Ann Stores, Inc. (the "Noticed Parties") each employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (Proposition 65).

1.3 Shefa alleges that the Noticed Parties manufacture, sell, and/or distribute for sale in California plastic grip accessories and parts containing DINP (Diisononyl Phthalate) and that

they do so without first providing the health hazard warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer. DINP is sometimes referred to in this Settlement Agreement as "the Listed Chemical."

1.4 The products covered by this Settlement Agreement are defined as, and expressly limited to, plastic grip accessories and parts containing DINP that are manufactured, sold or distributed for sale in California by Defendants, including but not limited to Comfort Grip Crochet (UPC:093461989069) and Comfort Grip Latch Hook (UPC:093461989052) (the "Covered Products").

1.5 On or about November 3, 2016, Shefa served on the Noticed Parties, the California Attorney General, and other requisite public enforcers with two 60-Day Notices of Violation ("Notice"), regarding the Covered Products.

1.6 To the best of the Parties' knowledge, no public enforcer has commenced prosecuting the allegations against Defendants.

1.7 Defendants deny the material, factual, and legal allegations contained in the Notices and maintain that the Covered Products sold or distributed for sale in California have been, and are, in compliance with all laws.

1.8 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").

1.9 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.

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

1.11 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 Defendants 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) Kahoot Products, Inc., and Kahoot Products, Inc. d/b/a/ Yarn Valet, and its owners, parents, subsidiaries, affiliates, sister and related companies, 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 only, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, and specifically including Hobby Lobby Stores, Inc., and Jo-Ann Stores, Inc. ("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/or Downstream Releasees regarding exposing persons to the Listed Chemical and/or 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 after the Effective Date.

2.2 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 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' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees and/or 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, 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 Defendants' Duties

3.1 Defendants represent that they are not presently selling or otherwise distributing the Covered Products for sale in or into California. Defendants agree, however, that should they recommence sales of the Covered Products in California in the future, they will only offer (a) Compliant Products, or (b) Covered Products that are sold with a clear and reasonable health hazard warning, pursuant to section 3.3 below.

3.2 For purposes of this Settlement Agreement, "Compliant Products" shall mean Covered Products containing the Listed Chemical in concentrations less than or equal to 1000 parts per million ("ppm") (.1%) when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology for determining the Listed Chemical content in a substance of the form of the Covered Products herein.

3.3 For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging, label, labeling, tag, or directly to each Product sold in California by Defendants that contains one of the following statements:

WARNING: This product contains DINP, a chemical known to

the State of California to cause cancer.

OR

WARNING: This product contains a chemical known to the State of California to cause cancer.

3.4 The injunctive requirements of this Section 3 shall not apply to Covered Products that are already in the stream of commerce as of the Effective Date, which Products are subject to the releases provided in Section 2.

4.0 **Payments**

4.1 In settlement of the claims referred to in this Agreement, Defendants agree to pay a total of \$11,000.00 within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 **Attorneys' Fees and Costs:** \$10,000.00 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 Defendants' attention. The check shall be delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406. By the Effective Date, Law Office of Daniel N. Greenbaum shall provide Defendant with its EIN.

4.1.2 **Penalty:** Defendants shall issue two (2) separate checks for a total amount of \$1,000.00 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 \$750.00, representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC in the amount of \$250, 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.

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 Defendants represent that its signatory to this Settlement Agreement has full authority to enter into and legally bind Defendants to this Settlement Agreement.

6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California

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 facsimile or 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 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 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 Notification Requirements

11.1 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 Avenue, Suite 320
Van Nuys, CA 91406

For Kahoot Products, Inc. & Kahoot Products, Inc. d/b/a Yarn Valet

Kendra Lounsberry, Esq.
Barnes & Thornburg LLP
2029 Century Park East, Suite 300
Los Angeles, CA 90067-2904

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

12.0 Severability

12.1 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.

13.0 Governing Law

13.1 The Terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

13.2 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 Defendants 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.

13.3 This Settlement Agreement shall apply to and be binding upon Shefa and Defendants and their respective, divisions, subdivisions, and subsidiaries, successors, and assigns.

13.4 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.

13.5 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.

13.6 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.

14.0 Miscellaneous


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

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

AGREED TO:

SHEFA LMV, INC.

Dated: 2/14/17

By: 

KAHOOTS PRODUCTS, INC.

Dated: 2/15/17

By: 

KAHOOTS PRODUCTS, INC.
D/B/A YARN VALET

Dated: 2/15/17

By: 