

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)				
	DEFENDANT(S) INVOLVED IN SETTLEMENT				
CASE INFO	COURT DOCKET NUMBER			COURT NAME	
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input 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		DATE SETTLEMENT SIGNED / /
	COPY OF SETTLEMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER ()	
	ADDRESS			FAX NUMBER ()	
	CITY		STATE	ZIP	E-MAIL ADDRESS

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.

**CONFIDENTIAL SETTLEMENT AGREEMENT BETWEEN
SHEFA LMV, INC. AND WILLERT HOME PRODUCTS, INC.**

Shefa LMV, INC. (“Shefa”) and Willert Home Products, Inc. (“Willert”), collectively referred to as the “Parties,” enter into this Confidential Settlement Agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle Shefa’s allegations that Willert and certain Downstream Releasees, as defined below, violated the California Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §25249.6 et seq. (“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. 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. Shefa alleges that Willert manufactures, imports, sells, or distributes, for sale in the State of California, clothes hanger products that contain Diisononyl Phthalate (“DINP”) without first providing a clear and reasonable warning as required by Proposition 65.

1.3. DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer.

1.4. The products covered by this Settlement Agreement are clothes hanger products manufactured by or for Willert, imported by or for Willert, or distributed or sold by or for Willert to others, including, but not limited to, Space Saver 8 Drip-Dry Hangers;

UPC: 070922046011 (the “Covered Products”).

1.5. On December 20, 2013, the State of California added DINP to the list of chemicals known to the State to cause cancer.

1.6. This addition took place more than twelve (12) months before Shefa served Willert with its “60-Day Notice of Violation,” which is further described below.

1.7. DINP is referred to hereinafter as the “Listed Chemical.”

1.8. On or about March 2, 2017, Shefa served Willert, as well as certain relevant public enforcement agencies, with a document entitled “60-Day Notice Of Violation” (“Notice”) advising of its intent to sue for alleged violations of Proposition 65 arising from or related to the Covered Products containing the Listed Chemical.

1.9. The Notice alleged that Willert violated Proposition 65 by failing to warn consumers in California that use of the Covered Products purportedly exposed users to the Listed Chemical.

1.10. To the best of the Parties’ knowledge, no public enforcer has commenced any investigation or action against Willert relating to the Covered Products.

1.11. Willert denies all allegations contained in the Notice, and maintains that all of the products that it has sold and distributed in California, including the Covered Products, are and have been in compliance with all laws and regulations, including Proposition 65.

1.12. The Parties enter into this Settlement Agreement to avoid litigation and settle disputed claims between the Parties as alleged in the Notice and as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65 (the “Dispute”).

1.13. 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 alleged 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 against interest, by any Party, of any alleged 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 against interest or evidence of fault, wrongdoing, or liability by Willert, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, any person acting for Willert, any direct or indirect customer of Willert who sold or sells the Covered Products, and/or any Downstream Releasees, as defined below, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

2. Release

2.1 This Settlement Agreement is a full, final, and binding resolution between Shefa, acting in its individual capacity only, and not its representative capacity, on the one hand, and (a) Willert, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, licensors, licensees, brands, shareholders, members, officers, directors, insurers, agents, attorneys, predecessors, successors, and assigns (collectively, "Releasees"), and (b) all entities to whom Releasees directly or indirectly have provided, distributed, or sold the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including Rite Aid Corporation, and their respective attorneys, officers, directors, employees, agents, contractors, subcontractors, predecessors,

successors, assigns, subsidiaries, parent(s) and affiliated companies (and each of the officers, directors, legal representatives, insurers, and assigns thereof) (collectively, “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, whether known or unknown.

2.2 With respect to the Covered Products, in exchange for the payments described in Section 4 below, Shefa, in its individual and not representative capacity, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby fully waives, releases, settles, and forever discharges Willert and its current and former officers, directors, employees, agents, representatives, affiliates, parents, subsidiaries, insurers, together with their predecessors, successors, and assigns, from any and all claims, actions, rights, demands, damages, or any liability of whatever kind or nature, whether known or unknown, up to the Effective Date. This release includes, without limiting the generality of the foregoing, 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 the “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 up to the Effective Date. Shefa understands that as of the Effective Date it may have claims against any one or more of the Releasees and/or Downstream Releasees with regard to the Covered Products about which it has no knowledge or suspicion, but it agrees and represents that this Agreement extends to all claims, whether known or unknown, claimed, or suspected by it or its attorneys. Shefa

further represents and warrants that it has no pending charges, lawsuits, complaints, or actions of any kind against the Releasees or Downstream Releasees before any local, state, or federal agency or court with regard to the Covered Products.

2.3 Shefa acknowledges that it is familiar with Section 1542 of the California 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. Willert's Duties

3.1 Commencing on the Effective Date, Willert shall only sell or offer for sale, in California, Covered Products that are Compliant Products. For purposes of this Settlement Agreement, "Compliant Products" are defined as those Covered Products either (a) containing the Listed Chemical in a concentration less than or equal to 1,000 parts per million ("ppm") (0.1%) 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 (“Reformulation Standard”), or (b) exhibiting a warning in compliance with Proposition 65 (“Compliant Warning”).

3.2 Whenever a clear and reasonable warning is required under Section 3.1 for Covered Products offered for sale in the State of California, it shall state one of the warnings described in Section 3.3 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.

3.3 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.” as provided by existing regulations; or

b. the text, “WARNING: This product can expose you to DINP, a chemical which is known to the State of California to cause cancer. 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 - 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.

3.4 The Parties agree that the specifications for Compliant Warnings in this

Settlement Agreement comply with Proposition 65 and its regulations as of the date of this Settlement Agreement, and with regulations adopted on or about August 30, 2016 and which become effective August 30, 2018.

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

4. **Payments**

4.1 **Payment from Willert.** Within thirty (30) business days of the Effective Date, Willert shall make the Total Settlement Payment of \$19,500.00.

4.2 **Allocation of Payments.** The Total Settlement Payment shall be paid in three (3) separate checks made payable and allocated as follows:

4.2.1 **Civil Penalty.** Willert shall pay \$5,000.00 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment in the amount of \$3,750.00 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The Shefa portion of the civil penalty payment in the amount of \$1,250.00 shall be made payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

4.2.2 **Attorney's fees and Costs.** A reimbursement of Shefa's attorney's fees and costs in the amount of \$14,500.00 payable to the "Law Office of Daniel N. Greenbaum," and associated with taxpayer identification number 46-4580172. This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

4.2.3 **Tax Forms.** Additionally, three 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 \$3,750.00. The second 1099 shall be issued in the amount of \$1,250.00 to Shefa (EIN: 81-0907002) and delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406. The third 1099 shall be issued in the amount of \$14,500.00 to Law Office of Daniel N. Greenbaum and delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406. Further, Shefa shall have completed IRS

Form W-9s for Shefa, LMV, Inc. and Law Office of Daniel N. Greenbaum provided to Willert within thirty (30) days of the Effective Date.

Shefa shall be responsible for any tax liability that the Internal Revenue Service ("IRS") or any similar state or local agency may determine is owed in connection with the payments set forth above.

5. Report of the Settlement Agreement to the Office of the Attorney General

Shefa shall report this Settlement Agreement to the California Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

6. Execution in Counterparts and Facsimile

6.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document.

6.2 A facsimile or portable document format (PDF) signature shall be as valid as the original.

7. Entire Agreement

7.1 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.

7.2 No other agreements, oral or otherwise, exist to bind any of the Parties.

8. Modification of Settlement Agreement

Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

9. Application of Settlement Agreement

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, as well as the Parties' heirs, executors, administrators, assigns, successors, beneficiaries, and agents. Willert's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 by the Releasees and Downstream Releasees with regard to the Listed Chemical in the Covered Products.

10. Confidentiality.

Shefa understands, acknowledges, and agrees that the terms and contents of this Agreement and any and all facts and circumstances giving rise to the Notice, the Dispute, and this Agreement shall remain strictly confidential and will not be disclosed to anyone other than the parties' attorneys or tax and financial advisors, or pursuant to court order or subpoena or as otherwise required by law. In the event that Shefa is compelled by legal subpoena or court order to provide information covered by this paragraph, Shefa shall immediately notify Willert upon receipt of such a court order or subpoena. In the event of a breach or threatened breach by Shefa or its agents of any of these provisions, Willert may seek a restraining order and/or an injunction restraining the utilization or disclosure in whole or in part, of any such information.

Notwithstanding anything to the contrary, nothing in this Agreement shall prevent the disclosure of confidential information or the terms hereunder to lawyers, accountants, auditors, insurers/reinsurers (if any), together with such insurers/reinsurers' third party service providers, actuaries, or intermediaries (collectively "Recipients") or regulators, provided the disclosure of the information is reasonably necessary to effectuate the terms of this Agreement, or is required for tax, financial reporting, or governmental compliance purposes, or to transact the business of insurance. Prior to disclosure, the Recipients shall be informed of the confidential nature of the information and shall agree in writing to keep such information confidential.

11. Non-Disparagement.

The Parties shall not disparage the other Party, or its agents, officers, directors, or employees to any person or entity or encourage others to do so. The Parties shall not engage in any communications designed to disparage the other Party or that would be reasonably expected to disparage or demean the other, including the other's employees, agents, services, business practices, or policies.

12. Enforcement of Settlement Agreement

12.1 Any Party may file suit before the Superior Court of the County of Alameda, consistent with the terms and conditions set forth in Sections 12.2 and 12.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement.

12.2 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 Willert by Shefa, unless the Party seeking enforcement or alleging violation notifies the other Party of the specific act(s) alleged to constitute a breach of this Settlement Agreement or a violation of Proposition 65 at least 90 days before serving or filing any action or Notice of Violation.

12.3 Any notice to Willert alleging a new violation of Proposition 65 contain (a) the name of the product, including SKU if applicable, (b) specific dates when the product was sold after the Effective Date in California without reformulation or a warning, (c) the store or other place at which the product was available for sale to consumers, (d) evidence that the Reformulation Standard was exceeded or a warning was not provided, and (e) any other evidence

or other support for the allegations in the notice.

12.4 Within thirty (30) days (or such additional time as the Parties may mutually agree upon) of receiving the notice described in Section 10.2, Willert and Shefa shall meet and confer on the alleged violation.

12.5 Should the Parties be unable to resolve the dispute, any Party may seek relief under Section 12.1.

13. Notification Requirements

Any notice required or permitted hereunder shall be effective only if given in writing 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 Willert

Meshach Y. Rhoades, Esq.
ARMSTRONG TEASDALE
4643 South Ulster Street, Suite 800
Denver, CO 80237

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

14. Severability

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.

15. Governing Law

15.1 If Shefa files suit to enforce any provision herein, the terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

15.2 This Settlement Agreement shall have no application to Covered Products which are not sold to California customers.

15.3 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 Willert 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.

15.4 The Parties, including their counsel, have jointly participated in the preparation of this Settlement Agreement, and this Settlement Agreement is the result of the joint efforts of the Parties.

15.5 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.

15.6 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.

16. Authorization

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 to thus legally bind that Party. The undersigned have read, understand, and agree to all of the terms and conditions

of this Settlement Agreement. Except as explicitly provided herein, each Party is to bear its own fees and costs.

AGREED TO:

Dated: 2/12/18

SHEFA LMV, INC.

By: 

Dated: 1/19/18

WILLERT HOME PRODUCTS, INC.

By: 