

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 91406	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.

1 LAW OFFICE OF DANIEL N. GREENBAUM
2 Daniel N. Greenbaum, Esq. (SBN 268104)
3 The Hathaway Building
4 7120 Hayvenhurst Avenue, Suite 320
5 Van Nuys, CA 91406
6 Telephone: (818) 809-2199
7 Facsimile: (424) 243-7689
8 Email: dgreenbaum@greenbaumlawfirm.com

9 Attorney for Plaintiff SHEFA LMV, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

10 SHEFA LMV, INC.,

11 Plaintiff,

12 vs.

13 MOREFLAVOR, INC. DBA
14 BREWMASTER; and DOES 1 through
15 10, Inclusive,

16 Defendants.

Case No. BC685121

Hon. Michael L. Stern
Dept. 62

**[PROPOSED] CONSENT JUDGMENT
AS TO MOREFLAVOR, INC. DBA
BREWMASTER**

Action filed: November 30, 2017

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1 Settling Defendant; (ii) venue is proper in the County of Los Angeles; and (iii) this Court has
2 jurisdiction to enter this Consent Judgment.

3 1.9 Nothing in this Consent Judgment is or shall be construed as an admission by any
4 of the Parties of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
5 compliance with the Consent Judgment constitute or be construed as an admission by any of the
6 Parties of any fact, finding, conclusion of law, issue of law, or violation of law.

7 1.10 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
8 remedy, argument, or defense the Parties may have in any other legal proceeding.

9 1.11 This Consent Judgment is the product of negotiation and compromise and is
10 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
11 this action.

12 1.12 The term "Effective Date" means the date on which this Consent Judgment is
13 approved and entered by the Court.

14 1.13 Shefa shall file a dismissal as to the entire case within (thirty) 30 days after entry
15 of this Consent Judgment by the Court.

16 **2. INJUNCTIVE RELIEF**

17 2.1 **Warning Requirement.** Beginning on or as of the Effective Date, any Covered
18 Products that are manufactured more than thirty (30) days after the Effective Date, and which
19 Settling Defendant sells in California, markets or distributes for sale in California, or offers for
20 sale to a third party for retail sale in California, shall either: (1) contain only low lead brass¹ or
21 brass that contains zero amounts of lead ("Reformulated"); or (2) satisfy the warning
22 requirements set forth in this Section 2.

23 2.2 **Proposition 65 Warnings.** Covered Products that are not Reformulated are
24 compliant with Proposition 65 and this Consent Judgment if warnings are provided on the
25 product label, packaging, including the packing slip or invoice for products shipped directly to

26 _____
27 ¹ Brass alloy containing 0.25% or less lead is known as "low lead" brass, as opposed to the more
typical alloy which contains 5% lead.

1 consumers in California, or affixed to the product itself, in accordance with Sections 2.3 and 2.4.
2 For Covered Products that are sold by third-party retailers in California, Settling Defendant may
3 provide labels with the requisite warning to the third-party retailer with instructions for attaching
4 the labels to the Covered Products before they are sold or offered for retail sale in California.
5 Settling Defendant shall also include a warning, in accordance with applicable provisions of
6 Sections 2.3 and 2.4, on its website for any Covered Products.

7 **2.3 Product Labeling.** Warnings that are provided through one or more of the
8 methods described in Section 2.2 shall state:

9 **“WARNING:** This product contains lead and/or lead compounds, a chemical known to
10 the State of California to cause cancer and birth defects or other reproductive harm.”

11 **2.4 Warning Placement.** Each warning shall be prominently placed with such
12 conspicuousness as compared with other words, statements, designs, or devices as to render it
13 likely to be read and understood by an ordinary individual under customary conditions of
14 purchase or use. The warning must be at least the same size as the largest of any other health or
15 safety warnings appearing on the product label, as applicable, of such product. To the extent any
16 subsequent revisions to Proposition 65 or its implementing regulations require or allow for
17 additional or different warning language, Settling Defendant may revise the above warning to
18 comply with such new law or regulations.

19 **2.5 Sell Through Period.** Settling Defendant will have sixty (60) days following the
20 Effective Date to sell any inventory of Covered Products that are not Reformulated and that do
21 not comply with the warning requirements above.

22 **3. SETTLEMENT PAYMENTS**

23 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective
24 Date, Defendant shall make the Total Settlement Payment of \$23,500.00 by
25 delivering checks, as set forth below, to counsel for Shefa.

26 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three
27 (3) separate checks made payable and allocated as follows:

1 **3.2.1 Civil Penalty.** Defendant shall pay \$5,000.00 as a civil penalty
2 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be
3 apportioned in accordance with Health & Safety Code § 25249.12 (25% to Shefa and
4 75% to the State of California's Office of Environmental Health Hazard Assessment
5 ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment in the
6 amount of \$3,750.00 shall be made payable to OEHHA and associated with taxpayer
7 identification number 68-0284486. This payment shall be delivered as follows:

8 For United States Postal Service Delivery:

9 Attn: Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010, MS #19B
13 Sacramento, CA 95812-4010

14 For Non-United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street, MS #19B
19 Sacramento, CA 95814

20 The Shefa portion of the civil penalty payment in the amount of
21 \$1,750.00 shall be made payable to Shefa LMV, Inc. and associated with
22 taxpayer identification number 81-0907002. This payment shall be delivered
23 by Settling Defendant to the Law Office of Daniel N. Greenbaum, 7120
24 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

25 **3.2.2 Attorney's fees and Costs.** A reimbursement of Shefa's attorney's fees
26 and costs in the amount of \$18,500.00 payable to the "Law Office of Daniel N.
27 Greenbaum," and associated with taxpayer identification number 46-4580172. This
28 payment shall be delivered by Settling Defendant to the Law Office of Daniel N.
 Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

4. **CLAIMS COVERED AND RELEASED**

under Proposition 65, Bus. & Prof. Code §§ 17200 *et seq.*, or 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 or lead compounds in Covered Products manufactured, imported, shipped, distributed, offered for sale, and/or sold by Settling Defendant prior to thirty (30) days after the Effective Date.

4.4 **General Release:** It is possible that other Claims not known to the Parties arising out of the facts alleged in the Notice 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 Consent Judgment 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 acknowledges that the Claims released in Sections 4.1, 4.2 and 4.3 include unknown Claims, and Shefa nevertheless waives Civil Code § 1542 as to any such unknown Claims. Civil Code § 1542 reads 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, its past and current agents, representatives, attorneys, and successors and/or assignees, and **not** in its representative capacity, acknowledges and understands the significance and consequences of this specific waiver of Civil Code § 1542.

4.5 Compliance with the terms of this Consent Judgment by Settling Defendant shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and Distributor Releasees with respect to any alleged failure to warn about lead or lead compounds in Covered Products manufactured, imported, shipped, distributed, offered for sale, and/or sold by Settling Defendant more than thirty (30) days after the Effective Date.

4.6 Nothing in this Section 4 affects Shefa's right to commence or prosecute an action under Proposition 65 against any person other than Settling Defendant, Defendant Releasees, or Distributor Releasees.

5. ENFORCEMENT

5.1 The Parties may, by motion or application for an order to show cause before the Superior Court of Los Angeles County, enforce the terms and conditions contained in this Consent Judgment.

5.2 Prior to bringing any motion or application to enforce the requirements of Section 2 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase and a copy of any test results, which purportedly support the Notice of Violation.

5.3 Prior to bringing any motion or application to enforce any of the terms and conditions contained in this Consent Judgment, the Parties shall meet and confer regarding the basis for the anticipated motion or application in an attempt to resolve it informally, including providing Settling Defendant with a reasonable opportunity of at least thirty (30) days to cure any alleged violation.

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

6. ATTORNEYS' FEES

6.1 Except as otherwise provided in this Consent Judgment, each Party shall bear its own attorneys' fees and costs.

6.2 Nothing in this Section 6 shall preclude a Party from seeking an award of sanctions pursuant to law.

7. NOTICE

7.1 When Shefa is entitled to receive any notice under this Consent Judgment, the notice shall be sent by first class and electronic mail to:

Daniel N. Greenbaum
Law Office of Daniel N. Greenbaum

7120 Hayvenhurst Ave., Suite 320
Van Nuys CA 91406
dgreenbaum@greenbaumlawfirm.com

7.2 When Settling Defendant is entitled to receive any notice under this Consent Judgment, the notice shall be sent by electronic mail to:

Mr. Dan Lipscomb
MoreFlavor, Inc. DBA Brewmaster
701 Willow Pass Road, Suite 1
Pittsburg, CA 94565
danl@moreflavor.com

With a courtesy copy to:

Stuart Block, Esq.
STICE & BLOCK
2335 Broadway, Suite 201
Oakland CA 94612
Email: sblock@sticeblock.com

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

8. MODIFICATION

8.1 **Written Consent.** This Consent Judgment may be modified from time to time by express written agreement of the Parties with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

8.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

9. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)

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

10. COURT APPROVAL

10.1 This Consent Judgment shall become effective upon entry by the Court.

10.2 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Shefa shall prepare and file such motion, and Settling Defendant shall not oppose it.

11. OTHER TERMS

11.1 This Consent Judgment shall apply to and be binding upon Shefa, Settling Defendant, its affiliates, and successors or assigns of any of them.

11.2 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

11.3 There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein.

11.4 No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

11.5 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

11.6 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

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

11.8 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

11.9 This Consent Judgment 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.

1 11.10 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment
2 shall not be interpreted against any Party as a result of the manner of the preparation of this
3 Consent Judgment.

4 11.11 Each Party to this Consent Judgment agrees that any statute or rule of
5 construction providing that ambiguities are to be resolved against the drafting Party should not
6 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
7 waive Civil Code § 1654.

8 **12. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the state of California
10 and apply within the state of California. In the event that Proposition 65 is repealed, preempted,
11 or is otherwise rendered inapplicable or no longer required as a result of any such repeal or
12 preemption, or rendered inapplicable by reason of law generally as to the Covered Products, then
13 Settling Defendant may provide written notice to Shefa of any asserted change in law, and shall
14 have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to
15 the extent that, the Covered Products are so affected.

16 **13. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF** 17 **CONSENT JUDGMENT**

18 13.1 This Consent Judgment will be brought before this Court upon the request of the
19 Parties. The Parties request the Court to review this Consent Judgment and to make the
20 following findings pursuant to Health & Safety Code § 25249.7(f)(4):

- 21 a. The injunctive relief required by the Consent Judgment complies with Health &
22 Safety Code § 25249.7;
 - 23 b. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment
24 is reasonable under California law; and
 - 25 c. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.
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AGREED TO:

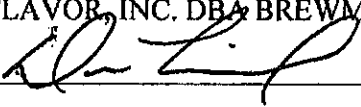
Dated: 1/26/18

SHEFA LMV, INC.

By: 

Dated: 1/24/18

MOREFLAVOR, INC. DBA BREWMASTER

By: 

1 **ORDER AND JUDGMENT**

2 Please note that on _____, 2017 at _____, Plaintiff Shefa LMV Inc.'s ("Plaintiff")
3 Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to
4 MoreFlavor, Inc. DBA Brewmaster, came on for hearing before this Court in Department 62, the
5 Honorable Michael L. Stern presiding. Counsel for Plaintiff did [not] appear; counsel for
6 Defendant did [not] appear.

7 After full consideration of the points and authorities and related pleadings submitted, the
8 Court GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code
9 §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following
10 findings pursuant to Health & Safety Code § 25249.7(f)(4):

- 11 a. The injunctive relief required by the Settlement Agreement complies with Health &
12 Safety Code § 25249.7;
13 b. The reimbursement of fees and costs to be paid pursuant to the Settlement Agreement
14 is reasonable under California law; and
15 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.
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17 The Settlement Agreement is hereby approved, and the clerk is directed to enter
18 judgment in accordance with the terms of the Settlement Agreement above.

19
20 Dated: _____
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22 _____
23 Judge of the Superior Court
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