

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.

SETTLEMENT AGREEMENT

BETWEEN

SHEFA LMV, INC.

AND

TELEBRANDS CORP.

Shefa LMV, INC. (“Shefa”) and TELEBRANDS CORP. (“Defendant”) (Shefa and Defendant collectively are 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 Defendant and other Releasees (as defined in section 2.1 of this Settlement Agreement) 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”).

1.0 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 Shefa alleges that Defendant manufactures, imports, sells, or distributes for sale in the State of California rechargeable callus remover products that contain a Listed Chemical (as defined below) without first providing a clear and reasonable warning as required by Proposition 65. The “Listed Chemical” is Di-[2-Ethylhexyl] Phthalate or Bis (2-ethylhexyl) Phthalate (“DEHP”).

1.3 The Listed Chemical is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.4 The products covered by this Settlement Agreement are rechargeable callus remover products manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for Defendant to others, including, but not limited to, the Peg Egg® Powerball™ Rechargeable Callus Remover (the “Covered Products”).

1.5 On or before January 1, 1988, the State of California added the Listed Chemical to the list of chemicals known to the State of California to cause cancer. On or before October 24, 2003, the State of California added the Listed Chemical to the list of chemicals known to the State of California to cause reproductive toxicity.

1.6 Each of these additions took place more than twelve (12) months before Shefa served its “60-Day Notice of Violation” which is further described below.

1.7 On or about December 21, 2017, Shefa served Defendant, 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 violations of Proposition 65 arising from or related to Covered Products allegedly containing the Listed Chemical. The Notice alleged that Defendant violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposed users to the Listed Chemical.

1.8 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the same allegations against Defendant.

1.9 Defendant denies the material, factual and legal allegations contained in the Notice.

1.10 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as alleged in the Notice and as set forth below concerning the Releasees' compliance with Proposition 65 with respect to the Covered Products (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 against interest by any Party 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 against interest or evidence of fault, wrongdoing, or liability by Defendant, its officers, directors, employees, or parents, subsidiaries, or affiliated corporations, or any person acting for Defendant, or any direct or indirect customer of Defendant who sold or sells the Covered Products, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

1.13 Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Shefa or Defendant may have against one another in any other 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, on behalf of itself individually and *not* in its representative capacity, and (a) Defendant, and each of Defendant's past and present parents, affiliates, subsidiaries, divisions, predecessors, successors and assigns and each of their respective owners, officers, directors, board members, trustees, shareholders, managers, members, employees, agents, attorneys, insurers, auditors, accountants,

experts, stockholders, representatives, partners, and any other persons acting on their behalf (collectively the “Defendant Releasees”), and (b) to each entity to whom a Defendant Releasee directly or indirectly provides, distributes, or sells Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Sears Holdings Management Corporation and Kmart Corporation, and each such person’s past and present parents, affiliates, subsidiaries, divisions, predecessors, successors and assigns and each of their respective owners, officers, directors, board members, trustees, shareholders, managers, members, employees, agents, attorneys, insurers, auditors, accountants, experts, stockholders, representatives, partners, and any other persons acting on their behalf (“Downstream Releasees”) (Defendant Releasees and Downstream Releasees are referred to collectively as the “Releasees”), of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claims that have been, could have been, or may in the future be asserted against any Releasee regarding exposing persons to the Listed Chemical and/or the failure to warn about exposure to the Listed Chemical arising in connection with the Covered Products. The Parties agree that compliance with the terms of this Settlement Agreement by Defendant shall be deemed to be compliance with Proposition 65 by Releasees with respect to any exposures to the Listed Chemical in a Covered Product.

2.2 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, but not in its capacity as representative of the public, hereby waives and releases with respect to the Covered Products all rights to institute or participate in or assist in, directly or indirectly, any claim or form of legal action, whether initiated by Shefa or another person, 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 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, including without limitation to the extent that such Claims relate to any Releasee's alleged exposure of persons to the Listed Chemical contained in a Covered Product or any failure by a Releasee to warn about exposures to the Listed Chemical contained in a Covered Product. For itself, Shefa hereby releases, remises and forever discharges all Releasees with respect to all such Claims with respect to Covered Products ("Released Claims)."

2.3 Shefa acknowledges that it is familiar with Section 1542 of the 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, future 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 Claims.

2.4 Other than any action to enforce the terms of this Agreement, Shefa, for itself and its past, future and current agents, representatives, attorneys, successors, and/or assignees, covenants not to institute, commence, continue, file, or otherwise prosecute, or assist others in instituting, commencing, continuing, filing or otherwise prosecuting, whether directly or indirectly, or through third parties, any notice of violation, claim, proceeding, lawsuit, cause of action, demand, or legal proceeding, for or arising out of or relating to any Released Claims.

3.0 Defendant's Duties

3.1 Commencing on the Effective Date, Defendant 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 containing DEHP 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 valid and reliable methodology for determining the concentration of DEHP in a substance of the form of the Covered Products ("Formulation Standard"), or those Covered Products 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 exposure.

3.3 The Parties agree that any of the following warnings shall constitute a Compliant Warning for DEHP in the Covered Products:

(a) the text, “**WARNING:** This product can expose you to Di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. 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

(b) the text, “**WARNING:** Cancer and Reproductive Harm - 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 became 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, Defendant may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations.

4.0 Payments

4.1 Payment from Defendant. Within thirty (30) business days of the Effective Date, Defendant shall make the Total Settlement Payment of \$5,500.00.

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. Defendant shall pay \$1,000.00 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 \$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 \$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 Attorneys' fees and Costs. A reimbursement of Shefa's attorney's fees and costs in the amount of \$4,500.00 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, 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 \$750.00 The second 1099 shall be issued in the amount of \$250.00 to Shefa and delivered to: Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

5.0 Report of the Settlement Agreement to the Office of the Attorney General

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

6.0 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 agreement.

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

7.0 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.

8.0 Modification of Settlement Agreement

8.1 To be effective, any modification to this Settlement Agreement must be in writing and signed by the Parties.

9.0 Application of Settlement Agreement

9.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, Shefa and each of the Releasees identified in Section 2 above. Defendant's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 by the Releasees with regard to the Listed Chemical in the Covered Products.

10.0 Enforcement of Settlement Agreement

10.1 In the event of a breach of this Settlement Agreement, any Party or Releasee may file suit before the Superior Court of California, County of Los Angeles or County of San Francisco, consistent with the terms and conditions set forth in paragraphs 10.2 and 10.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. This is the exclusive remedy of the Parties for any breach of this Settlement Agreement.

10.2 No action to enforce this Settlement Agreement may be commenced or maintained against Defendant 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 and the entity receiving the notice fails to comply with the requirements set forth in Section 10.3 below. Any notice to Defendant alleging a violation of this Settlement Agreement must 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 meeting the Formulation Standard or a warning, (c) the store or other place at which the product was available for sale to consumers, (d) evidence that the Formulation Standard was exceeded or warning not provided, and (e) any other evidence or other support for the allegations in the notice.

10.3 Within thirty (30) days (or such additional time as the Parties may mutually agree upon) of receiving the notice described in Section 10.2, Defendant and Shefa shall meet and confer on the alleged violation. Should the Parties be unable to resolve the dispute, any Party may seek relief under Section 10.1.

10.4 The Releasees are third-party beneficiaries to this Agreement and are each entitled to the rights and benefits hereunder and may enforce the provisions hereof as if they were a Party hereto.

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 Telebrands Corp.:

Robert S. Niemann, Esq.
KELLER HECKMAN LLP
Three Embarcadero Center Suite 1420
San Francisco, CA 94111

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 This Settlement Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of California. This Settlement Agreement shall have no application to a Covered Product which is not sold to California consumers.

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 Defendant shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, any Covered Products that is so affected.

13.3 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.

13.4 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.

13.5 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 **AUTHORIZATION**

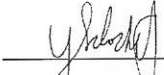
14.1 Each signatory to this Settlement Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement on behalf of the Party represented and legally bind that Party.

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

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

AGREED TO:

SHEFA LMV, INC.

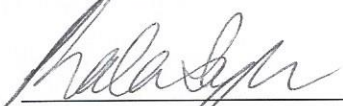
By: 

Name: Yisroel Schochet

Title: Director

Dated: November 6, 2018

TELEBRANDS CORP.

By: 

Bala Iyer
Executive Vice President and COO

Dated: November 13, 2018