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

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

FORM JUS 1501
(03-01)

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
Neoteric Cosmetics, Inc.

CASE INFO

COURT DOCKET NUMBER
n/a

COURT NAME
n/a

SHORT CASE NAME
n/a

REPORT INFO

INJUNCTIVE RELIEF
Reformulation and/or Warning label

PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER
2,500	14,750	0.00

WILL SETTLEMENT BE SUBMITTED TO COURT? ☐ Yes ☒ No

IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL

DATE SETTLEMENT SIGNED
05 / 15 / 2019

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
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.

Clear Form

SETTLEMENT AGREEMENT

BETWEEN

SHEFA LMV, INC. AND NEOTERIC COSMETICS INC.

Shefa LMV, Inc. ("Shefa") and Neoteric Cosmetics Inc. ("Neoteric"), (Shefa and Neoteric collectively 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 Neoteric violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which all Parties fully execute it (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 Neoteric previously sold, at various times, facial sunscreens, including but not limited to Alpha™ Skin Care Moisturizing Facial Sunscreen UPC: 73537915261 (all Neoteric sunscreens are together, the "Covered Products").

1.3 Shefa alleges the Covered Products contain Diethanolamine ("DEA") and Neoteric 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")).

1.4 On June 22, 2012, the Governor of California added DEA to the list of chemicals known to the State to cause cancer. These additions took place more than twelve (12) months before Shefa served its "60 Day Notice of Violation" (the "Notice") which is further described below.

1.5 DEA is referred to hereafter as the "Listed Chemical."

1.6 On March 16, 2018, Shefa served Neoteric with the Notice regarding Covered Products containing the Listed Chemical.

1.7 The Notice alleges Neoteric 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.

1.8 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.

1.10 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.

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

1.12 Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense Shefa or Neoteric 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, individually and not in its representative capacity on the one hand, and (a) Neoteric, 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, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, including but not limited Tuesday Morning, 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 Downstream 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 after the Effective Date.

2.2 Shefa, 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, 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 manufactured, shipped, and/or otherwise distributed prior 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 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 Neoteric's Duties

3.1 Neoteric agrees, promises, and represents that as of the Effective Date, Neoteric shall reformulate any Covered Products manufactured after the Effective Date and offered for sale in California to exclude DEA in the Covered Products or, in the alternative, provide a Proposition 65 warning as set forth in Sections 3.2 and 3.3, below.

3.2 The warning 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.

3.3 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 can expose you to Diethanolamine ("DEA"), 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 approximately the same size as the letters in the word, "**WARNING**" or as otherwise in compliance with regulations effective on August 30, 2018 at 27 Cal. Code Reg. Sections 25600 *et seq.,* and as amended from time to time; or

(b) 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 approximately the same size as the letters in the word, "**WARNING**" or as otherwise in compliance with regulations effective on August 30, 2018 at 27 Cal. Code Reg. Sections 25600 *et seq.,* and as amended from time to time.

The triangular warning symbol specified in Section 3.4(a) and 3.4(b) shall be in yellow with a black exclamation mark; *provided however*, the symbol may be printed in black and white if the Covered Product label is not printed against a yellow background.

4.0 <u>Payments</u>

4.1 Neoteric agrees, to pay a total of seventeen thousand two hundred and fifty

dollars ($17,250.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Attorney's Fees and Costs: Fourteen thousand seven hundred and fifty dollars ($14,750.00) of such payment shall be paid to Law Office of Daniel N. Greenbaum, as Shefa's attorneys, for reasonable investigation fees and costs, attorney's fees, and any other costs incurred as a result of investigating and bringing this matter to Neoteric's 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 Neoteric with its EIN.

4.1.2 Penalty: Neoteric shall issue two (2) separate checks for a total amount of two thousand five hundred dollars ($2,500.00) 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 eight hundred seventy five dollars ($1,875.00), representing 75% of the total penalty; and (b) one check to Shefa LMV, Inc. in the amount of six hundred twenty five dollars ($625.00), 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 $1,875.00. The second 1099 shall be issued in the amount of $625.00 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 Neoteric represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Neoteric to this Settlement Agreement.

6.0 Report of the Settlement Agreement 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 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 Enforcement of Settlement Agreement

11.1 Any party may file suit before the Superior Court of the County of Los Angles, 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. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

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 Neoteric 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. Any notice to Neoteric must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation or a Compliant 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.

11.3 Within 30 days of receiving the notice described in Section 11.2, Neoteric 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 Neoteric, (2) demonstrate to Shefa that the product was manufactured, shipped, and/or otherwise distributed prior to the Effective Date, or (3) refute the information provided under Section 11.2. 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:

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

For Neoteric:

Brent Johnson, Esq.
HOLLAND & HART LLP
222 So. Main Street, #2200
Salt Lake City, Utah 84101

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

14.4 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.

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: 5/15/2019

SHEFA LMV, INC.

By: _____

Dated: 5/10/19

NEOTERIC COSMETICS, INC.

By: _____