

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

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 WILD EYE DESIGNS, INC.**

Shefa LMV, INC. (“Shefa” or “Plaintiff”) and Wild Eye Designs, Inc. (“Wild Eye” or “Defendant”) enter into this settlement agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle Shefa’s allegations that Defendant 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”). Shefa and Defendant are sometimes individually referred to as a “Party”, and collectively 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”).

1.1 Introduction

1.2 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.

1.3 Shefa alleges that Defendant manufactures, imports, sells, or distributes for sale in the State of California certain lunch carrier products that allegedly contain the listed chemical Di [2-Ethylhexyl] Phthalate (“DEHP”) without first providing a clear and reasonable warning as required by Proposition 65.

1.3 DEHP is listed by the State of California pursuant to Proposition 65. DEHP is referred to hereafter as the “Listed Chemical.”

1.4 The products covered by this Settlement Agreement are lunch carriers/lunch bags sold in California that are manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for Defendant to others in California, including, but not limited to UPC

665613254457 Red, Insulated Lunch Carrier Bag (collectively “Covered Products”).

1.1 On or about December 21, 2018, Shefa served Defendant, Homegoods, Inc., and certain relevant public enforcement agencies, with a document entitled “60-Day Notice Of Violation” (the “Notice”) alleging violations of Proposition 65 arising from or related to Covered Products allegedly containing the Listed Chemical.

1.2 The Notice alleged that Defendant violated Proposition 65 by failing to warn consumers in California that use of Covered Products can allegedly expose users to the Listed Chemical.

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

1.4 Defendant denies the material, factual and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Covered Product, are and have been in compliance with all laws and are completely safe for their intended use.

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

1.6 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 fact, conclusion of law, issue of law, or violation of law.

1.7 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 Wild Eye, its officers, directors, employees, or parent, subsidiary, or affiliated corporations, or any person acting for or on behalf of Wild Eye, or any direct or indirect customer of Wild Eye who sold or sells the Covered Products, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

1.8 Except for the allegations settled and compromised herein, 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, individually and *not* in its representative capacity, and: (a) Defendant, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, members, officers, directors, insurers, agents, attorneys, predecessors, successors, and assigns (collectively the “Releasees”); and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell Covered Products, including but not limited to all distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Homegoods, Inc. (“Downstream Releasees”), 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 Defendant, the Releasees, and/or Downstream Releasees regarding exposures to the Listed Chemical and the failure to warn about exposures to the Listed Chemical arising in connection with Defendant’s Covered Products manufactured, shipped, and/or

otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. Notwithstanding any other provision of this Settlement Agreement, the Parties agree that Defendant's compliance with the terms hereof shall be deemed compliance with Proposition 65 by Defendant, Releasees, and Downstream Releasees, with respect to any actual or alleged exposures to the Listed Chemical in Covered Products manufactured, distributed, or sold by Defendant after the Effective Date.

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 general 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 the "Claims"), against Defendant, 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 Product manufactured, shipped, or otherwise distributed and/or 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 Covered Products or any alleged failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in Covered Products.

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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Shefa, on behalf of itself, and 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.

2.4. It is Wild Eye's understanding that the commitments it has agreed to herein, and the actions to be taken by Wild Eye under this Settlement Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Wild Eye that to the extent any other private party serves a 60-day notice and/or initiates an action alleging a violation of Proposition 65 with respect to Wild Eye's alleged failure to provide a warning concerning actual or alleged exposure to DEHP prior to use of the Covered Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that Wild Eye is in material compliance with the terms hereof.

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: (1) contain 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 Product herein (“Reformulation Standard”); or (2) have a warning in compliance with Proposition 65 as set forth below (“Compliant Warning”). Plaintiff agrees that no warning is required for Covered Products that meet the Reformulation Standard.

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, one of the warnings described in Section 3.3 shall be provided in such a manner as to make it reasonably likely to be read and understood by a California consumer prior to or at the time of sale, purchase, or use of the Covered Product.

3.3 The Parties agree that any of the following warnings shall constitute a Compliant Warning for the Listed Chemical in the Covered Product:

- [California Proposition 65] **WARNING:** This product can expose you to chemicals including Di (2-Ethylhexyl) Phthalate (DEHP), which are 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.

Or:

- [California Proposition 65] **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Language in brackets is optional. The background of the yellow triangle can be white if yellow is not otherwise used on the product label.

3.1 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.

3.2 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 contained 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 ten (10) business days of the Effective Date, Defendant shall make an all inclusive Total Settlement Payment of \$10,750 to resolve all claims alleged or that could have been alleged in the Notice.

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.** In settlement of any and all claims by Plaintiff for monetary relief of any kind related to the claims alleged or that could have been alleged in the Notice, other than Plaintiff's attorney's fees and expenses as set forth in Section 4.2.2 below, Defendant shall pay a total of \$1,000 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 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
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 #12B
Sacramento, CA 95814

The Shefa portion of the civil penalty payment in the amount of \$250 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. In complete reimbursement of Shefa's attorney's fees and expenses for all work performed through the execution of this Settlement Agreement, including but not limited to all investigative, testing, and other expenses of any kind, Defendant shall pay the amount of \$9,750 to the "Law Office of Daniel N. Greenbaum," 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. The second 1099 shall be issued in the amount of \$250 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' full 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 document.

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 Any modification to this Settlement Agreement shall 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, Defendant, and the Releasees and Downstream Releasees identified in Section 2 above. Defendant's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 by Defendant, the Releasees, and Downstream Releasees with regard to the Listed Chemical in Covered Products.

100 Enforcement of Settlement Agreement

10.1 Any Party may file suit before the Superior Court of the County of Los Angeles, 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 herein.

10.2 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 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 or notice of violation 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 new violation with respect to Covered Products which is not subject to the releases of claims herein 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 reformulation or a warning; (c) the California store or other place at which the product was available for sale to California consumers; (d) all evidence that the Reformulation 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 of receiving the notice described in Section 10.2 (or such additional time as the Parties may mutually agree upon), Defendant and Shefa shall meet and confer on the alleged violation. If Defendant refutes the alleged violation (for example, by establishing the Covered Product is subject to the releases of claims herein or by producing test results documenting that the Covered Product meets the Reformulation Standard), no further action is necessary, and Defendant shall have no monetary or other liability. If Shefa establishes the violation, then Defendant shall send the store or other place at which the product was available for sale to the public in California a letter directing that the subject product be immediately removed from inventory and returned to Defendant, and Defendant shall have no monetary or other liability. Should the Parties be unable to resolve the dispute, any Party may seek relief under Section 10.1.

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 Wild Eye Designs, Inc.

Warren Horowitz
President
Wild Eye Designs, Inc.

1500 Military Road, Suite 100
Kenmore, NY 14217

With Copy To:

J. Robert Maxwell, Esq.
Robert Dollar Building
311 California St., 10th Floor
San Francisco, CA 94104

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. This Settlement Agreement shall have no application to Covered Products which are 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 Product that are 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 shall 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 this 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 attorney's fees and costs.

AGREED TO:

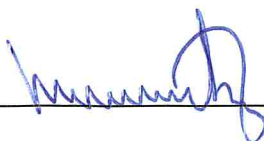
Dated: 7/8/2019

SHEFA LMV, INC.

By:  _____

Dated: July 2, 2019

WILD EYE DESIGNS, INC.

By:  _____

