

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 1502
(03-01)

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

REPORT OF ENTRY OF JUDGMENT

Please print or type required information Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV LLC			
	DEFENDANT(S) INVOLVED IN JUDGMENT CPI Manufacturing, Inc.			
CASE INFO	COURT DOCKET NUMBER BC581912		COURT NAME Los Angeles Superior Court	
	SHORT CASE NAME Shefa LMV LLC vs. CPI Manufacturing, Inc.			
REPORT INFO	INJUNCTIVE RELIEF Reformultion and/or warning label			
	PAYMENT: CIVIL PENALTY \$5,000.00	PAYMENT: ATTORNEYS FEES \$19,000.00	PAYMENT: OTHER \$0.00	For Internal Use Only
	DATE SUBMITTED TO COURT 12 / 04 / 2015	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 12 / 04 / 2015	
	COPY OF JUDGMENT MUST BE ATTACHED			
NAME OF CONTACT Daniel N. Greenbaum, Esq.				
FILER INFO	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
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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 judgment 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.

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11 Attorneys for PARK SUPPLY OF AMERICA, INC.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 20 2016

Sherri R. Carter, Executive Officer/Clerk
By: R. Inostroza, Deputy

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

16 SHEFA LMV, LLC,

17 Plaintiff,

18 vs.

19 CPI MANUFACTURING & SUPPLY CO.;
20 and DOES 1 through 100, Inclusive,

21 Defendants.

Unlimited Jurisdiction

CASE NO. BC581912

Honorable Suzanne G. Bruguera

**~~PROPOSED~~ CONSENT JUDGMENT AS
TO PARK SUPPLY OF AMERICA, INC.
(dba CPI MANUFACTURING & SUPPLY
CO.) (dba BINFORD SUPPLY HOUSE)**

Hearing Set For

Date: January 20, 2016

Time: 10:00 a.m.

Place: 111 North Hill Street, Los Angeles

Courtroom: Department 71

Action filed: October 17, 2014

26 Page 1

27 **~~PROPOSED~~ CONSENT JUDGMENT**
28 **AS TO PARK SUPPLY OF AMERICA, INC.**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment ("Parties") are Shefa LMV, LLC ("Shefa")
3 and Park Supply of America, Inc., a Minnesota corporation (dba CPI MANUFACTURING &
4 SUPPLY CO.) (dba BINFORD SUPPLY HOUSE) ("Settling Defendant"). Shefa and Settling
5 Defendant are referred to collectively as the "Parties."

6 1.2 The products covered by this Consent Judgment ("Covered Products") are
7 plumbing supplies manufactured, distributed and/or sold by Settling Defendant that contain lead
8 and or lead compounds ("Lead"), including but not limited to diverter stems.

9 1.3 On or about October 16, 2014, May 12, 2015, and July 24, 2015, Shefa mailed a
10 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic
11 Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*) ("Notices") to
12 Settling Defendant and one of its upstream distributors Barry E. Walter Sr. Company ("BEW"),
13 the California Attorney General, the District Attorneys of every County in the State of
14 California, and the City Attorneys for every City in the State of California with a population
15 greater than 750,000.

16 1.4 The Notices allege violations of Proposition 65 with respect to the presence of
17 Lead in certain of the Covered Products sold, distributed and/or manufactured by Settling
18 Defendant and BEW (hereinafter "Products").

19 1.5 On or about May 14, 2015, Shefa filed the Complaint in the matter of *Shefa LMV,*
20 *LLC v. CPI Manufacturing & Supply Co., Inc., et al.*, Los Angeles County Superior Court No.
21 BC581912, ("Complaint") alleging Proposition 65 violations as to Products sold in California by
22 Settling Defendant.

23 1.6 Settling Defendant denies the claims of alleged violations asserted against it in
24 the Complaint and denies that it has any liability under Proposition 65.

25 1.7 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
26 Court has jurisdiction over the allegations of violations contained in the operative Complaint

1 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts
2 alleged in the Complaint; (ii) venue is proper in the County of Los Angeles; and (iii) this Court
3 has jurisdiction to enter this Consent Judgment.

4 1.8 Nothing in this Consent Judgment is or shall be construed as an admission by the
5 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
6 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
7 conclusion of law, issue of law, or violation of law.

8 1.9 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
9 remedy, argument, or defense the Parties may have in any other legal proceeding.

10 1.10 This Consent Judgment is the product of negotiation and compromise and is
11 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
12 this action.

13 1.11 The term "Effective Date" means the date on which this Consent Judgment is
14 approved and entered by the Court.

15 2. INJUNCTIVE RELIEF

16 2.1 On or before ninety (90) days after the Effective Date, Settling Defendant shall
17 provide warnings that comply with Proposition 65 on all newly manufactured Covered Products
18 shipped or delivered for sale or distribution in California.

19 2.2 The Parties agree that labeling stating "WARNING: This product contains
20 chemicals known to the State of California to cause cancer and birth defects or other
21 reproductive harm" shall constitute compliance with Proposition 65 with respect to Paragraph
22 2.1.

23 3. PAYMENTS

24 3.1 Within ten (10) business days of the Effective Date, Settling Defendant shall pay
25 the Total Settlement Payment of \$24,000.00 by delivering checks payable to "Shefa LMV, LLC"
26 and "Law Office of Daniel N. Greenbaum" as set forth below to counsel for Shefa.

1 4.2 **Individual Release:** Shefa, on behalf of itself, its past and current agents,
2 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,
3 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a
4 bar to all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other
5 statutory or common law, that are or may be asserted against Settling Defendant, Defendant
6 Releasees, and Distributor Releasees, whether known or unknown, suspected or unsuspected,
7 arising out of alleged exposures to, and/or failure to warn of alleged exposures to, Lead in the
8 Covered Products shipped, distributed or sold by Settling Defendant prior to the Effective Date.

9 4.3 **General Release:** It is possible that other Claims not known to the Parties arising
10 out of the facts alleged in the Notices or the Complaint will develop or be discovered. Shefa, on
11 behalf of itself, its past and current agents, representatives, attorneys, and successors and/or
12 assigns, and *not* in its representative capacity, acknowledges that this Consent Judgment is
13 expressly intended to cover and include all such Claims, including all rights of action therefor.
14 Shefa has full knowledge of the contents of California Civil Code § 1542. Shefa acknowledges
15 that the Claims released in Sections 4.1 and 4.2 include unknown Claims, and Shefa nevertheless
16 waives California Civil Code § 1542 as to any such unknown Claims. California Civil Code §
17 1542 reads as follows:

18
19 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
20 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
21 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
22 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
23 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
24 HER SETTLEMENT WITH THE DEBTOR."

25 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and
26 successors and/or assignees, and *not* in its representative capacity, acknowledges and
27 understands the significance and consequences of this specific waiver of California Civil Code §
28 1542.

1 4.4 Compliance with the terms of this Consent Judgment by Settling Defendant shall
2 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
3 Distributor Releasees with respect to any alleged failure to warn about Lead in Covered Products
4 manufactured, distributed, or sold by Settling Defendants after the Effective Date.

5 4.5 Nothing in this Section 4 affects Shefa's right to commence or prosecute an action
6 under Proposition 65 against any person other than Settling Defendant, Defendant Releasees, or
7 Distributor Releasees.

8 **5. ENFORCEMENT**

9 5.1 Shefa may, by motion or application for an order to show cause before the
10 Superior Court of Los Angeles County, enforce the terms and conditions contained in this
11 Consent Judgment.

12 5.2 Prior to bringing any motion or application to enforce the requirements of Section
13 2 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
14 and a copy of any test results which purportedly support the Notice of Violation.

15 5.3 The Parties shall then meet and confer regarding the basis for the anticipated
16 motion or application in an attempt to resolve it informally, including providing Settling
17 Defendant with a reasonable opportunity of at least thirty (30) days to cure any alleged violation.

18 5.4 Should such attempts at informal resolution fail, Shefa may file an enforcement
19 motion or application.

20 **6. ATTORNEYS' FEES**

21 6.1 A Party who unsuccessfully brings or contests an action arising out of this
22 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and
23 costs.

24 6.2 For purposes of Section 6.1, the prevailing Party refers to the Party that was
25 successful in obtaining relief more favorable to it than the relief that the other Party was

1 amenable to providing during the Parties' good faith attempt to resolve the dispute pursuant to
2 Section 5.

3 6.3 Except as otherwise provided in this Consent Judgment, each Party shall bear its
4 own attorneys' fees and costs.

5 6.4 Nothing in this Section 6 shall preclude a Party from seeking an award of
6 sanctions pursuant to law.

7 **7. NOTICE**

8 7.1 When Shefa is entitled to receive any notice under this Consent Judgment, the
9 notice shall be sent by first class and electronic mail to:

10 Daniel N. Greenbaum
11 Law Office of Daniel N. Greenbaum
12 7120 Hayvenhurst Ave., Suite 320
13 Van Nuys CA 91406
dgreenbaum@greenbaumlawfirm.com

14 7.2 When Settling Defendant is entitled to receive any notice under this Consent
15 Judgment, the notice shall be sent by first class and electronic mail to:

16 Gordon Wichterman
17 President
18 Park Supply of America, Inc.
19 2727 East 26th St.
20 Minneapolis, MN 55406
gordy@parksupplyofamerica.com

21 Aaron Allan, Esq.
22 GLASER WEIL
23 10250 Constellation Blvd., 19th Floor
24 Los Angeles, CA 90067
aallan@glaserweil.com

25 7.3 Any Party may modify the person and address to whom the notice is to be sent by
26 sending the other Party notice by first class and electronic mail.

1 **8. MODIFICATION**

2 8.1 **Written Consent.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties with the approval of the Court, or by an order of this
4 Court upon motion and in accordance with law.

5 8.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
6 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
7 modify the Consent Judgment.

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

9 9.1 Shefa agrees to comply with the reporting form requirements referenced in
10 California Health and Safety Code § 25249.7(f).

11 **10. COURT APPROVAL**

12 10.1 This Consent Judgment shall become effective upon entry by the Court.

13 10.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and
14 Settling Defendant shall support entry of this Consent Judgment.

15 10.3 The Parties acknowledge that, pursuant to California Health & Safety Code §
16 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, and
17 Shefa shall draft and file such motion within fifteen (15) days of the date this Consent Judgment
18 is fully executed by the Parties, and Settling Defendant shall not oppose it.

19 10.4 If this Consent Judgment is not entered by the Court, it shall be of no force or
20 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
21 purpose other than to allow the Court to determine if there was a material breach of Section 10.2.

22 **11. OTHER TERMS**

23 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California.

25 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling
26 Defendant, its affiliates, and successors or assigns of any of them.

1 11.3 This Consent Judgment contains the sole and entire agreement and understanding
2 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
3 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
4 and therein.

5 11.4 There are no warranties, representations, or other agreements between the Parties
6 except as expressly set forth herein.

7 11.5 No representations, oral or otherwise, express or implied, other than those
8 specifically referred to in this Consent Judgment have been made by any Party hereto.

9 11.6 No other agreements not specifically contained or referenced herein, oral or
10 otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11 11.7 No supplementation, modification, waiver, or termination of this Consent
12 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

13 11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or
14 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
15 such waiver constitute a continuing waiver.

16 11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights
17 Settling Defendant might have against any other party, whether or not that party is a Settling
18 Defendant.

19 11.10 This Court shall retain jurisdiction of this matter to implement or modify the
20 Consent Judgment.

21 11.11 The stipulations to this Consent Judgment may be executed in counterparts and
22 by means of facsimile or portable document format (pdf), which taken together shall be deemed
23 to constitute one document.

24 11.12 Each signatory to this Consent Judgment certifies that he or she is fully
25 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
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1 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
2 that Party.

3 11.13 The Parties, including their counsel, have participated in the preparation of this
4 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

5 11.14 This Consent Judgment was subject to revision and modification by the Parties
6 and has been accepted and approved as to its final form by all Parties and their counsel.

7 11.15 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment
8 shall not be interpreted against any Party as a result of the manner of the preparation of this
9 Consent Judgment.

10 11.16 Each Party to this Consent Judgment agrees that any statute or rule of
11 construction providing that ambiguities are to be resolved against the drafting Party should not
12 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
13 waive California Civil Code § 1654.

14
15 **12. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
16 **CONSENT JUDGMENT**

17 12.1 This Consent Judgment came before this Court upon the request of the Parties.
18 The Parties request the Court to review this Consent Judgment and to make the following
19 findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

1 AGREED TO:

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Dated: 12/03/2015

SHEFA LMV, LLC

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By: _____

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Dated: 12-1-15

PARK SUPPLY OF AMERICA, INC.

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By: _____

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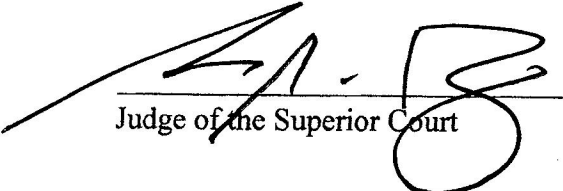
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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Park Supply of America, Inc., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: Jan 20, 2016



Judge of the Superior Court

SUZANNE G. BRUGUERA