

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 Symmons Industries, Inc.		
CASE INFO	COURT DOCKET NUMBER BC581910	COURT NAME Los Angeles Superior Court	
	SHORT CASE NAME Shefa LMV LLC vs. Symmons Industries, Inc.		
REPORT INFO	INJUNCTIVE RELIEF Reformultion and/or warning label		
	PAYMENT: CIVIL PENALTY \$10,000.00	PAYMENT: ATTORNEYS FEES \$40,000.00	PAYMENT: OTHER \$0.00
	DATE SUBMITTED TO COURT 11 / 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 11 / 04 / 2015
	COPY OF JUDGMENT MUST BE ATTACHED		
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum, Esq.		
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11 Attorneys for SYMMONS INDUSTRIES, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF LOS ANGELES

15
16 SHEFA LMV, LLC,

17 Plaintiff,

18 vs.

19 SYMMONS INDUSTRIES, INC.; and
20 DOES 1 through 100, Inclusive,

21 Defendants.

Unlimited Jurisdiction
581945
CASE NO. BC581910-

Honorable Suzanne G. Bruguera

**[PROPOSED] CONSENT JUDGMENT AS
TO SYMMONS INDUSTRIES, INC.**

Hearing Set For

Date: December 17, 2015

Time: 9:30 a.m.

Place: 111 North Hill Street, Los Angeles

Courtroom: Department 71

Action filed: October 17, 2014

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

DEC 17 2015

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

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1. INTRODUCTION

1.1 The parties to this Consent Judgment ("Parties") are Shefa LMV, LLC ("Shefa") and Symmons Industries, Inc. ("Settling Defendant"). Shefa and Settling Defendant are referred to collectively as the "Parties."

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

1.3 On or about October 16, 2014, Shefa mailed a 60-Day Notice of Violation under Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*) ("Notices") to Settling Defendant, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000.

1.4 The Notices allege violations of Proposition 65 with respect to the presence of Lead in diverter stem plumbing products manufactured by Settling Defendant with an identifying designation of UPC 671256526400 ("UPC 671256526400 Products").

1.5 The Notices also allege violations of Proposition 65 with respect to the presence of Lead in diverter stem plumbing products with an identifying designation of UPC 703765211000.

1.6 On or about May 14, 2015, Shefa filed the Complaint in the matter of *Shefa LMV, LLC v. Symmons Industries, Inc., et al.*, Los Angeles County Superior Court No. BC581945, ("Complaint") alleging Proposition 65 violations as to UPC 671256526400 and UPC 703765211000.

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

1.8 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this 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
2 acts alleged in the Complaint; (ii) venue is proper in the County of Los Angeles; and (iii)
3 this Court has jurisdiction to enter this Consent Judgment.

4 1.9 Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of
5 any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the
6 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 1.10 Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,
9 argument, or defense the Parties may have in any other legal proceeding.

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

13 1.12 The term "Effective Date" means the date on which this Consent Judgment is approved
14 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 provide
17 warnings that comply with Proposition 65 on all newly manufactured UPC 671256526400
18 Products shipped or delivered for sale or distribution in California.

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

22 3. PAYMENTS

23 3.1 Within ten (10) business days of the Effective Date, Settling Defendant shall pay the Total
24 Settlement Payment of \$50,000.00 by delivering checks payable to "Shefa LMV, LLC"
25 and "Law Office of Daniel N. Greenbaum" as set forth below to counsel for Shefa.

26 3.2 The funds paid by Settling Defendant shall be allocated as follows:

1 3.2.1 **Civil Penalty.** A civil penalty in the amount of \$10,000.00 payable to "Shefa
2 LMV, LLC", pursuant to Health & Safety Code § 25249.7(b), with such money to
3 be apportioned and distributed by Shefa in accordance with Health & Safety Code
4 § 25249.12 as follows: 25% to Shefa and 75% to the State of California's Office
5 of Environmental Health Hazard Assessment.

6 3.2.2 **Attorneys' fees and Costs.** A reimbursement of Shefa's attorneys' fees and costs
7 in the amount of \$40,000.00 payable to the "Law Office of Daniel N.
8 Greenbaum".

9 4. CLAIMS COVERED AND RELEASED

10 4.1 **Full and Binding Resolution of Proposition 65 Allegations:** This Consent Judgment is a
11 full, final, and binding resolution between (i) Shefa on behalf of itself and the public
12 interest; and (ii) Settling Defendant and its affiliates, its former affiliates ("affiliate" means
13 a person or entity who directly or indirectly owns or controls, is owned or controlled by, or
14 is under common ownership or control with, Settling Defendant), and their current and
15 past directors, officers, employees and attorneys ("Defendant Releasees"), and each entity
16 to whom any of them directly or indirectly distribute or sell Covered Products, including
17 but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative
18 members, licensors, and licensees ("Downstream Defendant Releasees"); of any violation
19 of Proposition 65 that was or could have been asserted in the Complaint against Settling
20 Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure
21 to warn about alleged exposure to Lead contained in Covered Products shipped, distributed
22 or sold by Settling Defendant prior to the Effective Date.

23 4.2 **Individual Release:** Shefa, on behalf of itself, its past and current agents, representatives,
24 attorneys, and successors and/or assignees, and not in its representative capacity, hereby
25 provides a release that shall be effective as a full and final accord and satisfaction, as a bar
26 to all Claims under Proposition 65, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, or any other

1 statutory or common law, that are or may be asserted against Settling Defendant,
2 Defendant Releasees, and Downstream Defendant Releasees, whether known or unknown,
3 suspected or unsuspected, arising out of alleged exposures to, and/or failure to warn of
4 alleged exposures to, Lead in the Covered Products shipped, distributed or sold by Settling
5 Defendant prior to the Effective Date.

6 4.3 **General Release:** It is possible that other Claims not known to the Parties arising out of
7 the facts alleged in the Notices or the Complaint will develop or be discovered. Shefa, on
8 behalf of itself, and not in its representative capacity, its past and current agents,
9 representatives, attorneys, and successors and/or assigns, and not in its representative
10 capacity, acknowledges that this Consent Judgment is expressly intended to cover and
11 include all such Claims, including all rights of action therefor. Shefa has full knowledge
12 of the contents of California Civil Code § 1542. Shefa acknowledges that the Claims
13 released in Sections 4.1 and 4.2 include unknown Claims, and Shefa nevertheless waives
14 California Civil Code § 1542 as to any such unknown Claims. California Civil Code §
15 1542 reads as follows:

16
17 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
18 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
19 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
20 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
21 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
22 HER SETTLEMENT WITH THE DEBTOR."

21 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and
22 successors and/or assignees, and not in its representative capacity, acknowledges and
23 understands the significance and consequences of this specific waiver of California Civil
24 Code § 1542.

25 4.4 Compliance with the terms of this Consent Judgment by Settling Defendant shall
26 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees,

1 and Downstream Defendant Releasees with respect to any alleged failure to warn about
2 Lead in Covered Products manufactured, distributed, or sold by Settling Defendants after
3 the Effective Date.

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

7 **5. ENFORCEMENT**

8 5.1 Shefa may, by motion or application for an order to show cause before the Superior Court
9 of Los Angeles County, enforce the terms and conditions contained in this Consent
10 Judgment.

11 5.2 Prior to bringing any motion or application to enforce the requirements of Section 2 above,
12 Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
13 and a copy of any test results which purportedly support the Notice of Violation.

14 5.3 The Parties shall then meet and confer regarding the basis for the anticipated motion or
15 application in an attempt to resolve it informally, including providing Settling Defendant
16 with a reasonable opportunity of at least thirty (30) days to cure any alleged violation.

17 5.4 Should such attempts at informal resolution fail, Shefa may file an enforcement motion or
18 application.

19 **6. ATTORNEYS' FEES**

20 6.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
21 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and
22 costs.

23 6.2 For purposes of Section 6.1, the prevailing Party refers to the Party that was successful in
24 obtaining relief more favorable to it than the relief that the other Party was amenable to
25 providing during the Parties' good faith attempt to resolve the dispute pursuant to
26 Section 5.

1 6.3 Except as otherwise provided in this Consent Judgment, each Party shall bear its own
2 attorneys' fees and costs.

3 6.4 Nothing in this Section 6 shall preclude a Party from seeking an award of sanctions
4 pursuant to law.

5 **7. NOTICE**

6 7.1 When Shefa is entitled to receive any notice under this Consent Judgment, the notice shall
7 be sent by first class and electronic mail to:

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

13 7.1.1 When Settling Defendant is entitled to receive any notice under this Consent Judgment,
14 the notice shall be sent by first class and electronic mail to:

15 EMILY L. MURRAY
16 ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS
17 LLP
18 515 South Figueroa Street, 9th Floor
19 Los Angeles, CA 90071-3309
20 E-Mail: emurray@allenmatkins.com

21 7.1.2 Any Party may modify the person and address to whom the notice is to be sent by
22 sending the other Party notice by first class and electronic mail.

23 **8. MODIFICATION**

24 8.1 **Written Consent.** This Consent Judgment may be modified from time to time by express
25 written agreement of the Parties with the approval of the Court, or by an order of this
26 Court upon motion and in accordance with law.

1 8.1.1 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall attempt in
2 good faith to meet and confer with all affected Parties prior to filing a motion to modify
3 the Consent Judgment.

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

5 9.1 Shefa agrees to comply with the reporting form requirements referenced in California
6 Health and Safety Code § 25249.7(f).

7 **10. COURT APPROVAL**

8 10.1 This Consent Judgment shall become effective upon entry by the Court.

9 10.2 Shefa shall prepare and file a Motion for Approval of this Consent Judgment and Settling
10 Defendant shall support entry of this Consent Judgment.

11 10.3 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
12 noticed motion is required to obtain judicial approval of this Consent Judgment, and Shefa
13 shall draft and file such motion within fifteen (15) days of the date this Consent Judgment
14 is fully executed by the Parties, and Settling Defendant shall not oppose it.

15 10.4 If this Consent Judgment is not entered by the Court, it shall be of no force or effect and
16 shall never be introduced into evidence or otherwise used in any proceeding for any
17 purpose other than to allow the Court to determine if there was a material breach of
18 Section 10.2.

19 **11. OTHER TERMS**

20 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California.

22 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling Defendant, its
23 affiliates, and successors or assigns of any of them.

24 11.3 This Consent Judgment contains the sole and entire agreement and understanding of the
25 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26

1 negotiations, commitments, or understandings related thereto, if any, are hereby merged
2 herein and therein.

3 11.4 There are no warranties, representations, or other agreements between the Parties except as
4 expressly set forth herein.

5 11.5 No representations, oral or otherwise, express or implied, other than those specifically
6 referred to in this Consent Judgment have been made by any Party hereto.

7 11.6 No other agreements not specifically contained or referenced herein, oral or otherwise,
8 shall be deemed to exist or to bind any of the Parties hereto.

9 11.7 No supplementation, modification, waiver, or termination of this Consent Judgment shall
10 be binding unless executed in writing by the Party to be bound thereby.

11 11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or shall
12 constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
13 such waiver constitute a continuing waiver.

14 11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights Settling
15 Defendant might have against any other party, whether or not that party is a Settling
16 Defendant.

17 11.10 This Court shall retain jurisdiction of this matter to implement or modify the Consent
18 Judgment.

19 11.11 The stipulations to this Consent Judgment may be executed in counterparts and by means
20 of facsimile or portable document format (pdf), which taken together shall be deemed to
21 constitute one document.

22 11.12 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
23 Party he or she represents to stipulate to this Consent Judgment and to enter into and
24 execute the Consent Judgment on behalf of the Party represented and legally to bind that
25 Party.

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1 11.13 The Parties, including their counsel, have participated in the preparation of this Consent
2 Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

3 11.14 This Consent Judgment was subject to revision and modification by the Parties and has
4 been accepted and approved as to its final form by all Parties and their counsel.

5 11.15 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
6 interpreted against any Party as a result of the manner of the preparation of this Consent
7 Judgment.

8 11.16 Each Party to this Consent Judgment agrees that any statute or rule of construction
9 providing that ambiguities are to be resolved against the drafting Party should not be
10 employed in the interpretation of this Consent Judgment and, in this regard, the Parties
11 hereby waive California Civil Code § 1654.

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

15 12.1 This Consent Judgment came before this Court upon the request of the Parties. The Parties
16 request the Court to review this Consent Judgment and to make the following findings
17 pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

1 AGREED TO:

2 Dated: 10/23/2015

SHEFA LMV, LLC

3
4 By: 
5 Managing Member

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7

8 Dated: 10/14/15

SYMMONS INDUSTRIES, INC.

9 By: 
10 Chief Financial officer

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ORDER AND JUDGMENT

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

Dated: Dec. 17, 2015

SUZANNE G. BRUGUERA
Judge of the Superior Court