

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

|                              |   |  |   |  |
|------------------------------|---|--|---|--|
| <b>PARTIES TO THE ACTION</b> | PLAINTIFF(S)<br><b>Shefa LMV LLC</b>                                |  |   |  |
|                              | DEFENDANT(S) INVOLVED IN JUDGMENT<br><b>Kissler &amp; Co., Inc.</b> |  |   |  |
| <b>CASE INFO</b>             | COURT DOCKET NUMBER<br><b>BC581946</b>                              |  | COURT NAME<br><b>Los Angeles Superior Court</b>                                 |  |
|                              | SHORT CASE NAME<br><b>Shefa v. Kissler</b>                          |  |   |  |
| <b>REPORT INFO</b>           | INJUNCTIVE RELIEF<br><b>Warning Labels</b>                          |  |   |  |
|                              | PAYMENT: CIVIL PENALTY<br><b>\$4,000.00</b>                         | PAYMENT: ATTORNEYS FEES<br><b>\$20,000.00</b>  | PAYMENT: OTHER<br><b>0</b>  |  |
|                              | DATE SUBMITTED TO COURT<br><b>7 / 7 / 2016</b>                      | IS JUDGMENT PURSUANT TO SETTLEMENT?<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL<br><b>7 / 7 / 2016</b> |  |
|                              | <b>COPY OF JUDGMENT MUST BE ATTACHED</b>                            |  |   |  |
| <b>FILER INFO</b>            | NAME OF CONTACT<br><b>Daniel N. Greenbaum, Esq.</b>                 |  |   |  |
|                              | ORGANIZATION<br><b>Law Office of Daniel Greenbaum</b>               |  | TELEPHONE NUMBER<br><b>( 818 ) 809-2199</b>                                     |  |
|                              | ADDRESS<br><b>7120 Hayvenhurst Ave., Suite 320</b>                  |  | FAX NUMBER<br><b>( 424 ) 243-7689</b>   |  |
|                              | CITY<br><b>Van Nuys</b>   | STATE    ZIP<br><b>CA 91406</b>  | E-MAIL ADDRESS<br><b>dgreenbaum@greenbaumlawfirm.com</b>                        |  |

**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.

1 LAW OFFICE OF DANIEL N. GREENBAUM  
Daniel N. Greenbaum, Esq. (SBN 268104)  
2 The Hathaway Building  
7120 Hayvenhurst Avenue, Suite 320  
3 Van Nuys, CA 91406  
Telephone: (818) 809-2199  
4 Facsimile: (424) 243-7689  
5 Email: dgreenbaum@greenbaumlawfirm.com

6 Attorney for Plaintiff SHEFA LMV, LLC

7 TUCKER ELLIS LLP  
Ronie Schmelz, Esq.  
8 515 S. Flower Street  
42<sup>nd</sup> Floor  
9 Los Angeles CA 90071  
10 Telephone: (213) 430-3375  
Facsimile: (213) 430-3409  
11 Email: Ronie.Schmelz@tuckerellis.com

12 Attorneys for KISSLER & CO., INC.

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 ED YOUNG'S TRUE VALUE; KISSLER &  
20 CO., INC.; and DOES 1 through 100,  
Inclusive,

21 Defendants.  
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Unlimited Jurisdiction

CASE NO. BC581946

*Honorable Gail R. Feuer*

~~PROPOSED~~ CONSENT JUDGMENT AS  
TO KISSLER & CO., INC.

Hearing Set For

Date: September 1, 2016

Time: 9:30 a.m.

Place: 111 North Hill Street, Los Angeles

Courtroom: Department 78

Action filed: May 14, 2015

By Fax

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~~PROPOSED~~ CONSENT JUDGMENT  
AS TO KISLER & CO., INC.

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment ("Parties") are Shefa LMV, LLC ("Shefa")  
3 and Kissler & Co., Inc. ("Settling Defendant"). Shefa and Settling Defendant are referred to  
4 collectively as the "Parties."

5 1.2 The products covered by this Consent Judgment ("Covered Products") are  
6 plumbing supplies manufactured, distributed and/or sold by Settling Defendant that contain lead  
7 and or lead compounds ("Lead"), including but not limited to diverter stems.

8 1.3 On or about October 16, 2014, Shefa mailed a 60-Day Notice of Violation under  
9 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
10 & Safety Code §§ 25249.5, *et seq.*) ("Notices") to Settling Defendant, the California Attorney  
11 General, the District Attorneys of every County in the State of California, and the City Attorneys  
12 for every City in the State of California with a population greater than 750,000.

13 1.4 The Notices allege violations of Proposition 65 with respect to the presence of  
14 Lead in certain of the Covered Products sold, distributed and/or manufactured by Settling  
15 Defendant (hereinafter "Products").

16 1.5 On or about May 14, 2015, Shefa filed the Complaint in the matter of *Shefa LMV,*  
17 *LLC v. Ed Young's True Value, et al.*, Los Angeles County Superior Court No. BC581946,  
18 ("Complaint") alleging Proposition 65 violations as to Products sold in California by Settling  
19 Defendant.

20 1.6 Settling Defendant denies the claims of alleged violations asserted against it in  
21 the Complaint and denies that it has any liability under Proposition 65.

22 1.7 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
23 Court has jurisdiction over the allegations of violations contained in the operative Complaint  
24 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts  
25 alleged in the Complaint; (ii) venue is proper in the County of Los Angeles; and (iii) this Court  
26 has jurisdiction to enter this Consent Judgment.

1 1.8 Nothing in this Consent Judgment is or shall be construed as an admission by the  
2 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with  
3 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
4 conclusion of law, issue of law, or violation of law.

5 1.9 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,  
6 remedy, argument, or defense the Parties may have in any other legal proceeding.

7 1.10 This Consent Judgment is the product of negotiation and compromise and is  
8 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in  
9 this action.

10 1.11 The term "Effective Date" means the date on which this Consent Judgment is  
11 approved and entered by the Court.

12 **2. INJUNCTIVE RELIEF**

13 2.1 On or before ninety (90) days after the Effective Date, Settling Defendant shall  
14 provide warnings that comply with Proposition 65 on all newly manufactured Covered Products  
15 shipped or delivered for sale or distribution in California.

16 2.2 The Parties agree that labeling stating "WARNING: This product contains  
17 chemicals known to the State of California to cause cancer and birth defects or other  
18 reproductive harm" shall constitute compliance with Proposition 65 with respect to Paragraph  
19 2.1.

20 **3. PAYMENTS**

21 3.1 Beginning ten (10) business days of the Effective Date, Settling Defendant shall  
22 make the first payment of the Total Settlement Payment of \$24,000.00 by delivering checks  
23 payable to "Shefa LMV, LLC" and "Law Office of Daniel N. Greenbaum" as set forth below to  
24 counsel for Shefa.

25 3.2 The funds paid by Settling Defendant shall be allocated as follows:  
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3.2.1 **Civil Penalty.** A civil penalty in the amount of \$4,000.00 payable to "Shefa LMV, LLC", pursuant to Health & Safety Code § 25249.7(b), with such money to be apportioned and distributed by Shefa in accordance with Health & Safety Code § 25249.12 as follows: 25% to Shefa and 75% to the State of California's Office of Environmental Health Hazard Assessment.

3.2.2 **Attorneys' fees and Costs.** A reimbursement of Shefa's attorneys' fees and costs in the amount of \$20,000.00 payable to the "Law Office of Daniel N. Greenbaum."

3.2.3 **Payment Schedule.** Settling Defendant shall make 6 equal payment installments (\$4,000.00 each) beginning within 10 days of the Effective Date. Each subsequent payment installment shall be made each 30 days after the preceding payment until the full balance of the payment has been completed.

**4. CLAIMS COVERED AND RELEASED**

4.1 **Full and Binding Resolution of Proposition 65 Allegations:** This Consent Judgment is a full, final, and binding resolution between

- (i) Shefa on behalf of itself and the public interest; and
- (ii) Settling Defendant and its affiliates, its former affiliates ("affiliate" means a person or entity who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, Settling Defendant), and their current and past directors, officers, employees and attorneys ("Defendant Releasees"), and each entity to whom (or from whom) any of them directly or indirectly distribute, receive for distribution and/or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Distributor Releasees"); of any violation of Proposition 65 that was or could have been asserted in the Complaint against Settling Defendant,

1 Defendant Releasees, and Distributor Releasees, based on failure to warn about alleged exposure  
2 to Lead contained in Covered Products shipped, distributed or sold by Settling Defendant prior  
3 to the Effective Date.

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

12       4.3     **General Release:** It is possible that other Claims not known to the Parties arising  
13 out of the facts alleged in the Notices or the Complaint will develop or be discovered. Shefa, on  
14 behalf of itself, its past and current agents, representatives, attorneys, and successors and/or  
15 assigns, and *not* in its representative capacity, acknowledges that this Consent Judgment is  
16 expressly intended to cover and include all such Claims, including all rights of action therefor.  
17 Shefa has full knowledge of the contents of California Civil Code § 1542. Shefa acknowledges  
18 that the Claims released in Sections 4.1 and 4.2 include unknown Claims, and Shefa nevertheless  
19 waives California Civil Code § 1542 as to any such unknown Claims. California Civil Code §  
20 1542 reads as follows:

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

1 Shefa, on behalf of itself, its past and current agents, representatives, attorneys, and  
2 successors and/or assignees, and *not* in its representative capacity, acknowledges and  
3 understands the significance and consequences of this specific waiver of California Civil Code §  
4 1542.

5 4.4 Compliance with the terms of this Consent Judgment by Settling Defendant shall  
6 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and  
7 Distributor Releasees with respect to any alleged failure to warn about Lead in Covered Products  
8 manufactured, distributed, or sold by Settling Defendants after the Effective Date.

9 4.5 Nothing in this Section 4 affects Shefa's right to commence or prosecute an action  
10 under Proposition 65 against any person other than Settling Defendant, Defendant Releasees, or  
11 Distributor Releasees.

## 12 5. ENFORCEMENT

13 5.1 Shefa may, by motion or application for an order to show cause before the  
14 Superior Court of Los Angeles County, enforce the terms and conditions contained in this  
15 Consent Judgment.

16 5.2 Prior to bringing any motion or application to enforce the requirements of Section  
17 2 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase  
18 and a copy of any test results which purportedly support the Notice of Violation.

19 5.3 The Parties shall then meet and confer regarding the basis for the anticipated  
20 motion or application in an attempt to resolve it informally, including providing Settling  
21 Defendant with a reasonable opportunity of at least thirty (30) days to cure any alleged violation.

22 5.4 Should such attempts at informal resolution fail, Shefa may file an enforcement  
23 motion or application.

1 **6. ATTORNEYS' FEES**

2 6.1 A Party who unsuccessfully brings or contests an action arising out of this  
3 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and  
4 costs.

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

9 6.3 Except as otherwise provided in this Consent Judgment, each Party shall bear its  
10 own attorneys' fees and costs.

11 6.4 Nothing in this Section 6 shall preclude a Party from seeking an award of  
12 sanctions pursuant to law.

13 **7. NOTICE**

14 7.1 When Shefa is entitled to receive any notice under this Consent Judgment, the  
15 notice shall be sent by first class and electronic mail to:

16 Daniel N. Greenbaum  
17 Law Office of Daniel N. Greenbaum  
18 7120 Hayvenhurst Ave., Suite 320  
19 Van Nuys CA 91406  
[dgreenbaum@greenbaumlawfirm.com](mailto:dgreenbaum@greenbaumlawfirm.com)

20 7.2 When Settling Defendant is entitled to receive any notice under this Consent  
21 Judgment, the notice shall be sent by first class and electronic mail to:

22  
23 TUCKER ELLIS LLP  
24 Ronie Schmelz, Esq.  
25 515 S. Flower Street  
26 42<sup>nd</sup> Floor  
27 Los Angeles CA 90071  
28 Email: [Ronie.Schmelz@tuckerellis.com](mailto:Ronie.Schmelz@tuckerellis.com)



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**ORDER AND JUDGMENT**

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

Dated: SEP 02 2016

**GAIL RUDERMAN FEUER**  
\_\_\_\_\_  
Judge of the Superior Court