

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

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

PARTIES TO THE ACTION	PLAINTIFF(S)			
	DEFENDANT(S) INVOLVED IN JUDGMENT			
CASE INFO	COURT DOCKET NUMBER		COURT NAME	
	SHORT CASE NAME			
REPORT INFO	INJUNCTIVE RELIEF			
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER	
	DATE SUBMITTED TO COURT / /	IS JUDGMENT PURSUANT TO SETTLEMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL / /	
	COPY OF JUDGMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT			
	ORGANIZATION		TELEPHONE NUMBER ()	
	ADDRESS		FAX NUMBER ()	
	CITY	STATE	ZIP	E-MAIL ADDRESS

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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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Received

JAN 18 2018

Filing Window

FILED
Superior Court of California
County of Los Angeles

JAN 30 2018

Sherril B. Carter, Executive Officer/Clerk
By Michael Rivera Deputy
Michael Rivera

9 Attorneys for Plaintiff
10 SHEFA LMV, INC.

11 **GRIMALDI LAW OFFICES**

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18 Attorneys for Defendant
19 3M COMPANY

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 FOR THE COUNTY OF LOS ANGELES

22 SHEFA LMV, INC.,
23
24 Plaintiff,

25 vs.

26 3M COMPANY, et al.,
27
28 Defendants.

) Case No.: BC650959

)
) Assigned to the Hon. Marc Marmaro
) Department 37

) **[PROPOSED] AMENDED CONSENT**
) **JUDGMENT BETWEEN PLAINTIFF**
) **SHEFA LMV, INC. AND DEFENDANT**
) **3M COMPANY**

01/30/2018

1 **I. DEFINITIONS**

2 1.1 The products covered by this Consent Judgment shall be designated "Covered
3 Product."

4 1.2 "Covered Product" is defined as metal polish, such as 3M Marine Metal
5 Restorer and Polish; UPC: 051131090194, as described in Plaintiff's February 24, 2016 60-
6 Day Notice.

7 1.3 The term "Effective Date" means the date the Los Angeles County Superior
8 Court approves this Consent Judgment.

9 1.4 The term "Proposition 65" means California Health and Safety Code section
10 25249.5 et seq.

11 1.5 The term "Listed Chemical" means lead and lead compounds (Pb).

12 1.6 The terms "Shefa" or "Plaintiff" mean Plaintiff Shefa LMV, Inc.

13 1.7 The term "Defendant" means 3M Company. Plaintiff and Defendant are
14 collectively referred to as the "Parties."

15 **2. INTRODUCTION**

16 2.1 This Consent Judgment is entered into by and between Plaintiff and
17 Defendant.

18 2.2 Plaintiff is a company residing in California that is acting as a private enforcer
19 pursuant to California Health & Safety Code § 25249.7(d).

20 2.3 For purposes of this Consent Judgment, each Defendant employs 10 or more
21 persons and is a person doing business in California for the purpose of Proposition 65.

22 2.4 On or about February 24, 2016, Plaintiff served Defendant, various retailers
23 and various public enforcement agencies with a document entitled "60-Day Notice of
24 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that
25 Defendant was in violation of Proposition 65.

26 2.5 The Notice alleges that Defendant manufactured, distributed, and/or offered
27 for sale in California the Covered Product that, during use, exposes consumers to Pb without

1 the requisite Proposition 65 warnings.

2 2.6 Lead and lead compounds (the "Listed Chemical") are listed pursuant to
3 Proposition 65 as a chemical known to the State of California to cause cancer, birth defects
4 and other reproductive harm.

5 2.7 The Notice alleges that Defendant's conduct violates Health & Safety Code
6 §25249.6, the warning provision of Proposition 65.

7 2.8 On February 17, 2017, Plaintiff filed the instant action entitled *Shefa LMV,*
8 *Inc. vs. 3M Company, et al.*, Case No. BC650959, alleging violations of Proposition 65 (the
9 "Action").

10 2.9 Defendant denies the material, factual, and legal allegations contained in the
11 Notice and Complaint, and maintain that all products sold, distributed, or offered for sale in
12 California have been and are in compliance with all laws, including, without limitation,
13 Proposition 65. Defendant specifically denies that the Covered Product causes an exposure to
14 lead above the safe harbor value when the Covered Product is used for its intended purpose
15 and denies that it is legally obligated to provide warnings for the Covered Product for
16 exposures resulting from the use of the Covered Product.

17 2.10 The Parties enter into this Consent Judgment to resolve all Proposition 65
18 claims concerning the Covered Products.

19 2.11 By executing this Consent Judgment, the Parties do not admit any facts or
20 conclusions or law.

21 2.12 It is the Parties' intent that nothing in this Consent Judgment shall be
22 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or
23 violation of law, nor shall compliance with the Consent Judgment constitute or be construed
24 as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of
25 law.

26 2.13 Upon approval of this Consent Judgment, the Parties waive their respective
27 rights to a hearing or a trial on the allegations of the Complaint.

1 2.14 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
2 remedy, argument, or defense the Parties may have in any other or future legal proceedings,
3 except as provided in this Consent Judgment.

4 **3. INJUNCTIVE RELIEF -- PRODUCT LABELING**

5 3.1 Except for Covered Products for which current Proposition 65 safe harbor
6 warnings already are provided, 3M shall provide warnings (as described in Paragraph 3.4 of
7 this Consent Judgment) on the Covered Product and its label produced 120 days after the
8 Effective Date. 3M may, at its sole discretion, implement the warning text and/or methods of
9 transmission set forth in Title 27, California Code of Regulations, Sections 25602 and 25603,
10 for the Covered Product as adopted on August 30, 2016 (formally effective on August 30,
11 2018).

12 3.2 Each warning required by Section 3.1 shall be prominently placed upon a
13 product's label or other labeling or displayed at the retail outlet with such conspicuousness, as
14 compared with other words, statements, designs, or devices in the label, labeling or display as to
15 render it likely to be read and understood by an ordinary individual under customary conditions
16 of purchase or use.

17 3.3 Each warning required by Section 3.1 shall be provided in a manner such that the
18 consumer or user understands to which specific Covered Product the warning applies, so as to
19 minimize the risk of consumer confusion.

20 3.4 **Product Labeling.** Subject to Section 3.1, one of the following warning
21 statements shall be applied to the Products:

- 22 a. "**WARNING:** This product can expose you to lead, which is known
23 to the State of California to cause cancer and birth defects or other
24 reproductive harm. For more information go to
25 www.P65Warnings.ca.gov."
- 26 b. "**WARNING:** Polishing items, such as brass or pewter, may cause the
27 release of chemicals which are known to the State of California to

1 cause cancer and birth defects or other reproductive harm. Always
2 wear gloves while using this product to avoid skin exposure. Always
3 wash your hands after use.”

4 c. “WARNING: Polishing items, such as brass or pewter, may cause the
5 release of chemicals which are known to the State of California to cause
6 cancer and birth defects or other reproductive harm.”

7 3.5 Defendant may, but shall not be required to, add specific chemicals to the above
8 warning unless the Attorney General advises that the inclusion of such chemicals would render
9 the warning misleading or constitute over warning.

10 **4. SETTLEMENT PAYMENTS**

11 4.1 Beginning ten (10) business days of the Effective Date, Settling Defendant shall
12 make the Total Settlement Payment of \$25,000.00 by delivering checks payable to “Shefa LMV,
13 Inc.” and “Law Office of Daniel N. Greenbaum” as set forth below to counsel for Shefa.

14 4.2 The funds paid by Settling Defendant shall be allocated as follows:

15 4.2.1 **Civil Penalty.** A civil penalty in the amount of \$2,000.00 payable to
16 “Shefa LMV, Inc.,” pursuant to Health & Safety Code § 25249.7(b),
17 with such money to be apportioned and distributed by Shefa in
18 accordance with Health & Safety Code § 25249.12 as follows: 25% to
19 Shefa and 75% to the State of California’s Office of Environmental
20 Health Hazard Assessment.

21 4.2.2 **Attorneys’ fees and Costs.** A reimbursement of Shefa’s attorney’s
22 fees and costs in the amount of \$23,000.00 payable to the “Law Office
23 of Daniel N. Greenbaum.”

24 **5. ENFORCEMENT**

25 Plaintiff, by motion or application for an order to show cause before the Los Angeles
26 County Superior Court, may enforce the terms and conditions contained in this Consent
27 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3

02/01/2018

1 above, Plaintiff shall provide the Defendant with Notice of Violation and a copy of any test
2 results, which purportedly support Plaintiff's Notice of Violation. The Parties shall then meet
3 and confer regarding the basis for Plaintiff's anticipated motion or application to resolve the
4 matter informally, including providing Settling Defendant a reasonable opportunity of at least
5 thirty (30) days to cure any alleged violation. Should such attempt at informal resolution fail,
6 Plaintiff may file its enforcement motion or application. The prevailing party on any motion to
7 enforce this Consent Judgment shall be entitled to its reasonable attorney's fees and costs
8 incurred because of such motion or application.

9 **6. CLAIMS COVERED AND RELEASED**

10 **6.1 Full and Binding Resolution.** This Consent Judgment is a full, final, and
11 binding resolution between Plaintiff on behalf of itself, and in its representative capacity, its
12 past and current attorneys, agents, representatives, successors, assigns, and in the public
13 interest pursuant to California Health and Safety Code section 25249.7(d), on the one hand,
14 and Defendant, and its parents, shareholders, divisions, subdivisions, subsidiaries, partners,
15 sister companies, affiliates, directors, officers, employees, attorneys, and any and all
16 successors and assigns ("Defendant Releasees"); all entities to whom Defendant and/or
17 Defendant Releasees directly or indirectly distribute or sell or have in the past directly or
18 indirectly distributed or sold Covered Products, including but not limited to distributors,
19 wholesalers, customers, retailers, franchisees, cooperative members, marketplace hosts, and
20 Defendant's and Defendant Releasees' licensors and licensees ("Downstream Defendant
21 Releasees"), on the other hand, regarding any violation of Proposition 65 that was or could
22 have been asserted in the Notice and/or Complaint against Defendant, Defendant Releasees
23 and Downstream Defendant Releasees, with respect to the alleged failure to warn about any
24 Covered Products, and/or the use of any Covered Products, manufactured, shipped,
25 distributed or sold by Defendant, Defendant Releasees and/or Downstream Defendant
26 Releasees before 3M's production of Covered Products and labels in compliance with Paragraph
27 3.1 herein.

1 **6.2 Compliance.** Compliance with the terms of this Consent Judgment
2 constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemical
3 resulting from the use of the Covered Product.

4 **6.3 Individual Release.** In further consideration of the promises and agreements
5 herein contained, the injunctive relief commitments set forth in Section 3, and for the
6 payments to be made pursuant to Section 4, Plaintiff, on behalf of itself, its past and current
7 agents, representatives, attorneys, including but not limited to Daniel Greenbaum, Esq.,
8 successors, and/or assignees and *not* in its representative capacity, hereby waives all rights to
9 institute or participate in, directly or indirectly, any form of legal action and releases all
10 claims, including, without limitation, all actions, and causes of action, in law or in equity,
11 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
12 (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any
13 nature whatsoever, whether known or unknown, fixed, or contingent (collectively "Claims")
14 that were brought or could have been brought against Defendant, Defendant Releasees and
15 Defendant Downstream Releasees in the Notice and/or Complaint based on claims arising
16 under Proposition 65 with respect to Listed Chemicals in the Covered Product or exposures
17 otherwise resulting from the use of the Covered Product, as such claims relate to the alleged
18 failure to warn under California Health and Safety Code section 25249.6 or arise under any
19 other statutory or common law.

20 **6.4 General Release.** In furtherance of the foregoing, Plaintiff on its own behalf
21 and *not* in its representative capacity, hereby waives any and all rights and benefits which it
22 now has, or in the future may have respecting the Covered Product, conferred upon it with
23 respect to claims involving Covered Product by virtue of the provisions of Section 1542 of
24 the California Civil Code, which provides as follows:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
26 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
27 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**

1 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**
2 **HIS OR HER SETTLEMENT WITH THE DEBTOR.**

3 By executing this Consent Judgment, Plaintiff understands and acknowledges that the
4 significance and consequence of this waiver of California Civil Code Section 1542 is that even if
5 Plaintiff suffers future damages arising out of or resulting from, or directly related to or
6 indirectly to, in whole or in part, the Covered Product, including but not limited any exposure to,
7 or failure to warn with respect to exposure to lead or lead compounds from the Covered Product,
8 Plaintiff will not be able to make any claim for those damages against Defendant, Defendant
9 Releasees and Defendant Downstream Releasees, and the successors and assigns of any of them,
10 who may manufacture, use, maintain, distribute, retail, or sell the Covered Product.
11 Furthermore, Plaintiff acknowledges that it intends these consequences for any such claim and
12 any other claims related to the Action which may exist as of the date of this release pertaining to
13 the Covered Product listed in the Notice but which Plaintiff does not know exist, and which, if
14 known, would materially affect its decision to enter into this Consent Judgment, regardless of
15 whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any
16 other cause.

17 **6.5 Defendant Release.** On behalf of itself and Defendant Releasees, Defendant
18 waives all rights to institute any form of action against Plaintiff, its attorneys, consultants,
19 and representatives for all actions taken or statements made in the course of this Action prior
20 to the date of the execution of this Consent Judgment.

21 **6.6 Liability for Covered Products** that were manufactured and/or distributed for
22 retail sale in California before 3M's production of Covered Products and labels in compliance
23 with Paragraph 3.1 herein, shall be subject to the release of liability pursuant to Section 6 of
24 this Consent Judgment, without regard to when such Covered Product were, or are in the
25 future, sold to consumers.

26 **7. MODIFICATION**

27 **7.1** This Consent Judgment may be modified from time to time by express written

1 agreement of the Parties, with the approval of the Court, or by an order of this Court upon
2 motion and in accordance with law.

3 7.2 A Party seeking to modify this Consent Judgment shall attempt in good faith
4 to meet and confer with all affected Parties prior to filing a motion to modify the Consent
5 Judgment.

6 **8. ENTIRE AGREEMENT**

7 8.1 This Consent Judgment contains the sole and entire agreement and
8 understanding of the Parties with respect to the entire subject matter hereof, and any and all
9 prior discussions, negotiations, commitments, or understandings related thereto, if any, are
10 hereby merged herein and therein.

11 8.2 No representations, oral or otherwise, express or implied, other than those
12 specifically referred to in this Consent Judgment have been made by any Party hereto.

13 8.3 No supplementation, modification, waiver, or termination of this Consent
14 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

15 8.4 No waiver of any of the provisions of this Consent Judgment shall be deemed
16 or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
17 shall such waiver constitute a continuing waiver.

18 **9. GOVERNING LAW AND APPLICATION**

19 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
20 of California and shall apply only to Covered Product that are sold or offered for sale in the
21 State of California.

22 9.2 In the event that Proposition 65 is repealed, preempted or is otherwise rendered
23 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
24 rendered inapplicable or no longer required as a result of any such repeal or preemption or
25 rendered inapplicable by reason of law generally as to the Covered Product, then Defendant shall
26 notify Plaintiff and its counsel and may have no further obligations pursuant to this Consent
27 Judgment with respect to, and to the extent that, the Covered Product are so affected.

1 9.3 This Consent Judgment shall apply to and be binding upon the Parties and
2 their divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns.

3 9.4 The Parties, including their counsel, have participated in the preparation of
4 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the
5 Parties.

6 9.5 This Consent Judgment was subject to revision and modification by the
7 Parties and has been accepted and approved as to its final form by all Parties and their
8 counsel.

9 9.6 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment
10 shall not be interpreted against any Party as a result of the manner of the preparation of this
11 Consent Judgment.

12 **10. PROVISION OF NOTICE**

13 All notices required pursuant to this Consent Judgment and correspondence shall be
14 sent to the following:

15 For Plaintiff:

16 Daniel Greenbaum, Esq., 7120 Hayvenhurst Ave., Suite 320, Van Nuys CA 91406

17 For 3M:

18 Ann G. Grimaldi, Esq., 50 California Street, Suite 1500, San Francisco, CA 94111

19 **11. ATTORNEY'S FEES**

20 11.1 A Party who unsuccessfully brings or contests an action arising out of this
21 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees
22 and costs unless the unsuccessful Party has acted with substantial justification.

23 11.2 For purposes of this Consent Judgment, the term substantial justification shall
24 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure
25 Section 2016, et seq.

26 11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of
27

1 sanctions pursuant to law.

2 **12. EXECUTION AND COUNTERPARTS**

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

6 **14. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(t)**

7 Plaintiff agrees to comply with the reporting form requirements referenced in
8 California Health and Safety Code § 25249.7(f).

9 **15. COURT APPROVAL**

10 **15.1** This Consent Judgment shall become effective upon entry by the Court.

11 **15.2** Plaintiff shall prepare and file a Motion for Approval of this Consent
12 Judgment and Defendant shall support entry of this Consent Judgment.

13 **15.3** If the Court does not enter this Consent Judgment, it shall be of no force or
14 effect and shall never be introduced into evidence or otherwise used in any proceeding for
15 any purpose other than to allow the Court to determine if there was a material breach of the
16 previous section.

17 **16. AUTHORIZATION**

18 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
19 the party he or she represents to stipulate to this Consent Judgment and to enter into and
20 execute the Consent Judgment on behalf of the party represented and legally bind that party.

21 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY**
22 **OF CONSENT JUDGMENT**

23 **17.1** This Consent Judgment came before this Court upon the request of the
24 Parties.

25 **17.2** The Parties request the Court to review this Consent Judgment and to make
26 the following findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

27 1. The injunctive relief required by the Consent Judgment complies with

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Cal. Health & Safety Code § 25249.7;

2. The reimbursement of fees and costs to be paid pursuant to the Consent Judgment is reasonable under California law; and

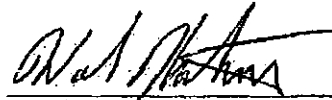
3. The civil penalty amount to be paid pursuant to Consent Judgment is reasonable.

The undersigned have read, understand, and agree to all of the terms and conditions of this Consent Judgment.

Except as explicitly provided herein, each party is to bear its own fees and costs.

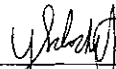
AGREED TO:

Dated: 9-15-2017



For 3M COMPANY
Wade Kretman
Technical Director
Automotive Aftermarkets Division, 3M

Dated: 9/18/2017



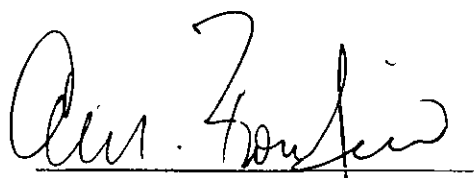
For SHEFA LMV, INC.

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ORDER AND JUDGMENT

Based upon the [Proposed] Consent Judgment between Plaintiff Shefa LMV, Inc. and 3M Company, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: 1-30-18



Judge of the Superior Court

ALAN S. ROSENFELD, JUDGE

02/01/2018