

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

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.

FILED
Superior Court of California
County of Los Angeles

JAN 30 2018

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

Received
JAN 18 2018
Filing Window

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Attorneys for Defendant
BLUE MAGIC, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

3M COMPANY, et al.,

Defendants.

) Case No.: BC650959

) *Hon. Marc Marmaro*

) *Department 37*

) **[PROPOSED] AMENDED CONSENT
JUDGMENT BETWEEN PLAINTIFF
SHEFA LMV, INC. AND DEFENDANT
BLUE MAGIC, INC.**

**[PROPOSED] AMENDED CONSENT JUDGMENT
BETWEEN PLAINTIFF SHEFA LMV, INC. AND DEFENDANT BLUE MAGIC, INC.**

01/30/2018

1 **1. DEFINITIONS**

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

4 1.2 Covered Products are Blue Magic branded polishing, removal, restoring, and
5 cleaning products, such as Blue Magic Metal Polish, UPC designation 077336200121.

6 1.3 The term "Effective Date" means ninety days after the date the Los Angeles
7 County Superior Court approves this Consent Judgment.

8 1.4 The term "Relabeling Date" means six months after the date that the Los
9 Angeles County Superior Court approves this Consent Judgment.

10 1.5 The term "Proposition 65" means California Health and Safety Code section
11 25249.5 et seq.

12 1.6 The term "Listed Chemical" means lead and lead compounds (Pb).

13 1.7 The terms "Shefa" or "Plaintiff" mean Plaintiff Shefa LMV, Inc.

14 1.8 The term "Defendant" means Blue Magic, Inc. (Technical Chemical
15 Company). Plaintiff and Defendant are collectively referred to as the "Parties."

16 **2. INTRODUCTION**

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

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

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

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

27 2.5 The Notice alleges that Defendant manufactured, distributed, and/or offered

1 for sale in California the metal polish Covered Product that exposes consumers to Pb without
2 the requisite Proposition 65 warnings.

3 2.6 The Listed Chemical is identified pursuant to Proposition 65 as a chemical
4 known to the State of California to cause cancer, birth defects 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 action entitled *Shefa LMV, Inc. vs.*
8 *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 maintains 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.

14 2.10 The Parties enter into this Consent Judgment to resolve all Proposition 65
15 claims concerning the Covered Products.

16 2.11 By executing this Consent Judgment, the Parties do not admit any facts or
17 conclusions of law.

18 2.12 It is the Parties' intent that nothing in this Consent Judgment shall be
19 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or
20 violation of law, nor shall compliance with the Consent Judgment constitute or be construed
21 as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of
22 law.

23 2.13 Upon approval of this Consent Judgment, the Parties waive their respective
24 rights to a hearing or a trial on the allegations of the Complaint.

25 2.14 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
26 remedy, argument, or defense the Parties may have in any other or future legal proceedings,
27 except as provided in this Consent Judgment.

1 **3. INJUNCTIVE RELIEF – PRODUCT LABELING**

2 3.1 As of the Relabeling Date, Defendant shall not manufacture, ship, or deliver
3 for sale or distribution in California Covered Product(s), unless such Covered Product(s) are
4 labeled with one of the clear and reasonable warnings set forth in Section 3.4. Covered
5 Product(s) already in the marketplace as of the Relabeling Date shall not be affected by this
6 Consent Judgment.

7 3.2 Each warning required by Section 3.1 shall be prominently placed upon a
8 product's label or other labeling or displayed at the retail outlet with such conspicuousness, as
9 compared with other words, statements, designs, or devices in the label, labeling or display as to
10 render it likely to be read and understood by an ordinary individual under customary conditions
11 of purchase or use.

12 3.3 Each warning required by Section 3.1 shall be provided in a manner such that the
13 consumer or user understands to which specific Product the warning applies, to minimize the risk
14 of consumer confusion.

15 3.4 **Product Labeling.** One of the following warning statements shall be applied
16 to the Products:

17 a. **“⚠WARNING:** This product can expose you to lead, which is known
18 to the State of California to cause cancer and birth defects or other
19 reproductive harm. For more information go to
20 www.P65Warnings.ca.gov.”

21 b. **“WARNING:** Polishing items, such as brass or pewter, may cause the
22 release of chemicals which are known to the State of California to
23 cause cancer and birth defects or other reproductive harm. Always
24 wear gloves while using this product to avoid skin exposure. Always
25 wash your hands after use.”

26 c. **“WARNING:** Polishing items, such as brass or pewter, may cause the
27 release of chemicals which are known to the State of California to cause

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1 cancer and birth defects or other reproductive harm.”

2 3.5 Defendant may add specific chemicals to the warning set out in section 3.4(c)
3 unless the Attorney General advises that the inclusion of such chemicals would render the
4 warning misleading or constitute over warning.

5 **4. SETTLEMENT PAYMENTS**

6 **4.1** Beginning within ten (10) business days of the Effective Date, Settling Defendant
7 shall make the Total Settlement Payment of \$20,000.00 by delivering checks
8 payable to “Shefa LMV, Inc.” and “Law Office of Daniel N. Greenbaum” as set
9 forth below to counsel for Shefa.

10 **4.2** The funds paid by Settling Defendant shall be allocated as follows:

11 **4.2.1 Civil Penalty.** A civil penalty in the amount of \$4,000.00 payable to
12 “Shefa LMV, Inc.,” pursuant to Health & Safety Code § 25249.7(b),
13 with such money to be apportioned and distributed by Shefa in
14 accordance with Health & Safety Code § 25249.12 as follows: 25% to
15 Shefa and 75% to the State of California’s Office of Environmental
16 Health Hazard Assessment.

17 **4.2.2 Attorneys’ fees and Costs.** A reimbursement of Shefa’s attorney’s
18 fees and costs in the amount of \$16,000.00 payable to the “Law Office
19 of Daniel N. Greenbaum.”

20 **5. ENFORCEMENT**

21 Either party, by motion or application for an order to show cause before the Los Angeles
22 County Superior Court, may enforce the terms and conditions contained in this Consent
23 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3
24 above, Plaintiff shall provide the Defendant with Notice of Violation and a copy of any test
25 results, which purportedly support Plaintiff’s Notice of Violation. The Parties shall then meet
26 and confer regarding the basis for Plaintiff’s anticipated motion or application to resolve the
27 matter informally, including providing Settling Defendant a reasonable opportunity of at least

1 thirty (30) days to cure any alleged violation. Should such attempt at informal resolution fail,
2 Plaintiff may file its enforcement motion or application. The prevailing party on any motion to
3 enforce this Consent Judgment shall be entitled to its reasonable attorney's fees and costs
4 incurred because of such motion or application.

5 **6. CLAIMS COVERED AND RELEASED**

6 **6.1 Full and Binding Resolution.** This Consent Judgment is a full, final, and
7 binding resolution between Plaintiff on behalf of itself, and in its representative capacity, its
8 past and current attorneys, agents, representatives, successors, assigns, and in the public
9 interest pursuant to California Health and Safety Code section 25249.7(d), on the one hand,
10 and Defendant, and each of them, and their respective parents, shareholders, divisions,
11 subdivisions, subsidiaries, partners, sister companies, affiliates, directors, officers,
12 employees, attorneys, and any and all successors and assigns ("Defendant Releasees"), all
13 entities to whom they directly or indirectly distribute or sell or have in the past directly or
14 indirectly distributed or sold Covered Products, including but not limited to distributors,
15 wholesalers, customers, retailers, franchisees, cooperative members, and Defendant
16 Releasees' licensors and licensees ("Downstream Defendant Releasees"), on the other hand,
17 regarding any violation of Proposition 65 that was or could have been asserted against
18 Defendant and Downstream Defendant Releasees, with respect to the Listed Chemical in the
19 Covered Products prior to the Effective Date.

20 **6.2 Compliance.** Compliance with the terms of this Consent Judgment
21 constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemical
22 from the Covered Products.

23 **6.3 Individual Release.** In further consideration of the promises and agreements
24 herein contained, the injunctive relief commitments set forth in Section 3, and for the
25 payments to be made pursuant to Section 4, Plaintiff, on behalf of itself, its past and current
26 agents, representatives, attorneys, including but not limited to Daniel Greenbaum, Esq.,
27 successors, and/or assignees and *not* in its representative capacity, hereby waives all rights to

1 institute or participate in, directly or indirectly, any form of legal action and releases all
2 claims, including, without limitation, all actions, and causes of action, in law or in equity,
3 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
4 (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any
5 nature whatsoever, whether known or unknown, fixed, or contingent (collectively "Claims")
6 that were brought or could have been brought against Defendant, Defendant Releasees, and
7 Defendant Downstream Releasees based on claims arising under Proposition 65 with respect
8 to Listed Chemical in the Covered Products.

9 **6.4 General Release.** In furtherance of the foregoing, Plaintiff on its own behalf
10 and *not* in its representative capacity, hereby waives any and all rights and benefits which it
11 now has, or in the future may have respecting the Covered Products, conferred upon it with
12 respect to claims involving the Covered Products by virtue of the provisions of Section 1542
13 of the California Civil Code, which provides as follows:

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

21 By executing this Consent Judgment, Plaintiff understands and acknowledges that the
22 significance and consequence of this waiver of California Civil Code Section 1542 is that even if
23 Plaintiff suffers future damages arising out of or resulting from, or directly related to or
24 indirectly to, in whole or in part, the Covered Product(s), including but not limited any exposure
25 to, or failure to warn with respect to exposure to the Listed Chemical from use of the Covered
26 Product(s), Plaintiff will not be able to make any claim for those damages against Defendant,
27 Defendant Releasees, and Defendant Downstream Releasees, and the successors and assigns of

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1 any of them. Furthermore, Plaintiff acknowledges that it intends these consequences for any
2 such claim and any other claims related to the Action which may exist as of the date of this
3 release pertaining to the Covered Products but which Plaintiff does not know exist, and which, if
4 known, would materially affect its decision to enter into this Consent Judgment, regardless of
5 whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any
6 other cause.

7 **6.5 Defendant Release.** On behalf of itself, Defendant Releasees, and Defendant
8 Downstream Releasees, Defendant waives all rights to institute any form of action against
9 Plaintiff, its attorneys, consultants, and representatives for all actions taken or statements
10 made in the course of this Action prior to the date of the execution of this Consent Judgment.

11 **6.6 Liability for Covered Products** that were manufactured and/or distributed for
12 retail sale in California prior to the Effective Date shall be subject to the release of liability
13 pursuant to Section 6 of this Consent Judgment, without regard to when such Covered
14 Product(s) were, or are in the future, sold to consumers.

15 **7. MODIFICATION**

16 **7.1** This Consent Judgment may be modified from time to time by express written
17 agreement of the Parties, with the approval of the Court, or by an order of this Court upon
18 motion and in accordance with law.

19 **7.2** A Party seeking to modify this Consent Judgment shall attempt in good faith
20 to meet and confer with all affected Parties prior to filing a motion to modify the Consent
21 Judgment.

22 **8. ENTIRE AGREEMENT**

23 **8.1** This Consent Judgment contains the sole and entire agreement and
24 understanding of the Parties with respect to the entire subject matter hereof, and any and all
25 prior discussions, negotiations, commitments, or understandings related thereto, if any, are
26 hereby merged herein and therein.

27 **8.2** No representations, oral or otherwise, express or implied, other than those

1 specifically referred to in this Consent Judgment have been made by any Party hereto.

2 **8.3** No supplementation, modification, waiver, or termination of this Consent
3 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

4 **8.4** No waiver of any of the provisions of this Consent Judgment shall be deemed
5 or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
6 shall such waiver constitute a continuing waiver.

7 **9. GOVERNING LAW AND APPLICATION**

8 **9.1** The terms of this Consent Judgment shall be governed by the laws of the State
9 of California and shall apply only to Covered Products that are sold or offered for sale in the
10 State of California.

11 **9.2** In the event that Proposition 65 is repealed, preempted or is otherwise rendered
12 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
13 rendered inapplicable or no longer required as a result of any such repeal or preemption or
14 rendered inapplicable by reason of law generally as to the Covered Product(s), then Defendant
15 shall notify Plaintiff and its counsel and may have no further obligations pursuant to this Consent
16 Judgment with respect to, and to the extent that, the Covered Product(s) are so affected.

17 **9.3** This Consent Judgment shall apply to and be binding upon the Parties and
18 their divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns.

19 **9.4** The Parties, including their counsel, have participated in the preparation of
20 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the
21 Parties.

22 **9.5** This Consent Judgment was subject to revision and modification by the
23 Parties and has been accepted and approved as to its final form by all Parties and their
24 counsel.

25 **9.6** Accordingly, any uncertainty or ambiguity existing in this Consent Judgment
26 shall not be interpreted against any Party as a result of the manner of the preparation of this
27 Consent Judgment.

1 **10. PROVISION OF NOTICE**

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

4 For Plaintiff:

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

6 For Blue Magic:

7 Meredith Jones-McKeown, Esq., 505 Howard Street, Suite 1000, San Francisco CA 94105-3201

8 **11. ATTORNEY'S FEES**

9 **11.1** A Party who unsuccessfully brings or contests an action arising out of this
10 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees
11 and costs unless the unsuccessful Party has acted with substantial justification.

12 **11.2** For purposes of this Consent Judgment, the term substantial justification shall
13 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure
14 Section 2016, et seq.

15 **11.3** Nothing in this Section 11 shall preclude a Party from seeking an award of
16 sanctions pursuant to law.

17 **12. EXECUTION AND COUNTERPARTS**

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

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

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

24 **15. COURT APPROVAL**

25 **15.1** This Consent Judgment shall become effective upon entry by the Court.

26 **15.2** Plaintiff shall prepare and file a Motion for Approval of this Consent
27

1 Judgment and Defendant shall support entry of this Consent Judgment.

2 **15.3** If this Consent Judgment is not entered by the Court, it shall be of no force or
3 effect and shall never be introduced into evidence or otherwise used in any proceeding for
4 any purpose other than to allow the Court to determine if there was a material breach of the
5 previous section.

6 **16. AUTHORIZATION**

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

10 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY**
11 **OF CONSENT JUDGMENT**

12 **17.1** This Consent Judgment came before this Court upon the request of the
13 Parties.

14 **17.2** The Parties request the Court to review this Consent Judgment and to make
15 the following findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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


22
23 **The undersigned have read, understand and agree to all of the terms and**
24 **conditions of this Consent Judgment.**

25
26 **Except as explicitly provided herein, each party is to bear its own fees and costs.**

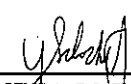
27 **AGREED TO:**

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Dated: 9-22-2017


For BLUE MAGIC, INC.

Dated: 9/23/2017


For SHEFA LMV, INC.

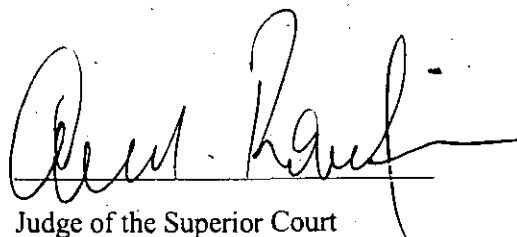
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ORDER AND JUDGMENT

Based upon the [Proposed] Consent Judgment between Plaintiff Shefa LMV, Inc. and Blue Magic, Inc. 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

EXHIBIT 2