

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 1501
(03-01)

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

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV INC			
	DEFENDANT(S) INVOLVED IN SETTLEMENT Belwith Management, inc.			
CASE INFO	COURT DOCKET NUMBER BC528514		COURT NAME Los Angeles Superior Court	
	SHORT CASE NAME Shefa LMV LLC v. Belwith Management, Inc.			
REPORT INFO	INJUNCTIVE RELIEF Reformulation and/or warning labels			
	PAYMENT: CIVIL PENALTY \$4,000	PAYMENT: ATTORNEYS FEES \$33,500	PAYMENT: OTHER 0.00	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 9 / 7 / 2016	
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum			
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698	
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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 settlement 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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12 Attorneys for Defendants BELWITH MANAGEMENT, INC.
& BELWITH PRODUCTS, LLC

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

16 SHEFA LMV, LLC

17 Plaintiff,

18 vs.

19 BELWITH MANAGEMENT, INC.;
20 BELWITH PRODUCTS, LLC; and DOES 1
THROUGH 25, Inclusive

21 Defendants.

CASE NO. BC528514

The Honorable Ernest M. Hiroshige

**[PROPOSED] STIPULATED
SETTLEMENT AGREEMENT**

Action filed: November 21, 2013

1 **1. INTRODUCTION**

2 1.1 This Stipulated Settlement Agreement pursuant To Section 664.6 C.C.P. (the
3 “Stipulated Settlement Agreement”) is entered into by and between Shefa LMV LLC (“Shefa”)
4 and Belwith Products LLC and Belwith Management, Inc. (jointly referred to as “Belwith”),
5 with Shefa and Belwith each individually referred to as a “Party” and collectively as the
6 “Parties.”

7 1.2 The products covered by this Stipulated Settlement Agreement (the “Covered
8 Products”) are brass hardware products manufactured, distributed, and/or sold by Belwith
9 Products LLC that contain lead and/or lead compounds (“Lead” or “Pb”), including but not
10 limited to the First Watch Flush Bolt, UPC 078555770389.

11 1.3 On or about April 30, 2013, Shefa mailed a 60-Day Notice (the “First Notice”) to
12 Orchard Supply Hardware, Belwith International Ltd. (“BIL”) and Belwith under Proposition 65
13 (The Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §§
14 25249.5, *et seq.*) to Belwith Products, LLC, the California Attorney General, the District
15 Attorneys of every County in the State of California, and the City Attorneys for every City in the
16 State of California with a population greater than 750,000.

17 1.4 Belwith was not listed as an alleged violator in the First Notice.

18 1.5 Belwith denied and does deny that BIL was related to or part of Belwith.

19 1.6 On November 21, 2013, Shefa filed its complaint naming Belwith; BIL was not
20 named.

21 1.7 Thereafter, on March 5, 2014, Shefa dismissed without prejudice Belwith; the
22 complaint was not dismissed.

23 1.8 On March 6, 2014, Shefa mailed a 60-Day Notice of Violation (the “Second
24 Notice”) to Belwith Products, LLC, the California Attorney General, the District Attorneys of
25 every County in the State of California, and the City Attorneys for every City in the State of
26 California with a population greater than 750,000.

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1 constitute or be construed as an admission by Belwith of any fact, finding, conclusion, issue of
2 law, or violation of law.

3 1.18 Except as expressly set forth herein, nothing in this Stipulated Settlement
4 Agreement shall prejudice, waive, or impair any right, remedy, argument, complaint, or defense
5 the Parties may have in any other or future legal proceeding unrelated to this specific
6 proceeding.

7 1.19 This Stipulated Settlement Agreement is the product of negotiation and
8 compromise and is accepted by the Parties for purposes of settling, compromising, and resolving
9 issues disputed in this action.

10 1.20 The term "Effective Date" means the date on which this Stipulated Settlement
11 Agreement is approved and entered by the Court.

12 2. INJUNCTIVE RELIEF

13 2.1 **Applicable Covered Products.** Any Covered Product manufactured after the
14 Effective Date that potentially causes users to become exposed to lead (Pb), and that Belwith
15 thereafter sells in California, markets or distributes for sale in California, or offers for sale to a
16 third party for retail sale in California shall provide a warning on the product label as described
17 below.

18 2.2 **Methods of Compliance.** The Parties acknowledge that Belwith may or already
19 has taken the following steps to prevent such exposure as described in section 2.1:

20 2.2.1 Belwith may coat all parts exposed during installation or use of any of the
21 Covered Products with a lacquer material of sufficient thickness that it
22 significantly retards or totally prevents the delivered dose of lead or lead
23 compounds to an installer or consumer from exceeding 0.5 micrograms of
24 lead or lead compounds per day during the reasonably foreseeable use of
25 the Covered Products; and/or

26 2.2.2 Belwith may use a brass alloy that contains zero parts per million (ppm) of
27 lead or lead compounds or contains such a low level of lead or lead

1 compounds that would prevent exposure to levels of lead or lead
2 compounds above the MADL during the reasonably foreseeable use of the
3 Covered Products.

4 2.2.3 No warning label is required of Belwith if the Covered Products comply
5 with the techniques described in 2.2.1 or 2.2.2 to eliminate any exposure
6 to lead or lead compounds from exceeding 0.5 micrograms of lead or lead
7 compounds per day during the reasonably foreseeable use of the Covered
8 Products.

9 2.3 **Warning Label.** The warning label required per ¶ 2.1 must be at least the same
10 size as the largest of any other health or safety warnings appearing on the product label, as
11 applicable, of such product. To the extent that any subsequent revisions to Proposition 65 or its
12 implementing regulations require additional or different warning language, Belwith may at its
13 option a) revise the above warning to comply with such new law or regulations, and b) provide
14 warnings that comply with any subsequent revisions to Proposition 65 or its implementing
15 regulations on all Covered Products manufactured after the date such revisions become effective
16 and which are thereafter shipped or delivered for sale or distribution in California.

17 2.4 **Warning Language.** The Parties agree that labeling stating “WARNING: This
18 product contains Lead, a chemical known to the State of California to cause cancer and birth
19 defects or other reproductive harm” shall constitute compliance with Proposition 65 with respect
20 to Paragraph 2.1.

21 **3. PAYMENTS**

22 3.1 Within ten (10) business days following the Effective Date, Belwith shall make a
23 Total Settlement Payment of \$37,500.00 by delivering checks payable to “Shefa LMV, LLC”
24 and “Law Office of Daniel N. Greenbaum” as set forth below to counsel for Shefa.

25 3.2 The funds paid by Belwith shall be allocated as follows:

26 3.2.1 **Civil Penalty.** A civil penalty in the amount of \$4,000.00 payable to
27 “Shefa LMV, LLC,” pursuant to Health & Safety Code § 25249.7(b), with

1 such money to be apportioned and distributed by Shefa in accordance with
2 Health & Safety Code § 25249.12 as follows: 25% to Shefa and 75% to
3 the State of California's Office of Environmental Health Hazard
4 Assessment (“OEHHA”).

5 3.2.2 **Attorneys' Fees and Costs.** A reimbursement of Shefa's attorney’s fees
6 and costs in the amount of \$33,500.00 payable to the “Law Office of
7 Daniel N. Greenbaum.”

8 3.3 Shefa shall provide and actually deliver to Belwith a W-9 for each payment noted
9 in ¶¶ 3.2.1. & 3.2.2 prior to the Effective Date.

10 **4. CLAIMS COVERED AND RELEASED**

11 4.1 **Full and Binding Resolution of Proposition 65 Allegations:** This Stipulated
12 Settlement Agreement is a full, final, and binding resolution between

13 (i) Shefa on behalf of itself and the public interest; and

14 (ii) Belwith and their affiliates, their former affiliates, any person or entity who directly
15 or indirectly owns or controls, is owned or controlled by, or is under common ownership or
16 control with Belwith, and their current and past directors, officers, employees, and attorneys
17 (“Defendant Releasees”), and each entity to whom (or from whom) any of them directly or
18 indirectly distribute, receive for distribution, and/or sell the Covered Products, including but not
19 limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members,
20 licensors, and licensees (“Distributor Releasees”), of any violation of Proposition 65 that was or
21 could have been asserted in the Complaint against Belwith, Defendant Releasees, and Distributor
22 Releasees, based on failure to warn about an alleged exposure to Lead from the reasonably
23 foreseeable use of the Covered Products shipped, distributed, or sold by Belwith prior to the
24 Effective Date.

25 4.2 **Individual Release:** Shefa, on behalf of itself, its past and current agents,
26 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,
27 hereby provides a release that shall be effective as a full and final accord and satisfaction, as a

1 bar to all Claims under Proposition 65, Bus. & Prof. Code §§ 17200 *et seq.*, and any other
2 statutory or common law, that are or may be asserted against Belwith, Defendant Releasees, and
3 Distributor Releasees, whether known or unknown, suspected or unsuspected, arising out of
4 alleged exposures to, and/or failure to warn of alleged exposures to, Lead from the Covered
5 Products shipped, distributed, or sold prior to the Effective Date by Belwith.

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

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

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

21 4.4 Compliance with the terms of this Stipulated Settlement Agreement by Belwith
22 shall constitute compliance with Proposition 65 by Belwith, Defendant Releasees, and
23 Distributor Releasees with respect to any alleged failure to warn about Lead in Covered Products
24 manufactured, distributed, or sold by Belwith after the Effective Date.

25 4.5 Nothing in this Section 4 affects Shefa's right to commence or prosecute an action
26 pursuant to Proposition 65 against any person other than Belwith, Defendant Releasees, or
27 Distributor Releasees.

1 **5. ENFORCEMENT**

2 5.1 Shefa may, by motion or application for an order to show cause before the
3 Superior Court of Los Angeles County, enforce the terms and conditions contained in this
4 Stipulated Settlement Agreement.

5 5.2 Prior to bringing any motion or application to enforce the requirements of this
6 Stipulated Settlement Agreement, Shefa shall provide Belwith with a Notice of Violation and
7 proof of purchase and a copy of any test results which purportedly support the Notice of
8 Violation.

9 5.3 The Parties shall then meet and confer regarding the basis for the anticipated
10 motion or application in an attempt to resolve it informally, including providing Belwith with a
11 reasonable opportunity of at least thirty (30) days to cure any alleged violation.

12 5.4 Should such attempts at informal resolution fail, Shefa may file an enforcement
13 motion or application.

14 **6. ATTORNEYS' FEES**

15 6.1 A Party who unsuccessfully brings or contests an action arising out of this
16 Stipulated Settlement Agreement shall be required to pay the prevailing Party's reasonable
17 attorney's fees and costs.

18 6.2 For purposes of Section 6.1, the term "prevailing Party" refers to the Party that
19 was successful in obtaining relief more favorable to it than the relief that the other Party was
20 amenable to providing during the Parties' good faith attempt to resolve the dispute pursuant to
21 Section 5.

22 6.3 Except as otherwise provided in this Stipulated Settlement Agreement, each Party
23 shall bear its own attorneys' fees and costs.

24 6.4 Nothing in this Section 6 shall preclude a Party from seeking an award of
25 sanctions pursuant to law.

26 **7. NOTICE**

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1 7.1 When Shefa is entitled to receive any notice under this Stipulated Settlement
2 Agreement, the notice shall be sent by first class and electronic mail to:
3 Daniel N. Greenbaum
4 Law Office of Daniel N. Greenbaum
5 7120 Hayvenhurst Ave., Suite 320
6 Van Nuys CA 91406
7 dgreenbaum@greenbaumlawfirm.com

8 7.2 When Belwith is entitled to receive any notice under this Stipulated Settlement
9 Agreement, the notice shall be sent by electronic mail to:
10 Thomas H. Clarke, Jr. (SBN 47592)
11 ROPERS, MAJESKI, KOHN & BENTLEY
12 1001 Marshall Street, Suite 500
13 Redwood City, CA 94063-2052
14 tclarke@rmkb.com

15 and
16 Michael J. Morrisroe
17 Morrisroe & Associates, Ltd.
18 114 S. Bloomingdale Road
19 Bloomingdale, Illinois 60108
20 mjm@morrisroelaw.com

21 and by facsimile to:
22 Greg Simsa, CFO
23 Belwith Products LLC
24 3100 Broadway Ave., SW
25 Granville, MI 49418
26 Facsimile: 616-237-4060

27 7.3 Any Party may modify the person and address to whom the notice is to be sent by
28 sending the other Party notice by electronic mail.

8. MODIFICATION

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

1 8.2 **Meet and Confer.** Any Party seeking to modify this Stipulated Settlement
2 Agreement shall attempt in good faith to meet and confer with all affected Parties prior to filing
3 a motion to modify the Stipulated Settlement Agreement.

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 Health
6 and Safety Code § 25249.7(f).

7 **10. COURT APPROVAL**

8 10.1 This Stipulated Settlement Agreement shall become effective upon entry by the
9 Court of judgment pursuant to C.C.P. Section 664.6.

10 10.2 Shefa shall prepare and file a Motion for Approval of this Stipulated Settlement
11 Agreement and Belwith shall support entry of this Stipulated Settlement Agreement.

12 10.3 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
13 noticed motion is required to obtain judicial approval of this Stipulated Settlement Agreement,
14 and Shefa shall draft and file such motion within fifteen (15) days of the date this Stipulated
15 Settlement Agreement is fully executed by the Parties, and Belwith shall not oppose it if such
16 motion is consistent with the terms and conditions of this Stipulated Settlement Agreement.

17 10.4 If this Stipulated Settlement Agreement is not entered by the Court, it shall be of
18 no force or effect and shall never be introduced into evidence or otherwise used in any
19 proceeding for any purpose.

20 **11. OTHER TERMS**

21 11.1 The terms of this Stipulated Settlement Agreement shall be governed by the laws
22 of the State of California.

23 11.2 This Stipulated Settlement Agreement shall apply to and be binding upon Shefa,
24 Belwith, its affiliates, and the successors or assigns of any of them.

25 11.3 This Stipulated Settlement Agreement contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
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1 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
2 merged herein and therein.

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

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

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

10 11.7 No supplementation, modification, waiver, or termination of this Stipulated
11 Settlement Agreement shall be binding unless executed in writing by the Party to be bound
12 thereby, except as provided by ¶¶ 8.1 & 8.2.

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

16 11.9 Nothing in this Stipulated Settlement Agreement shall release, or in any way
17 affect any rights Belwith might have against any other party, whether or not that party is a
18 Defendant Releasee or Distributor Releasee.

19 11.10 This Court shall retain jurisdiction of this matter to implement or modify the
20 Stipulated Settlement Agreement.

21 11.11 The signatories of this Stipulated Settlement Agreement may execute in
22 counterparts, and by means of facsimile or portable document format (pdf) such separate
23 signatures may be taken together and shall be deemed to constitute one document.

24 11.12 Each signatory to this Stipulated Settlement Agreement certifies that he or she is
25 fully authorized by the relevant Party to consent to this Stipulated Settlement Agreement and to
26 enter into and execute the Stipulated Settlement Agreement on behalf of the Party represented
27 and legally to bind that Party.

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1 11.13 The terms of this Stipulated Settlement Agreement have been reviewed by the
2 respective counsel for each Party prior to its signing, and each Party has had an opportunity to
3 fully discuss the terms and conditions with legal counsel.

4 11.14 The Parties agree that, in any subsequent interpretation and construction of this
5 Stipulated Settlement Agreement, no inference, assumption, or presumption shall be drawn, and
6 no provision of this Stipulated Settlement Agreement shall be construed against any Party,
7 based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or
8 drafted all or any portion of the Stipulated Settlement Agreement.

9 11.15 It is conclusively presumed that all of the Parties participated equally in the
10 preparation and drafting of this Stipulated Settlement Agreement.

11 **12. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
12 **STIPULATED SETTLEMENT AGREEMENT**

13 12.1 This Stipulated Settlement Agreement came before this Court upon the request of
14 the Parties.

15 12.2 The Parties request the Court to review this Stipulated Settlement Agreement and
16 to make the following findings pursuant to Health & Safety Code § 25249.7(f)(4):


- 17 a. The injunctive relief required by the Stipulated Settlement Agreement complies
18 with Health & Safety Code § 25249.7;
- 19 b. The reimbursement of fees and costs to be paid pursuant to the Stipulated
20 Settlement Agreement is reasonable under California law; and
- 21 c. The civil penalty amount to be paid pursuant to Stipulated Settlement Agreement
22 is reasonable.

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AGREED TO:

Dated: 9/7/16

FOR: SHEFA LMV, LLC

By: 

Its: Managing Member

Dated:

FOR: BELWITH INTERNATIONAL, INC. and
BELWITH PRODUCTS LLC

By: 
Tim Emmitt

Its: President

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ORDER AND JUDGMENT

Based upon the stipulated Stipulated Settlement Agreement between Shefa LMV, LLC and Belwith Management, Inc. and Belwith Products LLC, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: _____

Judge of the Superior Court