

1 **LAW OFFICE OF DANIEL N. GREENBAUM**
2 DANIEL N. GREENBAUM (NO. 268104)
3 7120 Hayvenhurst Avenue
4 Suite 320
5 Van Nuys, CA 91406
6 Telephone: (310) 200-2631
7 Facsimile: (424) 243-7689
8 Email: danielgreenbaumesq@gmail.com

9 Attorneys for Plaintiff
10 SHEFA LMV, LLC

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13 SHEFA LMV, LLC,

14 Plaintiff,

15 v.

16 HOME DEPOT USA, INC.; KTC SLAMS
17 INC.; THE AGENCY ACBH INC.; and DOES
18 1 through 25, Inclusive,

19 Defendants.

Case No. BC528422

UNLIMITED JURISDICTION

[PROPOSED] CONSENT JUDGMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION

1.1 Shefa LMV, LLC, KTC Slams, Inc., and The Agency ACBH

This Consent Judgment is entered into by and between plaintiff Shefa LMV, LLC (“Plaintiff”) and defendants KTC Slams, Inc. (KTC) and The Agency ACBH Inc. (“The Agency”) (collectively “Defendants”), with Plaintiff and Defendants collectively referred to as the “Parties” and individually as a “Party.” Plaintiff is an entity organized in the State of California, which has asserted that it seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Plaintiff alleges that Defendants employ ten or more persons and are each a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

1.2 General Allegations

Plaintiff alleges that Defendants have manufactured, imported, distributed and/or sold diverter stems that contain lead and lead compounds (“Lead”) without the requisite Proposition 65 warnings. Lead is listed as a carcinogen under Proposition 65.

1.3 Notice of Violation

On May 28, 2013, Plaintiff served Defendant and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) alleging that Defendants and Home Depot USA, Inc. were in violation of Proposition 65 for failing to warn consumers and customers of alleged exposures to Lead in plumbing/hardware, including diverter stems. No public enforcer has diligently prosecuted the allegations set forth in the Original Notice.

1.4 Complaint

On November 21, 2013 Plaintiff, acting in the public interest under Cal. Health & Safety Code § 25249.7(d), filed its complaint against Defendants and Home Depot in the above-captioned action (“Action”), alleging exposures to Lead in tub stems.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.5 No Admission

Defendants deny the material, factual and legal allegations contained in the Notice and asserted in the Action and maintain that they have at all times been in compliance with all laws and all products that it has sold, manufactured, imported and/or distributed in California, including the Covered Products. Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendants of any fact, finding, issue of law or violation of law. However, this Section 1.5 shall not diminish or otherwise affect Defendants' obligations, responsibilities and duties under this Consent Judgment.

1.6 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendants as to the allegations contained in the Notice, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

2. DEFINITIONS

2.1 "Covered Products" means tub stems that contain Lead.

2.2 "Effective Date" means the date on which the Court approves and enters judgment pursuant to the terms of this Consent Judgment.

3. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNING

3.1 As of the Effective Date, Defendant shall not distribute, sell or offer for sale any Covered Product that will be sold or offered for sale to California consumers unless the Covered Product bears a clear and reasonable warning pursuant to this Section 3.

3.2 The warning shall state: "WARNING: This product contains [lead,] a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm. [Wash hands after handling.]" The bracketed terms are optional.

1 3.3 The warning shall be prominently displayed on the Covered Product with such
2 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
3 read and understood by an ordinary individual prior to sale.

4 **4. MONETARY PAYMENTS**

5 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

6 Defendants shall pay a total civil penalty payment of \$10,000 within ten (10) days of the
7 Effective Date, as follows: the civil penalty shall be apportioned in accordance with California
8 Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of
9 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
10 25% of these funds remitted to Plaintiff, both pursuant to the procedures set forth in Section 4.3.

11 **4.2 Reimbursement of Plaintiff's Fees and Costs**

12 The Parties acknowledge that Plaintiff and its counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
14 this fee issue to be resolved after the material terms of the agreement had been settled.
15 Defendants expressed a desire to resolve the fee and cost issue after the other settlement terms
16 had been agreed. The Parties then attempted to (and did) reach an accord on the compensation
17 due to Plaintiff and its counsel under general contract principles and the private attorney general
18 doctrine codified at California Code of Civil Procedure § 1021.5 for all work performed in this
19 matter, except fees that may be incurred on appeal. Under these legal principles, Defendants shall
20 pay the amount of \$17,500 for fees and costs incurred investigating, litigating and enforcing this
21 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting and
22 obtaining the Court's approval of this Consent Judgment in the public interest.

23 **4.3 Payment Procedures**

24 All payments required by Sections 4.1 and 4.2 shall be made within ten (10) days of the
25 Effective Date, in three checks made payable as follows:

26 4.3.1 one check to "OEHHA" in the amount of \$7,500;

1 4.3.2 one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa
2 LMV, LLC" in the amount of \$2,500; and

3 4.3.3 one check to "Law Office of Daniel N. Greenbaum" in the amount of
4 \$17,500.

5 **4.4 Issuance of W-9 and 1099 Forms**

6 Plaintiff shall provide W-9 forms for all payees under this Consent Judgment prior to
7 entry of the Consent Judgment. After the settlement funds have been transmitted to Plaintiff's
8 counsel, Defendants shall issue separate 1099 forms, as follows:

9 4.4.1 one 1099 form to the "Office of Environmental Health Hazard
10 Assessment" (EIN: 68-0284486) in the amount of \$7,500;

11 4.4.2 a second 1099 form in the amount of \$2,500 to "Shefa LMV, LLC," whose
12 address and tax identification number shall be furnished upon request; and

13 4.4.3 a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082)
14 in the amount of \$17,500.

15 **4.5 Issuance of Payments.**

16 4.5.1 All payments shall be delivered to the following payment address:

17 Daniel N. Greenbaum, Esq.
18 Law Office of Daniel N. Greenbaum
19 7120 Hayvenhurst Avenue
20 Suite 320
21 Van Nuys, CA 91406

22 **5. CLAIMS COVERED AND RELEASED**

23 5.1 This consent judgment is a full, final, and binding resolution between Plaintiff,
24 acting in the public interest, and Defendants and each of their parents, subsidiaries, affiliated
25 entities that are under common ownership, directors, officers, employees, divisions, partners,
26 shareholders, attorneys and their successors and assigns (collectively, the "Defendant
27 Releasees"), and each entity to whom any Defendant Releasee directly or indirectly distributed or
28 sold any Covered Products, including, but not limited to, downstream distributors, wholesalers,
customers, retailers (including but not limited to Home Depot USA, Inc.), franchisees,

1 cooperative members, licensors and licensees (collectively, "Downstream Releasees"), of all
2 violations of Proposition 65 based on exposure to Lead from Covered Products as set forth in the
3 Notice, with respect to any Covered Products manufactured, distributed, or sold by Defendants
4 prior to the Effective Date. Compliance with the terms of this Consent Judgment by Defendants
5 and Defendant Releasees constitutes compliance with Proposition 65 with respect to any alleged
6 exposure to Lead from the Covered Products as set forth in the Notice and the Action.

7 5.2 Plaintiff, on behalf of itself and its past and current agents, representatives,
8 attorneys, successors and assigns, and in the public interest, waives all right to participate in any
9 action and releases and discharges Defendant Releasees and Downstream Releasees with respect
10 to all claims, including but not limited to causes of action, suits, liabilities, demands, obligations,
11 damages, costs, fines, penalties, fees (including but not limited to expert fees, attorneys' fees and
12 investigation fees) or losses (collectively, "Claims") regarding any violation of Proposition 65
13 based on failure to warn about alleged exposure to Lead, or alleged exposure to Lead, in any
14 Covered Products manufactured, distributed, or sold by Defendants prior to the Effective Date.

15 5.3 In addition, Plaintiff, on behalf of itself and its past and current agents,
16 representatives, attorneys, successors and assigns, in its individual capacity only and not in its
17 representative capacity, provides a release herein which shall be effective as a full and final
18 accord and satisfaction, and as a bar to all Claims under Proposition 65, Cal. Bus. & Prof. Code
19 §§ 17200 *et seq.*, and any other statutory or common law, whether known or unknown, suspected
20 or unsuspected, limited to and arising out of alleged exposure to, and/or failure to warn of alleged
21 exposure to, Lead in the Covered Products manufactured, distributed or sold by Defendants. It is
22 possible that other Claims not known to the Parties arising out of the facts alleged in the Notice or
23 the Action will develop or be discovered. Plaintiff, on behalf of itself and its past and current
24 agents, representatives, attorneys, successors and assigns, and not in its representative capacity,
25 acknowledges that this Consent Judgment is expressly intended to cover and include all such
26 Claims, including all rights of action therefor. Plaintiff has full knowledge of the contents of
27 California Civil Code § 1542. Plaintiff acknowledges that the Claims released in Sections 4.1 and
28

1 4.2 include unknown Claims, and Plaintiff nevertheless waives California Civil Code § 1542 as to
2 any such unknown Claims. California Civil Code § 1542 reads as follows:
3

4 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
6 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
7 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
8 HER SETTLEMENT WITH THE DEBTOR."

9 Plaintiff, on behalf of itself and its past and current agents, representatives, attorneys, and
10 successors and assigns, and not in its representative capacity, acknowledges and understands the
11 significance and consequences of this specific waiver of California Civil Code § 1542.

12 5.4 Defendants, on behalf of themselves and their past and current agents,
13 representatives, attorneys, and successors and assignees, hereby waive any and all claims against
14 Plaintiff and its attorneys and other representatives, for any and all actions taken or statements
15 made (or those that could have been taken or made) by Plaintiff and its attorneys and other
16 representatives, whether in the course of investigating claims or of otherwise seeking to enforce
17 Proposition 65 against them in this matter with respect to the Covered Products.

18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one
21 year after it has been fully executed by all Parties.

22 **7. INTEGRATION**

23 7.1 This Consent Judgment contains the sole and entire agreement of the Parties and
24 any and all prior negotiations and understandings related hereto shall be deemed to have been
25 merged within it. No representations or terms of agreement other than those contained herein
26 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

27 **8. SEVERABILITY**

28 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
Consent Judgment are held by a court to be unenforceable, the validity of the enforceable

1 provisions remaining shall not be adversely affected.

2 **9. MODIFICATION**

3 This Consent Judgment may be modified only: (1) by written agreement of the Parties
4 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
5 motion of any Party and entry of a modified Consent Judgment by the Court.

6 **10. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and the obligations of Defendant hereunder as to the Covered Products apply only
9 within the State of California. In the event that Proposition 65 is repealed, preempted, or is
10 otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
11 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal
12 or preemption or rendered inapplicable by reason of law generally as to the Covered Products,
13 including, without limitation, the removal of Lead from OEHHA's list of Proposition 65
14 chemicals, then Defendants shall have no further obligations pursuant to this Consent Judgment
15 with respect to, and to the extent that, any Covered Products are so affected.

16 **11. ATTORNEYS' FEES**

17 A Party who unsuccessfully brings or contests an action arising out of this Consent
18 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
19 unless the unsuccessful Party has acted with substantial justification. For purposes of this
20 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
21 Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

22 **12. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant
24 to this Consent Judgment shall be in writing and (i) personally delivered, (ii) sent by first-class or
25 by registered or certified mail return receipt requested, or (iii) sent by overnight courier to one
26 Party from the other Party at the following addresses:
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12.1 For Defendants:

Bill Harper
President
The Agency ACBH
2810 Edgmont Ave, Suite D
Parkside, PA 19015

With a copy to:

Jeffrey Margulies
Fulbright & Jaworski L.L.P.
555 South Flower St.
Forty First Floor
Los Angeles, CA 90071

12.2 For Plaintiff:

Daniel N. Greenbaum, Esq.
Law Office of Daniel N. Greenbaum
7120 Hayvenhurst Avenue
Suite 320
Van Nuys, CA 91406

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

13. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or .pdf signature shall be as valid as the original.

14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Plaintiff and its attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

15. ADDITIONAL POST-EXECUTION ACTIVITIES

15.1 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, and Plaintiff shall draft and file such motion, and Defendants shall not oppose it.

1 15.2 Within five (5) business days of entry of this Consent Judgment, Plaintiff shall file
2 a request for dismissal without prejudice as to Defendant Home Depot USA, Inc. in the above-
3 captioned action.

4 **16. AUTHORIZATION**

5 The undersigned are authorized to execute this Consent Judgment and have read,
6 understood, and agree to all of the terms and conditions of this Consent Judgment.

7 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
8 **CONSENT JUDGMENT**

9 17.1 This Consent Judgment came before this Court upon the request of the Parties.

10 17.2 The Parties request the Court to review this Consent Judgment and to make the
11 following findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

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

17 AGREED TO:

18 Date: 9/6/14

19 By: _____

20 Plaintiff, SHEFA LMV, LLC

21 Name: Alisa Fried

22 Its: Managing Member

17 AGREED TO:

18 Date: 9/9/14

19 By: _____

20 Defendant, KTC SLAMS, INC.

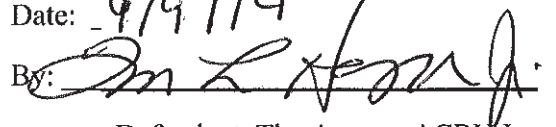
21 Name: William L. Harper Jr

22 Its: PRESIDENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date: 9/9/14

By: 
Defendant, The Agency ACBH Inc..

Name: William L. Harper Jr
Its: PRESIDENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and The Agency
ACBH, Inc. and KTC Slams, Inc., the settlement is approved and the clerk is directed to enter
judgment in accordance with the terms herein.

Dated: _____

Judge of the Superior Court