

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 LLC			
	DEFENDANT(S) INVOLVED IN SETTLEMENT Kissler & Co., Inc.			
CASE INFO	COURT DOCKET NUMBER BC581946		COURT NAME Los Angeles County Superior Court	
	SHORT CASE NAME Shefa LMV LLC v. Ed Young's True Value, et al.			
REPORT INFO	INJUNCTIVE RELIEF Reformulation			
	PAYMENT: CIVIL PENALTY \$4,000	PAYMENT: ATTORNEYS FEES \$20,000	PAYMENT: OTHER 0.00	For Internal Use Only
	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 5 / 17 / 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	
	CITY Van Nuys	STATE ZIP CA 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com	

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.

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
42nd 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

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.
22
23
24
25

Unlimited Jurisdiction

CASE NO. BC581946

Honorable Gail R. Feuer

**[PROPOSED] CONSENT JUDGMENT AS
TO KISSLER & CO., INC.**

Hearing Set For

Date: _____, 2016

Time: 10:00 a.m.

Place: 111 North Hill Street, Los Angeles

Courtroom: Department 78

Action filed: May 14, 2015

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:
26

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

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:

21
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."
28

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.

24
25
26
27
28

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

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 TUCKER ELLIS LLP
23 Ronie Schmelz, Esq.
24 515 S. Flower Street
25 42nd Floor
26 Los Angeles CA 90071
Email: Ronie.Schmelz@tuckerellis.com

1 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling
2 Defendant, its affiliates, and successors or assigns of any of them.

3 11.3 This Consent Judgment contains the sole and entire agreement and understanding
4 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
5 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
6 and therein.

7 11.4 There are no warranties, representations, or other agreements between the Parties
8 except as expressly set forth herein.

9 11.5 No representations, oral or otherwise, express or implied, other than those
10 specifically referred to in this Consent Judgment have been made by any Party hereto.

11 11.6 No other agreements not specifically contained or referenced herein, oral or
12 otherwise, shall be deemed to exist or to bind any of the Parties hereto.

13 11.7 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 11.8 No waiver of any of the provisions of this Consent Judgment shall be deemed or
16 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
17 such waiver constitute a continuing waiver.

18 11.9 Nothing in this Consent Judgment shall release, or in any way affect any rights
19 Settling Defendant might have against any other party, whether or not that party is a Settling
20 Defendant.

21 11.10 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

23 11.11 The stipulations to this Consent Judgment may be executed in counterparts and
24 by means of facsimile or portable document format (pdf), which taken together shall be deemed
25 to constitute one document.

26

27

28

1 11.12 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
3 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
4 that Party.

5 11.13 The Parties, including their counsel, have participated in the preparation of this
6 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

7 11.14 This Consent Judgment was subject to revision and modification by the Parties
8 and has been accepted and approved as to its final form by all Parties and their counsel.

9 11.15 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 11.16 Each Party to this Consent Judgment agrees that any statute or rule of
13 construction providing that ambiguities are to be resolved against the drafting Party should not
14 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
15 waive California Civil Code § 1654.

16
17 **12. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
18 **CONSENT JUDGMENT**

19 12.1 This Consent Judgment came before this Court upon the request of the Parties.
20 The Parties request the Court to review this Consent Judgment and to make the following
21 findings pursuant to Cal. Health & Safety Code § 25249.7(f)(4):

- 22 a. The injunctive relief required by the Consent Judgment complies with Cal.
23 Health & Safety Code § 25249.7;
- 24 b. The reimbursement of fees and costs to be paid pursuant to the Consent
25 Judgment is reasonable under California law; and

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

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

AGREED TO:

Dated: 5/17/2016

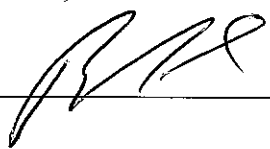
SHEFA LMV, LLC

By: 

Dated:

5-5-16

KISSLER & CO., INC.

By: 

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 Kissler & Co., 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