

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 Snow Joe LLC | | | | |
| CASE INFO | COURT DOCKET NUMBER BC 634205 | | COURT NAME Los Angeles County Superior Court | | |
| | SHORT CASE NAME Shefa v. Snow Joe LLC, et al. | | | | |
| REPORT INFO | INJUNCTIVE RELIEF Warning Labels | | | | |
| | PAYMENT: CIVIL PENALTY \$4,000 | PAYMENT: ATTORNEYS FEES \$28,500 | PAYMENT: OTHER 0.00 | For Internal Use Only | |
| | WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="radio"/> Yes <input type="radio"/> No | IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL | DATE SETTLEMENT SIGNED 11 / 22 / 2016 | | |
| | COPY OF SETTLEMENT MUST BE ATTACHED | | | | |
| NAME OF CONTACT Daniel N. Greenbaum | | | | | |
| FILER INFO | 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 CA | ZIP 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.

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6 Attorney for Plaintiff SHEFA LMV, INC.

7 SEYFARTH SHAW LLP^[SEP]
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9 San Francisco, California 94105-2930^[SEP]
Telephone: (415) 544-1036
10 Facsimile: (415) 839-9036
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11 Attorney for Defendant SNOW JOE LLC
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES
15

16 SHEFA LMV, INC.,

17 Plaintiff,

18 v.

19 SNOW JOE LLC; and DOES 1 through 100,
20 inclusive,

21 Defendants.
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Case No. BC634205

Hon. Suzanne G. Bruguera

**[PROPOSED] CONSENT JUDGMENT AS
TO SNOW JOE LLC**

Action filed: September 16, 2016

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are Shefa LMV, Inc. (“Shefa”)
3 and Snow Joe, LLC (“Settling Defendant”) (collectively the “Parties”).

4 1.2 The products covered by this Consent Judgment (“Covered Products”) are brass
5 garden and hardware products manufactured, distributed and/or sold by Settling Defendant that
6 contain lead and or lead compounds (“Lead” or “Pb”).

7 1.3 On or about June 27, 2016, Shefa mailed a 60-Day Notice of Violation under
8 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety
9 Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendant, the California Attorney General, the
10 District Attorneys of every County in the State of California, and the City Attorneys for every
11 City in the State of California with a population greater than 750,000.

12 1.4 The Notice alleges violations of Proposition 65 with respect to the presence of
13 Lead in certain of the Covered Products sold, distributed and/or manufactured by Settling
14 Defendant.

15 1.5 On or about September 16, 2016, Shefa filed the Complaint in the instant matter
16 (“Complaint”) alleging Proposition 65 violations as to the Covered Products sold in California
17 by Settling Defendant and Amazon.com, Inc.

18 1.6 Settling Defendant denies the claims of alleged violations asserted against it in
19 the Complaint and denies that it has any liability under Proposition 65.

20 1.7 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
21 Court has jurisdiction over the allegations of violations contained in the operative Complaint
22 applicable to Settling Defendant and personal jurisdiction over Settling Defendant as to the acts
23 alleged in the Complaint; (ii) venue is proper in the County of Los Angeles; and (iii) this Court
24 has jurisdiction to enter this Consent Judgment.

25 1.8 Nothing in this Consent Judgment is or shall be construed as an admission by the
26 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with
27

1 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
2 conclusion of law, issue of law, or violation of law.

3 1.9 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
4 remedy, argument, or defense the Parties may have in any other legal proceeding.

5 1.10 This Consent Judgment is the product of negotiation and compromise and is
6 accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
7 this action.

8 1.11 The term "Effective Date" means the date on which this Consent Judgment is
9 approved and entered by the Court.

10 1.12 Shefa shall file a dismissal as to the entire case within (thirty) 30 days after entry
11 of this Consent Judgment.

12 2. INJUNCTIVE RELIEF

13 2.1 **Warning Requirement.** Warnings in accordance with Section 2.2 shall be given
14 for Covered Products containing lead (Pb) that are manufactured ninety (90) days after the
15 Effective Date that Settling Defendant sells in California, markets or distributes for sale in
16 California, or offers for sale to a third party for retail sale in California. For purposes of Section
17 2 and this entire Consent Judgment, Covered Products will not be considered to "contain lead
18 (Pb)" if they are manufactured using low lead brass¹ or brass that contains zero amounts of lead.

19 2.2 **Proposition 65 Warnings.** Covered Products are compliant with Proposition 65
20 and this Consent Judgment if warnings are either provided: (a) on the product label or packaging
21 in accordance with Sections 2.3 and 2.4, or (b) in the stores in which the Covered Products are
22 sold in accordance with Section 2.5.

23 2.3 **Product Labeling.** Warnings that are affixed to the packaging, labeling, or
24 directly on each Covered Product sold at retail in California, shall state:

25 _____
26 ¹ Brass alloy containing 0.25% or less lead is known as "low lead" brass, as opposed to the more
27 typical alloy which contains 5% lead.

1 *[list products for which warning is required]*

2
3 Each warning sign shall not be covered or obscured, shall be affixed in a sufficiently
4 conspicuous manner reasonably calculated to be seen by the ordinary consumer of the product
5 requiring a warning.

6
7 **3. PAYMENTS**

8 3.1 Within ten (10) business days of the Effective Date, Settling Defendant shall
9 make the Total Settlement Payment of \$32,500.00 by delivering checks payable to “Shefa LMV,
10 Inc.” and “Law Office of Daniel N. Greenbaum” as set forth below to counsel for Shefa.

11 3.2 The funds paid by Settling Defendant shall be allocated as follows:

12 3.2.1 **Civil Penalty.** A civil penalty in the amount of \$4,000.00 payable to
13 “Shefa LMV, Inc.,” pursuant to Health & Safety Code § 25249.7(b), with
14 such money to be apportioned and distributed by Shefa in accordance with
15 Health & Safety Code § 25249.12 as follows: 25% to Shefa and 75% to
16 the State of California's Office of Environmental Health Hazard
17 Assessment.

18 3.2.2 **Attorneys' fees and Costs.** A reimbursement of Shefa's attorney's fees
19 and costs in the amount of \$28,500.00 payable to the “Law Office of
20 Daniel N. Greenbaum.”

21 **4. CLAIMS COVERED AND RELEASED**

22 4.1 **Full and Binding Resolution of Proposition 65 Allegations:** This Consent
23 Judgment is a full, final, and binding resolution between

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

25 (ii) Settling Defendant and its affiliates (“affiliate” means a person or entity who directly
26 or indirectly owns or controls, is owned or controlled by, or is under common ownership or
27 control with, Settling Defendant), former affiliates, and its current and past directors, officers,

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

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

9 4.4 Compliance with the terms of this Consent Judgment by Settling Defendant shall
10 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and
11 Distributor Releasees with respect to any alleged failure to warn about lead in Covered Products
12 that were distributed or sold by Settling Defendant and that were manufactured more than ninety
13 (90) days after the Effective Date.

14 4.5 Nothing in this Section 4 affects Shefa's right to commence or prosecute an action
15 under Proposition 65 against any person other than Settling Defendant, Defendant Releasees, or
16 Distributor Releasees.

17 5. ENFORCEMENT

18 5.1 The Parties may, by motion or application for an order to show cause before the
19 Superior Court of Los Angeles County, enforce the terms and conditions contained in this
20 Consent Judgment.

21 5.2 Prior to bringing any motion or application to enforce the requirements of Section
22 2 above, Shefa shall provide Settling Defendant with a Notice of Violation and proof of purchase
23 and a copy of any test results which purportedly support the Notice of Violation.

24 5.3 The Parties shall then meet and confer regarding the basis for the anticipated
25 motion or application in an attempt to resolve it informally, including providing Settling
26 Defendant with a reasonable opportunity of at least thirty (30) days to cure any alleged violation.

27 5.4 Should such attempts at informal resolution fail, Shefa may file an enforcement
28 motion or application.

1 **6. ATTORNEYS' FEES**

2 6.1 Except as otherwise provided in this Consent Judgment, each Party shall bear its
3 own attorneys' fees and costs.

4 6.2 Nothing in this Section 6 shall preclude a Party from seeking an award of
5 sanctions pursuant to law.

6 **7. NOTICE**

7 7.1 When Shefa is entitled to receive any notice under this Consent Judgment, the
8 notice shall be sent by first class and electronic mail to:

9 Daniel N. Greenbaum
10 Law Office of Daniel N. Greenbaum
11 7120 Hayvenhurst Ave., Suite 320
12 Van Nuys CA 91406
dgreenbaum@greenbaumlawfirm.com

13 7.2 When Settling Defendant is entitled to receive any notice under this Consent
14 Judgment, the notice shall be sent by electronic mail to:

15 Jay W. Connolly
16 Seyfarth Shaw LLP
17 560 Mission Street, 31st Floor
18 San Francisco, California 94105-2930^[1]_[SEP]
Email: jconnolly@seyfarth.com

19 7.3 Any Party may modify the person and address to whom the notice is to be sent by
20 sending the other Party notice by electronic mail.

21 **8. MODIFICATION**

22 8.1 **Written Consent.** This Consent Judgment may be modified from time to time by
23 express written agreement of the Parties with the approval of the Court, or by an order of this
24 Court upon motion and in accordance with law.

25 8.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
26 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
27 modify the Consent Judgment.

1 **9. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

2 9.1 Shefa agrees to comply with the reporting form requirements referenced in Health
3 and Safety Code § 25249.7(f).

4 **10. COURT APPROVAL**

5 10.1 This Consent Judgment shall become effective upon entry by the Court.

6 10.2 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
7 noticed motion is required to obtain judicial approval of this Consent Judgment. Shefa shall
8 prepare and file such motion, and Settling Defendant shall not oppose it.

9 10.3 If this Consent Judgment is not entered by the Court, it shall be of no force or
10 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
11 purpose other than to allow the Court to determine if there was a material breach of Section 10.2.

12 **11. OTHER TERMS**

13 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California.

15 11.2 This Consent Judgment shall apply to and be binding upon Shefa, Settling
16 Defendant, its affiliates, and successors or assigns of any of them.

17 11.3 This Consent Judgment contains the sole and entire agreement and understanding
18 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
19 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
20 and therein.

21 11.4 There are no warranties, representations, or other agreements between the Parties
22 except as expressly set forth herein.

23 11.5 No representations, oral or otherwise, express or implied, other than those
24 specifically referred to in this Consent Judgment have been made by any Party hereto.

25 11.6 This Court shall retain jurisdiction of this matter to implement or modify the
26 Consent Judgment.

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1 11.7 The stipulations to this Consent Judgment may be executed in counterparts and
2 by means of facsimile or portable document format (pdf), which taken together shall be deemed
3 to constitute one document.

4 11.8 Each signatory to this Consent Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
6 into and execute the Consent Judgment on behalf of the Party represented and legally to bind
7 that Party.

8 11.9 The Parties, including their counsel, have participated in the preparation of this
9 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

10 11.10 This Consent Judgment was subject to revision and modification by the Parties
11 and has been accepted and approved as to its final form by all Parties and their counsel.

12 11.11 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment
13 shall not be interpreted against any Party as a result of the manner of the preparation of this
14 Consent Judgment.

15 11.12 Each Party to this Consent Judgment agrees that any statute or rule of
16 construction providing that ambiguities are to be resolved against the drafting Party should not
17 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby
18 waive Civil Code § 1654.

19 **12. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
20 **CONSENT JUDGMENT**

21 12.1 This Consent Judgment will be brought before this Court upon the request of the
22 Parties. The Parties request the Court to review this Consent Judgment and to make the
23 following findings pursuant to Health & Safety Code § 25249.7(f)(4):

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

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

AGREED TO:

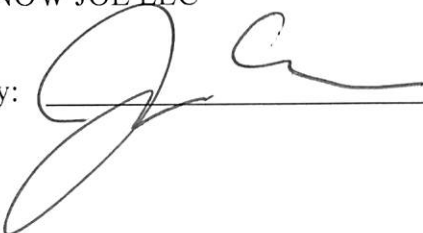
Dated: 11/22/16

SHEFA LMV, LLC

By:  _____

Dated: 11/22/16

SNOW JOE LLC

By:  _____

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Snow Joe 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