

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**

Please print or type required information

Original Filing     Supplemental Filing     Corrected Filing

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S) <b>Shefa LMV LLC</b>			
	DEFENDANT(S) INVOLVED IN JUDGMENT <b>Galderma Laboratories LP</b>			
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>CIV 1504055</b>		COURT NAME <b>Marin County Superior Court</b>	
	SHORT CASE NAME <b>Shefa LMV LLC v. Galderma Laboratories LP</b>			
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformulation</b>			
	PAYMENT: CIVIL PENALTY <b>\$16,000.00</b>	PAYMENT: ATTORNEYS FEES <b>\$22,000.00</b>	PAYMENT: OTHER <b>0</b>	
	DATE SUBMITTED TO COURT <b>6 / 16 / 2016</b>	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL <b>6 / 16 / 2016</b>	
	<b>COPY OF JUDGMENT MUST BE ATTACHED</b>			
<b>FILER INFO</b>	NAME OF CONTACT <b>Daniel N. Greenbaum, Esq.</b>			
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FILED

AUG 05 2016

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MARIN COUNTY SUPERIOR COURT  
By: J. Berg, Deputy

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF MARIN

16 UNLIMITED CIVIL JURISDICTION

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SHEFA LMV, LLC.,

Plaintiff,

vs.

GALDERMA LABORATORIES LP; and  
DOES 1 through 50, inclusive,

Defendants.

) Case No. CIV 1504055

) **[PROPOSED] MODIFIED CONSENT**  
) **JUDGMENT AS TO GALDERMA**  
) **LABORATORIES LP**

) Action Filed: Nov. 6, 2015

1 WHEREAS Plaintiff has issued a Notice and filed a Complaint against Settling  
2 Defendant regarding the presence of benzophenone in Covered Products, as further described in  
3 this Consent Judgment; and

4 WHEREAS the Parties acknowledge that the Notice to Settling Defendant was intended  
5 to cover all of Settling Defendant's Covered Products; and

6 WHEREAS the Parties, therefore, wish to resolve all Proposition 65 claims regarding  
7 benzophenone in Settling Defendant's products that are labeled as having Sun Protection Factor  
8 Value, they hereby agree as follows:

9 **1. INTRODUCTION**

10 **1.1 Parties**

11 This consent judgment ("**Consent Judgment**") is entered into by and between plaintiff  
12 Shefa LMV, LLC ("**Shefa**" or "**Plaintiff**") and Defendant Galderma Laboratories, LP ("**Settling**  
13 **Defendant**"), with Shefa and Settling Defendant collectively referred to as the "**Parties**" and  
14 individually as a "**Party**."

15 **1.2 Plaintiff**

16 Shefa is a California Limited Liability Company that seeks to promote awareness of exposure  
17 to toxic chemicals and to improve human health by reducing or eliminating hazardous  
18 substances contained in consumer and commercial products. Shefa alleges Settling Defendant  
19 employs ten or more persons and is a person in the course of doing business for purposes of the  
20 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code  
21 § 25249.6, *et seq.* ("**Proposition 65**").

22 **1.3 Defendant and Listed Chemical**

23 Settling Defendant manufactures, and/or distributes, and/or sells sunscreen products that  
24 are labeled as having a Sun Protection Factor Value ("**SPF Products**"). (*See* 21 C.F.R. § 352.3).  
25 One ingredient used in such products to enhance their ability to provide protection from the sun  
26 is octocrylene, an active ingredient approved for use in sunscreens by the Federal Food & Drug  
27 Administration ("**FDA**"). (*See* 76 Fed. Reg. 35620; 21 C.F.R. §§ 352.10, 352.20 (stayed)).

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1 Octocrylene can at times contain benzophenone. Benzophenone (CAS # 119-61-9) is a chemical  
2 listed under The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
3 Safety Code § 25249.5 *et seq.* (commonly known as “**Proposition 65**”) as a chemical “known to  
4 the state to cause cancer” as Proposition 65 defines that phrase. 27 CCR § 25000.

5 **1.4 Products Covered**

6 This Consent Judgment covers and applies to all SPF Products that are manufactured  
7 and/or distributed for sale in California and/or sold in California and that contain benzophenone.  
8 All sizes, types, brands, packaging, formulations, delivery forms (e.g., sprays or lotions applied  
9 by hand), intended uses (e.g., “faces,” children’s products, “sport,” “moisturizing,” cosmetic  
10 purposes) are included. Examples of the products subject to this Consent Judgment are Cetaphil  
11 w/ SPF, including but not limited to Cetaphil w/SPF 15. The products described in this Section  
12 1.4 shall be referred to herein as “**Covered Products**”. The Parties agree that the Notices to  
13 Settling Defendant covers all of Settling Defendant’s Covered Products. This Consent  
14 Judgment, and all of its terms, applies to all Covered Products, including without limitation new  
15 products and brands introduced, developed, or acquired in the future by Settling Defendant  
16 which would today meet the definition of Covered Products if they currently were being  
17 manufactured or distributed for sale, or being sold, in California. The term Covered Product, as  
18 used hereafter in this Consent Judgment, includes such future products and brands.

19 **1.5 General Allegations**

20 Plaintiff alleges in the Complaint that Settling Defendant manufactured, and/or  
21 distributed for sale in California, and/or sold in California, Covered Products containing  
22 benzophenone without “a clear and reasonable warning” as Proposition 65 defines that phrase,  
23 and continues to do so. Plaintiff asserts this settlement is necessary to assure compliance with  
24 Proposition 65 now and in the future and to settle Plaintiff’s alleged claims.

25 **1.6 Notice of Violation**

26 On April 15, 2015, Plaintiff served Settling Defendant and the requisite public enforcement  
27 agencies with a 60-Day Notice of Violation (“**Notice**”), alleging that Settling Defendant was in  
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1 violation of Proposition 65 for failing to warn consumers in California that its sunscreen  
2 products exposed users to benzophenone. On June 10, 2016, Plaintiff served Settling Defendant  
3 and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation  
4 (“**Supplemental Notice**”), alleging that Settling Defendant was in violation of Proposition 65  
5 for failing to warn consumers in California that its sunscreen products exposed users to  
6 benzophenone. The Supplemental Notice, served less than sixty days prior to execution of this  
7 Consent Judgment, was served so as to clarify and better define the scope of Covered Products.  
8 The Notice and the Supplemental Notice are attached hereto as Exhibit A. To the best of the  
9 Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the  
10 allegations set forth in the Notice.

11 **1.7 Complaint**

12 On September 10, 2015 Plaintiff filed a complaint in the Superior Court in and for the  
13 County of Marin against Concept II Cosmetics, LLC and DOES 1-150, alleging violations of  
14 California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in  
15 sunscreen products sold by Settling Defendant in the State of California. The complaint shall be  
16 deemed amended by this Consent Judgment to include the allegations set forth in certain  
17 supplemental notices, and the term “Covered Products” shall be deemed to include any and all  
18 products identified in those supplemental notices that were not subject to an earlier notice, on the  
19 day that the sixty-day notice period has passed if no authorized public prosecutor has, prior to  
20 that date, filed a Proposition 65 enforcement action with respect to the allegations in the  
21 Supplemental Notices.

22 On November 6, 2015, Shefa filed the present action in the Superior Court in and for the  
23 County of Marin, *Shefa LMV, LLC v. Galderma Laboratories, LP, et al.*, Marin Superior Court  
24 Case No. CIV 1504055 alleging violations of California Health & Safety Code § 25249.6, based  
25 on the alleged exposures to benzophenone contained in sunscreen products sold in the State of  
26 California. The complaint shall be deemed amended by this Consent Judgment to include the  
27 allegations set forth in the Supplemental Notice, and the term “Covered Products” shall be  
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1 deemed to include any and all products identified in the Supplemental Notice that were not  
2 subject to an earlier notice, on the day that the sixty-day notice period has passed if no  
3 authorized public prosecutor has, prior to that date, filed a Proposition 65 enforcement action  
4 with respect to the allegations in the Supplemental Notice.

5 **1.8 No Admission**

6 Settling Defendant denies all the respective material, factual, and legal allegations  
7 contained in the Notice and Complaint. Settling Defendant maintains that all of its Covered  
8 Products have been and are in compliance with all laws. Nothing in this Consent Judgment shall  
9 be construed as an admission against interest by Settling Defendant of any fact, finding,  
10 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
11 constitute or be construed as an admission against interest by Settling Defendant of any fact,  
12 finding, conclusion, issue of law, or violation of law. This Section shall not, however, diminish  
13 or otherwise affect Settling Defendant's obligations, responsibilities, and duties under this  
14 Consent Judgment.

15 **1.9 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
17 jurisdiction over Settling Defendant as to the allegations in the Complaint, that venue is proper in  
18 the County of Marin, Settling Defendant agrees that it employs or has employed ten or more  
19 persons during time periods relevant to the Complaint, and that this Court has jurisdiction over  
20 the Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition  
21 65 and Code of Civil Procedure § 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date  
24 that Plaintiff serves notice on Settling Defendant that this Consent Judgment is approved and  
25 entered by the Court.  
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1     **2.     INJUNCTIVE RELIEF: REFORMULATION STANDARD; NOTIFICATION**

2             **2.1     Reformulation Standard**

3             (a)     Whereas, Settling Defendant, based on inquiry for purposes of this Consent  
4 Judgment, has not identified any ingredient in its Covered Products other than octocrylene that is  
5 a source of detectable benzophenone in such Covered Products. Further, based upon inquiry for  
6 purposes of this Consent Judgment, Settling Defendant represents that it has investigated and  
7 concluded that there are only a few major suppliers of octocrylene for the domestic market and  
8 that time and phasing is needed for the marketplace of octocrylene suppliers to make the  
9 adjustments necessary to deliver octocrylene with benzophenone meeting the Octocrylene  
10 Reformulation Standards.

11            (b)     As of June 1, 2018, Settling Defendant shall only manufacture, or cause to be  
12 manufactured, either Covered Products containing no more than (i) 50 parts per million (“ppm”)  
13 benzophenone in the finished Covered Products; or (ii) 500 ppm of benzophenone in the  
14 ingredient octocrylene used in the finished Covered Products. These first standards are interim  
15 standards.

16            (c)     As of June 1, 2020, Settling Defendant shall only manufacture or cause to be  
17 manufactured, either Covered Products containing no more than (i) 35 ppm benzophenone in the  
18 finished Covered Product; or (ii) 350 ppm of benzophenone in the ingredient octocrylene used in  
19 the finished Covered Products. These second standards are the “**Final Reformulation**  
20 **Standards.**”

21            (d)     The dates and reformulations of the Covered Products as listed in Section 2.1 (b)  
22 and (c) shall be referred to collectively as the “**Reformulation Standards,**” consisting of either  
23 the Sections 2.1 (b)(i) and (c)(i) (the “**Finished Product Reformulation Standards**”) or  
24 Sections 2.1 (b)(ii) and (c)(ii) (the “**Octocrylene Reformulation Standards**”). Settling  
25 Defendant may at any time, at its own election, comply with either, both, or any combination of  
26 the applicable Finished Product Reformulation Standard or the Octocrylene Reformulation  
27 Standard with respect to any Covered Product.

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1 (e) The Reformulation Standards shall apply to Covered Products which are  
2 manufactured by or on behalf of Settling Defendant on or after the applicable Reformulation  
3 Standard dates.

4 **2.2. Notifications**

5 Settling Defendant shall provide, no later than fourteen (14) days after the Effective Date,  
6 written notice (the “**Octocrylene Supplier Letter**”) to its current respective octocrylene supplier  
7 or suppliers, informing said supplier or suppliers of the Octocrylene Reformulation Standard and  
8 urging each supplier to use reasonable efforts to provide expeditiously only octocrylene which  
9 complies with the Octocrylene Reformulation Standards. Settling Defendant shall not include  
10 statements in the Octocrylene Supplier Letter that will encourage a supplier to delay compliance  
11 with the Octocrylene Reformulation Standards. Settling Defendant shall include a statement in  
12 its Octocrylene Supplier Letter requesting that its supplier use any and all commercially  
13 reasonable efforts to achieve an Octocrylene Reformulation Standard of 200 ppm by June 1,  
14 2020.

15 **2.3 Compliance with Reformulation Standard**

16 (a) Should Settling Defendant elect to meet the Finished Product Reformulation  
17 Standard, it may, at its option, either (i) test the Covered Product pursuant to a scientifically  
18 appropriate application of U.S. Environmental Protection Agency testing methodologies 3580A,  
19 8270C, or any other scientifically appropriate methodology for determining the benzophenone  
20 content in a substance of the form of the specific Covered Product being tested, or (ii) may use  
21 the appropriate mathematical calculation based on octocrylene percentage in the Covered  
22 Product and the benzophenone concentration in the lot of octocrylene used in the finished  
23 Covered Product, based either on testing of the octocrylene lot or on a certificate of analysis  
24 documenting benzophenone content from the octocrylene supplier (the “**Certificate of**  
25 **Analysis**”) at Settling Defendant’s option.

26 (b) Should Settling Defendant elect to meet the Octocrylene Reformulation Standard,  
27 it shall obtain a Certificate of Analysis or analytical testing report for each lot of octocrylene  
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1 used in the manufacture of Covered Products. If, after Settling Defendant has advised its  
2 octocrylene suppliers to include a Certificate of Analysis with each lot of delivered octocrylene,  
3 an octocrylene supplier fails to include a Certificate of Analysis, Settling Defendant may correct  
4 the lapse upon discovery.

5 (c) Settling Defendant may, absent grounds to question the accuracy, demonstrate  
6 compliance with either Reformulation Standard by relying in good faith on an octocrylene  
7 supplier's Certificate of Analysis or comparable verified quantitative benzophenone content  
8 information. Such good faith reliance establishes compliance with the Reformulation Standards.  
9 Octocrylene suppliers shall rely on any scientifically appropriate testing methodology for  
10 determining the benzophenone content of octocrylene.

11 (d) Settling Defendant shall retain compliance documentation for three years after  
12 delivery of a lot of octocrylene and compliance documentation shall be made available within  
13 30 days of a written request by Plaintiff, who may make no more than two such requests  
14 annually.

15 **3. MONETARY PAYMENTS**

16 **3.1 Civil Penalty**

17 Pursuant to Health and Safety Code section 25249.7(b), Settling Defendant shall pay  
18 initial civil penalties of \$16,000.00 and, if applicable, final civil penalties in the amounts  
19 identified in Section 15.1. Settling Defendant shall issue two (2) separate checks for the total  
20 amount of \$16,000.00 penalties pursuant to Health & Safety Code § 25249.12: (a) one check  
21 made payable to the State of California's Office of Environmental Hazard Assessment  
22 ("OEHHA") in the amount of \$12,000.00, representing 75% of the total penalty; and (b) one  
23 check to Shefa LMV, LLC in the amount of \$4,000.00, representing 25% of the total penalty.

24 The payment to OEHHA shall be delivered to: Office of Environmental Health Hazard  
25 Assessment, Attn.: Mike Gyurics, Fiscal Operations Branch Chief, Office of Environmental  
26 Health Hazard Assessment, P.O. Box 4010 Sacramento, CA 95812-4010. The payment to Shefa  
27 shall be delivered to: Shefa LMV, LLC c/o Law Office of Daniel N. Greenbaum, 7120  
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1 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

2           **3.1.1 Initial Civil Penalty.** Within ten (10) business days of the Effective Date  
3 Settling Defendant shall issue checks in the amounts identified in 3.1 as the Initial Civil Penalty.

4           **3.1.2 Final Civil Penalty.** On or before June 30, 2018 Settling Defendant shall  
5 pay a final civil penalty (the “**Final Civil Penalty**”) in the amount of \$16,000.00. However, the  
6 Final Civil Penalty shall be waived in its entirety if Settling Defendant certifies that all Covered  
7 Products subject to this Consent Judgment manufactured by or on behalf of that Settling  
8 Defendant on or after June 1, 2018 meets a Final Reformulation Standard. A responsible official  
9 with personal knowledge, after due inquiry, of Settling Defendant that has exercised this election  
10 shall provide Plaintiff with a written certification confirming compliance with the above  
11 conditions on or before June 15, 2018.

12           **3.2 Reimbursement of Fees and Costs**

13           The Parties acknowledge that Shefa and its counsel offered to resolve this dispute  
14 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
15 leaving the issue to be resolved after the material terms of the agreement had been settled.  
16 Shortly after the other settlement terms had been finalized, Settling Defendant expressed a desire  
17 to resolve Shefa’s fees and costs. Settling Defendant agrees to pay Shefa and its counsel under  
18 the private attorney general doctrine codified at California Code of Civil Procedure section  
19 1021.5, for all work performed through the mutual execution of this agreement, including  
20 without limitation the fees and costs incurred as a result of investigating, bringing this matter to  
21 Settling Defendant’s attention, negotiating a settlement, and seeking court approval of the same.  
22 Settling Defendant agrees to pay the amount of fees and costs of \$22,000.00 within ten (10)  
23 business days of the Effective Date. Payment shall be delivered to Daniel N. Greenbaum, Law  
24 Office of Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Plaintiff's Public Release of Proposition 65 Claims**

3 This Consent Judgment is a full, final and binding resolution of all claims that were or  
4 could have been asserted in the Complaint arising out of Settling Defendant's alleged failure to  
5 provide Proposition 65 warnings for exposures to benzophenone in its Covered Products.  
6 Plaintiff, acting on its own behalf and in the public interest, releases Settling Defendant and its  
7 respective parents, subsidiaries, affiliated entities under (full or partial) common ownership,  
8 manufacturers, suppliers and the directors, officers, employees, attorneys, and predecessors,  
9 successors or assigns of each of them ("**Releasees**") and each entity to whom Settling Defendant  
10 directly or indirectly distributes or sells the Covered Products including, but not limited to, its  
11 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,  
12 licensors and licensees, and including, without limitation, and including any and all subsidiaries,  
13 parents, marketplace retailers and/or affiliates of the foregoing retailers (collectively, the  
14 "**Distribution Chain Releasees**") for violations arising under Proposition 65 for unwarned  
15 exposures to benzophenone from the Covered Products by Settling Defendant prior to the  
16 Effective Date. Plaintiff's release of claims applies to all Covered Products which Settling  
17 Defendant (or its manufacturer) either manufactured, and/or distributed and/or sold prior to the  
18 Effective Date, regardless of the date any person distributes or sells the subject Covered  
19 Products.

20 Upon entry of this Consent Judgment by the Court, going forward, Settling Defendant's  
21 compliance with the terms of this Consent Judgment shall be deemed to constitute compliance  
22 with Proposition 65 with respect to benzophenone in that Settling Defendant's prior, current and  
23 future Covered Products.

24 **4.2 Plaintiff's Individual Release of Claims**

25 Plaintiff, in its individual capacity only and *not* in its representative capacity, also  
26 provides a release to Settling Defendant, Releasees, and Distribution Chain Releasees, which  
27 release shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes  
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1 of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and  
2 demands of Plaintiff of any nature, character or kind, whether known or unknown, suspected or  
3 unsuspected, arising out of alleged or actual exposures to benzophenone in Settling Defendant's  
4 Covered Products prior to the Effective Date.

5 **4.3 Settling Defendant's Release of Shefa**

6 Settling Defendant, on behalf of itself, its past and current agents, representatives,  
7 attorneys, successors and assignees, hereby waives any and all claims against Shefa and its  
8 attorneys and other representatives, for any and all actions taken or statements made by Shefa  
9 and its attorneys and other representatives, whether in the course of investigating claims,  
10 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the  
11 Covered Products up through the Effective Date.

12 **4.4 Release and Dismissal of Retailer Defendant**

13 This Consent Judgment provides a "downstream" release which resolves all claims in the  
14 Complaint for all Covered Products manufactured by, or on behalf of, distributed, or sold by  
15 Settling Defendant. Any retailer who has been named in the Complaint (a "**Retailer**  
16 **Defendant**") due to its sale of one or more such Covered Products shall be dismissed without  
17 prejudice unless, prior to the date this Consent Judgment was lodged, that Retailer Defendant  
18 had also received a Notice that identified an exemplar product not manufactured or supplied by  
19 either Settling Defendant or an entity that has previously resolved Plaintiff's claims with a  
20 downstream release.

21 **5. FORCE MAJEURE**

22 In the event that it is not feasible for Settling Defendant to obtain conforming octocrylene  
23 necessary so as to comply with any Reformulation Standard due to an Act of God (including fire,  
24 flood, earthquake, storm, hurricane or other natural disaster) or loss of adequate supplier ability  
25 to supply octocrylene on an uninterrupted basis compliant with the applicable Octocrylene  
26 Reformulation Standard, the provisions of this paragraph will dictate whether the applicable  
27 dates for meeting the Reformulation Standards shall be extended. The criteria for determining  
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1 whether it is feasible to obtain conforming octocrylene shall include the following factors:  
2 availability and reliability of supply that meets the applicable Octocrylene Reformulation  
3 Standard, cost of such conforming octocrylene and resulting increase in manufacturers' prices  
4 resulting from the use of conforming octocrylene, performance characteristics of conforming  
5 octocrylene and of the resulting Covered Products, including but not limited to formulation,  
6 performance, safety, efficacy, consumer acceptance, and stability.

7         Settling Defendant shall provide notice to Plaintiff and to JAMS mediator Judge James  
8 Warren, or if he is not available, another mediator from JAMS mutually agreed to by the Parties  
9 or, if necessary, as referred by the Court. Included in the notice shall be the specific reason or  
10 reasons for invoking the Force Majeure clause, along with a reasonable estimate of the time  
11 period during which Settling Defendant will be unable to comply with the applicable  
12 Reformulation Standard. During the time invoked by Settling Defendant, the Reformulation  
13 Standard shall be revised to 100 ppm for the Finished Product Reformulation Standard and 1,000  
14 ppm for the Octocrylene Reformulation Standard.

15         If the Parties disagree as to whether Settling Defendant has a valid reason to invoke the  
16 Force Majeure clause or disagree as to the length of time necessary for Settling Defendant to  
17 comply with the Reformulation Standard, they shall attempt to resolve their differences through  
18 one or more sessions with Judge Warren, or if he is not available, another mediator from JAMS  
19 mutually agreed to by the Parties or, if necessary, as referred by the Court. Shefa's reasonable  
20 fees and costs of the mediation sessions under this Section shall be borne solely by the  
21 participating Settling Defendant unless otherwise allocated by Judge Warren or other mediator  
22 from JAMS, who shall consider whether mediation was necessary and/or whether a Party  
23 asserted unreasonable or extreme positions. If the Parties cannot reach resolution via a meet and  
24 confer or the JAMS process, an aggrieved Party may move the Court via a noticed motion on all  
25 Parties, with a copy to the Office of the Attorney General, for such additional relief as that Party  
26 deems necessary.

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1     **6. COURT APPROVAL**

2             This Consent Judgment is not effective until it is approved and entered by the Court and  
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
4 year after it has been fully executed by the Parties, or by such additional time as the Parties may  
5 agree in writing.

6     **7. SEVERABILITY**

7             If, subsequent to the execution of this Consent Judgment, any provision of this Consent  
8 Judgment is held by a court to be void or unenforceable, or the Parties agree to modify any terms  
9 due to input from the Office of the Attorney General or after a hearing before the Court in  
10 connection with Shefa's Motion to Approve, or for other good cause, each Party to be bound by  
11 any such modified terms must re-execute the modified Consent Judgment and such modified  
12 Consent Judgment then shall be presented to the Court for approval by Shefa; provided,  
13 however, that if a provision of this Consent Judgment declared void or unenforceable is material  
14 to the Party for whom such term provided a benefit or protection, that Party can seek other  
15 remedies, including, without limitation, rescission or reformation, based on the provision being  
16 declared void or unenforceable.

17     **8. GOVERNING LAW**

18             The terms of this Consent Judgment shall be governed by the laws of the State of  
19 California and apply within the State of California. In the event that Proposition 65 is repealed  
20 or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products,  
21 including without limitation the delisting of benzophenone, then Settling Defendant may provide  
22 written notice to Plaintiff of any asserted change in the law, and with the exception of Sections  
23 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with respect  
24 to, and to the extent that, the Covered Products are so affected. None of the terms of this  
25 Consent Judgment shall have any application to Covered Products sold outside of the State of  
26 California.

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1 **9. FUTURE FEDERAL REGULATION OF OCTOCRYLENE OR**  
2 **BENZOPHENONE**

3 If FDA adopts new regulations or Congress enacts new laws governing octocrylene  
4 and/or benzophenone content in any Covered Products, then the Parties shall meet and confer  
5 regarding the effect of such changes in the law on the obligations of this Consent Judgment. If  
6 necessary to reach agreement, the Parties may refer any specific issue for consideration by Judge  
7 Warren or other JAMS mediator agreed to by the Parties or, if necessary, as appointed by the  
8 Court.

9 Notwithstanding the foregoing, if FDA authorizes the percentage of octocrylene to  
10 increase above the current limit of 10% in Covered Products, then this Consent Judgment shall  
11 by operation of law be amended to allow benzophenone in finished Covered Products to rise in  
12 proportion to the percentage increase. Settling Defendant shall notify Plaintiff of the date this  
13 Section operates to change any Finished Product Reformulation Standard. This notice obligation  
14 shall sunset on June 1, 2023. Even if FDA changes the level of permissible octocrylene prior to  
15 June 1, 2018, the civil penalty provisions of Section 3.1.2 shall apply as written, not to any  
16 standards as modified by this Section 9. Settling Defendant represent that other than as  
17 described in the proceedings and papers referenced in their briefs in these consolidated cases,  
18 they are not aware that the FDA currently has published or made public plans to raise the  
19 allowable levels of octocrylene in the Covered Products.

20 **10. NOTICE**

21 Unless specified herein, all correspondence and notice required to be provided pursuant  
22 to this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class  
23 registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the  
24 other at the following addresses:  
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To Settling Defendant:  
  
Gary Roberts, Esq.  
Dentons US LLP  
601 South Figueroa Street, Suite 2500  
Los Angeles, CA 90017

To Shefa:  
  
Daniel N. Greenbaum  
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.

**11. COUNTERPARTS; FACSIMILE AND 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.

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

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

**13. ADDITIONAL POST EXECUTION ACTIVITIES**

The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment. Settling Defendant agrees to urge the Court to approve this Consent Judgment. If any third party objection to the noticed motion is filed, Plaintiff and Settling Defendant agree to work together to the extent appropriate, and shall appear at any hearing before the Court to urge the Court to approve the Consent Judgment.

**14. MODIFICATION**

This Consent Judgment may only be modified by a written instrument executed by the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion to modify shall be served on all Parties and the Office of the Attorney General.



1 **15. ENFORCEMENT**

2 **15.1 Settling Defendant**

3 In order to assert a potential violation of the Consent Judgment, Plaintiff shall provide  
4 notice to Settling Defendant as set forth in this paragraph (“**Notice of Breach**”): (a) Plaintiff  
5 shall provide all results of testing conducted on a specific Covered Product during the three  
6 month period for which the violation is alleged; (b) such testing must be of no less than five (5)  
7 of the same Covered Product (irrespective of the volume size of the container) collected within  
8 the three (3) month period, from five different retail vendors; (c) the average of all test results for  
9 that period exceed the Finished Product Reformulation Standard; and (d) Plaintiff shall provide  
10 the alleged violator a copy of (i) the purchase information for the allegedly violating Covered  
11 Product and (ii) a digital image of the allegedly violating Covered Product showing the  
12 SKU/UPC and, if present on the container, the Lot/Batch number(s).

13 Settling Defendant and Plaintiff shall, within thirty (30) days of receipt of the Notice of  
14 Breach, meet and confer regarding the alleged violation, during which time Plaintiff shall not file  
15 any motion, application, action, or pleading regarding the alleged violation.

16 For the first alleged violation as to any specific Covered Product for which Plaintiff  
17 provides Notice of Breach, Settling Defendant may demonstrate compliance by providing (1) a  
18 Certificate of Analysis or comparable verified quantitative benzophenone content information  
19 for five (5) units of the Covered Product or for the lot(s) of octocrylene from the supplier(s) of  
20 the octocrylene in the Covered Product at issue showing levels of benzophenone meeting the  
21 Octocrylene Reformulation Standard, or (2) a prior test result, using scientifically appropriate  
22 test methodologies, of the lot(s) of octocrylene used in the finished product which is the subject  
23 of the Notice of Breach, showing levels of benzophenone meeting the Octocrylene  
24 Reformulation Standard. If Settling Defendant cannot demonstrate compliance, it must pay a  
25 stipulated civil penalty of \$25,000 to be allocated according to Section 3.1.

26 In the event that, thereafter, Plaintiff provides a Notice of Breach pertaining to a second  
27 alleged violation for the same Covered Product, he must do so in accordance with this Section.

28

1 For the second alleged violation noticed by Plaintiff of the same Covered Product, Settling  
2 Defendant may demonstrate compliance with the terms of the Consent Judgment by providing  
3 test results, using scientifically appropriate test methodologies, conducted on five (5) units of the  
4 Covered Product or on the first three (3) lots of octocrylene received more than 30 days after  
5 receipt of the written response showing compliance with the Octocrylene Reformulation  
6 Standard received from the supplier of the octocrylene used to make the finished product which  
7 was the subject of the first Notice of Breach, and used to manufacture that finished product. If  
8 fewer than three (3) lots are received during the relevant time period, testing is required only for  
9 such lots as were received. Such a showing shall constitute compliance.

10 In the event that Settling Defendant cannot demonstrate compliance in the manner set  
11 forth above after receipt of a second Notice of Breach for the same Covered Product, and  
12 Plaintiff thereafter provides notice in accordance with the provisions in this Section of a third  
13 alleged violation for the same Covered Product, Settling Defendant shall pay a stipulated penalty  
14 of \$50,000 for each such second or subsequent violation.

15 **15.2 Retailer Defendant**

16 If Plaintiff sends a Notice of Breach to a Retailer Defendant, that Retailer Defendant  
17 shall be allowed to tender such notice to the manufacturer, distributor or seller of the subject  
18 Covered Product who is Settling Defendant. Thereafter, Plaintiff shall proceed with such  
19 Settling Defendant in accordance with Section 15.1 in lieu of the Retailer Defendant.

20 **16. AUTHORIZATION**

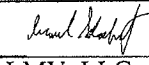
21 The undersigned are authorized to execute this Consent Judgment on behalf of their  
22 respective Parties and have read, understood and agree to all of the terms and conditions of this  
23 Consent Judgment.

24 AGREED TO:

AGREED TO:

25 Date: 6/15/16

Date: 6-14-16

26 By:   
27 Shefa LMV, LLC

By:   
GALDERMA LABORATORIES LP

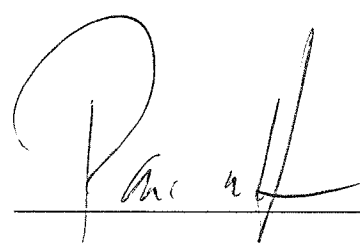
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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Galderma Laboratories LP, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: 8-5-16

  
\_\_\_\_\_  
Judge of the Superior Court

**EXHIBIT A**

## 60-DAY NOTICE OF VIOLATION

*SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)*

---

**DATE:** April 15, 2015

**To:** Amazon.com, Inc.; Drugstore.com; Pro Concepts; Sun Bum LLC; Galderma Laboratories, LP; Australian Gold, Inc.; Panama Jack, Inc.; S&G Hampton Sun, LLC; Child & Associates; Walgreens Co.

California Attorney General's Office;

District Attorney's Office for 58 Counties; and

City Attorney's Office for Los Angeles, San Diego, San Jose and San Francisco.

---

**From:** Shefa LMV, LLC

### I. INTRODUCTION

Our name is Shefa LMV, LLC. We are citizens and a Limited Liability Company of the State of California acting in the interest of the general public. We seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve public health and safety by reducing the hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6, et seq. ("Proposition 65"). The violations alleged by this Notice consist of product exposures, routes of exposures, and types of harm that may potentially result from exposures to the toxic chemical ("listed chemical") identified below:

<b>Product Exposure:</b>	<b>See Section VII, Exhibit A</b>
<b>Listed Chemical:</b>	<b>Benzophenone;</b>
<b>Routes of Exposure:</b>	<b>Dermal absorption; Ingestion; and Inhalation</b>
<b>Types of Harm:</b>	<b>Carcinogen</b>

### II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and which is the subject of this Notice, is listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the "products." The sales of these products in California dating at least as far back as **June 23, 2013** are subject to this Notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and responsible warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products from dermal and ingestion exposure as well as inhalation, California citizenry lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

Through the act of buying, acquiring and using the products, citizens of California are exposed to the listed chemical in homes, workplaces and elsewhere throughout California where these products are

their children. Exposure to consumers includes, but is not limited to, when handling the product Benzophenone is absorbed through dermal, and other migration pathways, including but not limited to incidental ingestion after one touch's the chemical and then touch's food or otherwise places his hands on or near his lips where his tongue can or will continue this pathway to ingestion exposure. Exposure may continue to occur for a significant period after the initial contact. People likely to be exposed are women, men, infants and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed by the state as known to cause cancer.

### **III. CONTACT INFORMATION**

Please direct all questions concerning this notice to us through our counsel's offices at the following address:

Daniel N. Greenbaum, Esq.  
7120 Hayvenhurst Avenue, Suite 320  
Van Nuys, CA 91406  
Main: (818) 809-2199  
Cell: (310) 200-2631  
Fax: (424) 243-7689  
Email: [dgreenbaum@greenbaumlawfirm.com](mailto:dgreenbaum@greenbaumlawfirm.com)

### **IV. PROPOSITION 65 INFORMATION**

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment ("OEHHA") in the Proposition 65 Implementation Office at (916) 445-6900. For the alleged Violator(s), I have attached a copy of "Proposition 65 in Plain Language" which has been prepared by OEHHA.

### **V. RESOLUTION OF NOTICED CLAIMS**

Based on the allegations set forth in this Notice, we intend to file a citizen enforcement lawsuit against the alleged Violator(s), unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future, or reformulate such products to eliminate the Benzophenone exposures.

If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day Notice period elapses; nor (2) speak for the Attorney General or any District Attorney or City Attorney who received this Notice. Therefore, while reaching an agreement that will resolve my claims, such an agreement may not be approved by the Attorney General after referral to them, or by the court as the last voice on settlements.

**VI. ADDITIONAL INFORMATION**

<u>Product</u>	<u>Retailer(s)</u>	<u>Manufacturer(s)/Distributor(s)</u>
Sunscreen; Face Soap	Amazon.com; Drugstore.com; Pro Concepts	Sun Bum LLC; Galderma Laboratories, LP; Australian Gold, Inc.; Panama Jack, Inc.; S&G Hampton Sun, LLC; Child & Associates; Walgreens Co.

**VII. EXHIBIT A**

Identified below are named products which contain the alleged chemicals at issue, and this reference is supportive of the material facts that are a part of my counsels Certificate of Merit that is attached hereto as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warnings” at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business to business, through the internet, and/or via catalog by the alleged Violator(s) and other distributors and retailers of the product.

<b>Product Category</b>	<b>Specific Product</b>	<b>UPC</b>	<b>Sold by</b>	<b>Manufacturer/Distributor</b>
Sunscreen	Sun Bum SPF 70	871760002098	Pro Concepts/Amazon	Sun Bum, LLC
Face Soap	Cetaphil w/ SPF 15	302993928041	Drugstore.com	Galderma Laboratories, L.P.
Sunscreen	Australian Gold SPF 50+ Continuous Spray Sport	054402260463	Amazon.com	Australian Gold, Inc.
Sunscreen	Panama Jack SPF 70 continuous spray	045336041709	Drugstore.com	Panama Jack, Inc.
Sunscreen	Hampton Sun Broad Spectrum SPF 35	184573000398	Drugstore.com	S & G Hampton Sun LLC.
Sunscreen	Maui Mike's Hawaiian Sunstick SPF 30	025301500189	Drugstore.com	Childs & Associates
Sunscreen	Walgreens Sunscreen Stick	049022764989	Drugstore.com	Walgreens Co.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this case or action. My business address is: **7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406**

A True and Correct copy of the documents entitled **60 DAY NOTICE OF VIOLATION; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** will be served or was served in the manner stated below:

I. Interested Parties (Served via Certified Mail): On April 15, 2015, I served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, postage prepaid, and addressed as follows:

Amazon.com, Inc.	ATTN: CEO or President	410 Terry Avenue N, Seattle, WA 98109
Corporation Service Company	c/o Amazon.com, Inc.	300 Deschutes Way SW, Suite 304, Seattle, WA 98501
Drugstore.com	ATTN: CEO or President	12835 Old Virginia Rd., Reno, NV 89521
Sun Bum, LLC	ATTN: CEO or President	5421 Avenida Encinas Ste J, Carlsbad, CA 92008-4410
Sun Bum	ATTN: CEO or President	P.O. Box 320598, Cocoa Beach FL 32932
Sun Bum LLC	ATTN: Dustin Smith	101 N. ORLANDO AVE., COCOA BEACH, FL 32931
Sun Bum LLC	ATTN: CEO or President	4940 Cascade Road, Suite # 210, Grand Rapids, MI 49546
CT Corporation System	Sun Bum Suncare LLC	967 Spaulding Ave., Suite B, Ada MI 49301
Galderma Laboratories, L.P.	ATTN: Quentin Cassady	14501 North Freeway, Fort Worth, TX 76177
Galderma Laboratories, L.P.	ATTN: CEO or President	14501 North Freeway, Fort Worth, TX 76177
Australian Gold	ATTN: CEO or President	6270 Corporate Dr., Indianapolis, IN 46278-2921
Corporation Service Company	c/o Australian Gold	251 E. Ohio Street, Suite 500, Indianapolis IN 46204
Panama Jack, Inc.	ATTN: CEO or President	230 Ernestine St., Orlando, FL 32801-3622
Panama Jack, Inc.	ATTN: Jack Katz	230 Ernestine St., Orlando, FL 32801-3622
S & G HamptonSun LLC.	ATTN: CEO or President	123 W 18th St Fl 8, New York, NY 10011-4127
National Registered Agents	c/o S&G HamptonSun	111 Eighth Ave., New York NY 11011
Childs & Associates	ATTN: CEO or President	Po Box 3595, San Rafael, CA 94902
Childs & Associates	ATTN: Barry H. Lawrence	C/O KAYE, SCHOLER ET AL, 1999 AVENUE OF THE STARS, #1600, LOS ANGELES, CA 90067
Walgreens Co.	ATTN: CEO or President	108 Wilmot Rd., Deerfield IL, 60015-4681
Illinois Corporation Service	c/o Walgreens	801 Adlai Stevenson Dr., Springfield IL 62703

II. California Attorney General (via website Portal): On April 15, 2015, I uploaded a true and correct copy thereof as a PDF file via the California Attorney General's website.

III. District and City Attorneys (via U.S. Mail): On April 15, 2015, I served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and addressed as follows **See attached pages for full service list**



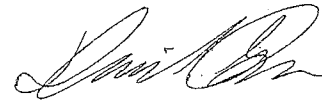
I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

April 15, 2015

*Date*

Daniel N. Greenbaum, Esq.

*Printed Name*



*Signature*

District Attorney  
ALAMEDA COUNTY  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney  
ALPINE COUNTY  
PO Box 248  
Markleeville, CA 96120

District Attorney  
AMADOR COUNTY  
708 Court Street, #202  
Jackson, CA 95642

District Attorney  
BUTTE COUNTY  
25 County Center Drive —  
Administration Building  
Oroville, CA 95965

District Attorney  
CALAVERAS COUNTY  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney  
COLUSA COUNTY  
346 5th Street, Suite. 101  
Colusa, CA 95932

District Attorney  
CONTRA COSTA COUNTY  
900 Ward Street  
Martinez, CA 94553

District Attorney  
DEL NORTE COUNTY  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney  
EL DORADO COUNTY  
515 Main Street  
Placerville, CA 95667

District Attorney  
FRESNO COUNTY  
2220 Tulare Street, Suite. 1000  
Fresno, CA 93721

District Attorney  
GLENN COUNTY  
PO Box 430  
Willows, CA 95988

District Attorney  
HUMBOLDT COUNTY  
825 5th Street  
Eureka, CA 95501

District Attorney  
IMPERIAL COUNTY  
940 West Main Street, Suite. 102  
El Centro, CA 92243

District Attorney  
INYO COUNTY  
168 North Edwards  
Independence, CA 93526

District Attorney  
KERN COUNTY  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney  
KINGS COUNTY  
1400 West Lacey Blvd.  
Hanford, CA 93230

District Attorney  
LAKE COUNTY  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney  
LASSEN COUNTY  
220 S. Lassen Street, Suite. 8  
Susanville, CA 96130

District Attorney  
LOS ANGELES COUNTY  
210 W. Temple Street  
Los Angeles, CA 90012

District Attorney  
MADERA COUNTY  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney  
MARIN COUNTY  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

District Attorney  
MARIPOSA COUNTY  
PO BOX 730  
Mariposa, CA 95338

District Attorney  
MENDOCINO COUNTY  
PO BOX 1000  
Ukiah, CA 95482

District Attorney  
MERCED COUNTY  
550 West Main Street  
Merced, CA 95340

District Attorney  
MODOC COUNTY  
204 S. Court Street, Room 202  
Alturas, CA 96101

District Attorney  
MONO COUNTY  
PO BOX 2053  
Mammoth Lakes, CA 93546

District Attorney  
MONTEREY COUNTY  
PO BOX 1131  
Salinas, CA 93902

District Attorney  
NAPA COUNTY  
PO BOX 720  
Napa, CA 94559

District Attorney  
NEVADA COUNTY  
201 Commercial Street  
Nevada City, CA 95959

District Attorney  
ORANGE COUNTY  
401 Civic Center Drive West  
Santa Ana, CA 92701

District Attorney  
PLACER COUNTY  
10810 Justice Center Drive  
Roseville, CA 95678

District Attorney  
PLUMAS COUNTY  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney  
RIVERSIDE COUNTY  
3960 Orange Street  
Riverside, CA 92501

District Attorney  
SACRAMENTO COUNTY  
901 G Street  
Sacramento, CA 95812

District Attorney  
SAN BENITO COUNTY  
419 4th Street  
Hollister, CA 95023

District Attorney  
SAN BERNARDINO COUNTY  
303 W. Third Street  
San Bernardino, CA 92415

District Attorney  
SAN DIEGO COUNTY  
330 W. Broadway, Suite 1300  
San Diego, CA 92101

District Attorney  
SAN FRANCISCO COUNTY  
880 Bryant Street, Third Floor  
San Francisco, CA 94103

District Attorney  
SAN JOAQUIN COUNTY  
PO BOX 990  
Stockton, CA 95202

District Attorney  
SAN LUIS OBISPO COUNTY  
Courthouse Annex, 4th Floor  
San Luis Obispo, CA 93408

District Attorney  
SAN MATEO COUNTY  
400 County Center, Third Floor  
Redwood City, CA 94063

District Attorney  
SANTA BARBARA COUNTY  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney  
SANTA CLARA COUNTY  
70 West Hedding Street, West Wing  
San Jose, CA 95110

District Attorney  
SANTA CRUZ COUNTY  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060

District Attorney  
SHASTA COUNTY  
1355 West Street  
Redding, CA 96001

District Attorney  
SIERRA COUNTY  
100 Courthouse Square  
Downieville, CA 95936

District Attorney  
SISKIYOU COUNTY  
PO BOX 986  
Yreka, CA 96097

District Attorney  
SOLANO COUNTY  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

District Attorney  
SONOMA COUNTY  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney  
STANISLAUS COUNTY  
832 12th Street, Suite 300  
Modesto, CA 95353

District Attorney  
SUTTER COUNTY  
446 Second Street, Suite 102  
Yuba City, CA 95991

District Attorney  
TEHAMA COUNTY  
PO BOX 519  
Red Bluff, CA 96080

District Attorney  
TRINITY COUNTY  
PO BOX 310  
Weaverville, CA 96093

District Attorney  
TULARE COUNTY  
221 South Mooney Blvd., Suite 224  
Visalia, CA 93291

District Attorney  
TUOLUMNE COUNTY  
423 No. Washington Street  
Sonora, CA 95370

District Attorney  
VENTURA COUNTY  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney  
YOLO COUNTY  
301 Second Street  
Woodland, CA 95695

District Attorney  
YUBA COUNTY  
215 Fifth Street, Suite. 152  
Marysville, CA 95901

Mike Feuer  
City Attorney  
CITY OF LOS ANGELES  
200 N. Main Street  
Los Angeles, CA 90012

Jan Goldsmith  
City Attorney  
CITY OF SAN DIEGO  
1200 Third Avenue, 3rd Floor  
San Diego, CA 92101

Richard Doyle  
City Attorney  
CITY OF SAN JOSE  
200 East Santa Clara Street  
San Jose, CA 95113

Dennis J. Herrera  
City Attorney  
CITY OF SAN FRANCISCO  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

## CERTIFICATE OF MERIT

I, Daniel N. Greenbaum, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
- (4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

April 15, 2015

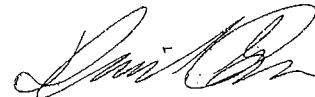
Daniel N. Greenbaum, Esq.

---

*Date*

---

*Printed Name*



---

*Signature*

## 60-DAY NOTICE OF VIOLATION

*SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)*

**This 60-Day Notice of Violation Supplements the following 60-Day Notices of Violation:**

- 1) AG#: 2016-00468
- 2) AG#: 2015-00317

---

**DATE: June 10, 2016**

**To:** The Estée Lauder Companies Inc.; Physicians Formula, Inc.; Markwins Beauty Products, Inc.; The Hain Celestial Group, Inc.; Beiersdorf, Inc.; Boots Retail USA, Inc.; Kiss My Face, LLC; Cosmetic Dermatology, Inc.; StriVectin Operating Co., Inc.; Niadyne, Inc.; Peter Thomas Roth LLC; First Aid Beauty, LLC; Galderma Laboratories LP; Origin Natural Resources, Inc.; Clinique Laboratories, Inc., and;

California Attorney General's Office; District Attorney's Office for 58 Counties; and City Attorney's Office for Los Angeles, San Diego, San Jose and San Francisco.

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**From:** Shefa LMV, LLC

### I. INTRODUCTION

We are citizens of the State of California acting in the interest of the general public. We seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve public health and safety by reducing the hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6, et seq. ("Proposition 65"). The violations alleged by this Notice consist of product exposures, routes of exposures, and types of harm that may potentially result from exposures to the toxic chemical ("listed chemical") identified below:

<b>Product Exposure:</b>	<b>See Section VII, Exhibit A</b>
<b>Listed Chemical:</b>	<b>Benzophenone;</b>
<b>Routes of Exposure:</b>	<b>Dermal absorption;</b>
	<b>Ingestion; and Inhalation</b>
<b>Types of Harm:</b>	<b>Carcinogen</b>

### II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and which is the subject of this Notice, is listed under "Product Category/Type" in Exhibit

A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the “products.” The sales of these products in California dating at least as far back as **August 12, 2014** are subject to this Notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and responsible warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products from dermal and ingestion exposure as well as inhalation, California citizenry lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

Through the act of buying, acquiring and using the products, citizens of California are exposed to the listed chemical in homes, workplaces and elsewhere throughout California. Exposure to consumers includes, but is not limited to, application to their bodies, their pets or their children. Benzophenone exposure to consumers includes dermal exposure when consumers handle the product (including through cuts and breaks in the skin) and other migration pathways, including but not limited to incidental ingestion after one touches the chemical and then touches food or otherwise places his hands on or near his lips where his tongue can or will continue this pathway to ingestion exposure. Exposure may continue to occur for a significant period after the initial contact. People likely to be exposed are women, men, and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed by the state as known to cause cancer.

### **III. CONTACT INFORMATION**

Please direct all questions concerning this notice to us through our counsel’s offices at the following address:

Daniel N. Greenbaum, Esq.  
Law Office of Daniel N. Greenbaum  
7120 Hayvenhurst Avenue, Suite 320  
Van Nuys, CA 91406  
Main: (818) 809-2199  
Fax: (424) 243-7689  
Email: [dgreenbaum@greenbaumlawfirm.com](mailto:dgreenbaum@greenbaumlawfirm.com)

### **IV. PROPOSITION 65 INFORMATION**

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment (“OEHHA”) in the Proposition 65 Implementation Office at (916) 445-6900. For the alleged Violator(s), I have attached a copy of “Proposition 65 in Plain Language” which has been prepared by OEHHA.

### **V. RESOLUTION OF NOTICED CLAIMS**

Based on the allegations set forth in this Notice, we intend to file a citizen enforcement lawsuit against the alleged Violator(s), unless such Violator enters into a binding written agreement to: (1) recall

products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future, or reformulate such products to eliminate the Benzophenone exposures.

If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day Notice period elapses; nor (2) speak for the Attorney General or any District Attorney or City Attorney who received this Notice. Therefore, while reaching an agreement that will resolve my claims, such an agreement may not be approved by the Attorney General after referral to them, or by the court as the last voice on settlements.

**VI. ADDITIONAL INFORMATION**

<u>Product</u>	<u>Retailer(s)</u>	<u>Manufacturer(s)/Distributor(s)</u>
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)		The Estée Lauder Companies Inc.; Physicians Formula, Inc.; Markwins Beauty Products, Inc.; The Hain Celestial Group, Inc.; Beiersdorf, Inc.; Boots Retail USA, Inc.; Kiss My Face, LLC; Cosmetic Dermatology, Inc.; StriVectin Operating Co., Inc.; Niadyne, Inc.; Peter Thomas Roth LLC; First Aid Beauty, LLC; Galderma Laboratories LP; Origin Natural Resources, Inc.; Clinique Laboratories, Inc.,

**VII. EXHIBIT A**

Identified below are named products which contain the alleged chemicals at issue, and this reference is supportive of the material facts that are a part of my counsel's Certificate of Merit that is attached hereto as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business to business, through the internet, and/or via catalog by the alleged Violator(s) and other distributors and retailers of the product.

We are identifying a number of products herein for all recipients' benefit to assist in investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the Product Category listed in Exhibit A. It is important to note that this

example list does not represent an exhaustive or comprehensive identification of any or all specific products. Further, it is our position that the alleged Violator(s) are obligated to continue to conduct in good faith an investigation into other specific products within the type or category described below that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violator(s)' custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

<b>Product Category</b>	<b>Specific Product</b>	<b>UPC</b>	<b>Manufacturer/Distributor</b>
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Bobbi Brown SPF 50 Protective Face Base SPF 50 (E8XX)	716170106335	The Estée Lauder Companies Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Estee Lauder Daywear Advanced Multi-Protection Anti-Oxidant & UV Defense Broad Spectrum SPF 30 Lotion (YCL3)	027131990413	The Estée Lauder Companies Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	La Mer The Reparative Body Sun Lotion Broad Spectrum SPF 30 Lotion (53ER)	747930042570	The Estée Lauder Companies Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Alba Botanica, Sea Moss Moisturizer, SPF 15	724742003128	The Hain Celestial Group, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Alba Botanica Hawaiian Greentea SPF 45	724742008277	The Hain Celestial Group, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Jason Sun Sport Sunscreen SPF 45	078522083207	The Hain Celestial Group, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Physicians Formula Super CC All Over Blur Primer Stick	044386066649	Physicians Formula, Inc.
Octocrylene containing	Physicians Formula Wrinkle Corrector SPF 15	044386075276	Physicians Formula, Inc.



Sunscreen (products claiming a Sun Protection Factor)			
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Wet n Wild Juicy Lip Balm	077802528322	Markwins Beauty Products, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Black Radiance BB Cream SPF 15	077802645340	Markwins Beauty Products, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Kiss my Face Kids defense spray SPF 50	028367841975	Kiss My Face, LLC
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Nivea Men Original Protective Lotion SPF 15	072140016302	Beiersdorf, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Aquaphor Broad Spectrum SPF 30	072140010119	Beiersdorf, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Eucerin Daily Protection Body Lotion SPF 15	072140012083	Beiersdorf, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Nivea Smoothness Hydrating Lip Care SPF 15	072140014216	Beiersdorf, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Botanics Organic Hydrating Day Cream	5000167157727	Boots Retail USA, Inc.
Octocrylene containing Sunscreen	Dr. Brandt BB cream	663963008249	Cosmetic Dermatology, Inc.

(products claiming a Sun Protection Factor)			
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Strivectin CC plum SPF 20	817777007183	Strivectin Operating Co., Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	NIA24 Niacin-Powered Skin Therapy	852103000773	Niadyne, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Peter Thomas Roth Max Sheer All Day Moisture Defense	670367013243	Peter Thomas Roth LLC
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Cetaphil w/ SPF 15	302993928041	Galderma Laboratories L.P.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	5 in 1 Face Cream SPF 30	851939002081	First Aid Beauty LLC
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Origins VitaZing SPF 15	717334162488	Origins Natural Resources, Inc.
Octocrylene containing Sunscreen (products claiming a Sun Protection Factor)	Clinique even better SPF 20	020714395230	Clinique Laboratories, Inc.

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this case or action. My business address is: **7120 Hayvenhurst Ave., Suite 320, Van Nuys CA 91406**. A True and Correct copy of the documents entitled 60 DAY NOTICE OF VIOLATION; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY will be served or was served in the manner stated below:

I. Interested Parties (Served via Email): On June 10, 2016, I caused to be served the following persons and/or entities via the valid email address(es) below.

The Estee Lauder Companies, Inc. / Origins Natural Resource, Inc. / Clinique Laboratories, Inc.	Alejandro Bras	ABras@mofocom
The Hain Celestial Group, Inc.	Trenton H. Norris	Trent.Norris@aporter.com
Physicians Formula, Inc.	Trenton H. Norris	Trent.Norris@aporter.com
Markwins Beauty Products, Inc.	Trenton H. Norris	Trent.Norris@aporter.com
Kiss My Face LLC	Peg Toledo	peg@toledolawcorp.com
Beiersdorf, Inc.	Greg Sperla	sperlag@gtlaw.com
Boots Retail USA, Inc.	Greg Sperla	sperlag@gtlaw.com
Cosmetic Dermatology, Inc.	Vilma Palma-Solana	VPalma@perkinscoie.com
StriVectin Operating Co., Inc.	Jeson Kerr	jasonkerr@ppktrial.com
Niadyne, Inc.	Jason Kerr	jasonkerr@ppktrial.com
First Aid Beauty LLC / Peter Thomas Roth	Brad Scheller	bmscheller@mintz.com
Galderma Laboratories LP	Sarah Choi	sarah.choi@dentons.com

II. California Attorney General (via website Portal): On June 10, 2016, I uploaded a true and correct copy thereof as a PDF file via the California Attorney General's website.

III. District and City Attorneys (via U.S. Mail): I caused to be served on June 10, 2016 the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and addressed as follows: SEE BELOW

IV. District and City Attorneys (via email): On June 10, 2016, I served the following persons and/or entities at the last known electronic addresses via email. The transmission was reported as sent without error.

cfeprd@yolocounty.org; sgrassini@contracosta.org; Prop65DA@co.monterey.ca.us; epu@da.sccgov.org; CEPD@countyofnapa.org; jbarnes@sonoma-county.org; Prop65@co.tulare.ca.us;

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

June 10, 2016

Nathan Ford



*Date*

*Name*

*Signature*

District Attorney  
ALAMEDA COUNTY  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney  
ALPINE COUNTY  
PO Box 248  
Markleeville, CA 96120

District Attorney  
AMADOR COUNTY  
708 Court Street, #202  
Jackson, CA 95642

District Attorney  
BUTTE COUNTY  
25 County Center Drive —  
Administration Building  
Oroville, CA 95965

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CALAVERAS COUNTY  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney  
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Colusa, CA 95932

District Attorney  
DEL NORTE COUNTY  
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Crescent City, CA 95531

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Placerville, CA 95667

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Fresno, CA 93721

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PO Box 430  
Willows, CA 95988

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HUMBOLDT COUNTY  
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Eureka, CA 95501

District Attorney  
IMPERIAL COUNTY  
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El Centro, CA 92243

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INYO COUNTY  
168 North Edwards  
Independence, CA 93526

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Bakersfield, CA 93301

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Ukiah, CA 95482

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Merced, CA 95340

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204 S. Court Street, Room 202  
Alturas, CA 96101

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Mammoth Lakes, CA 93546

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201 Commercial Street  
Nevada City, CA 95959

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401 Civic Center Drive West  
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PLACER COUNTY  
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Quincy, CA 95971

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Riverside, CA 92501

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San Bernardino, CA 92415

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San Francisco, CA 94103

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PO BOX 990  
Stockton, CA 95202

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Courthouse Annex, 4th Floor  
San Luis Obispo, CA 93408

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Redwood City, CA 94063

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Santa Barbara, CA 93101

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San Jose, CA 95110

District Attorney  
SHASTA COUNTY  
1355 West Street  
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San Jose, CA 95113

Dennis J. Herrera  
City Attorney  
CITY OF SAN FRANCISCO  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

# CERTIFICATE OF MERIT

I, Daniel N. Greenbaum, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.
- (4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

June 10, 2016

*Date*

Daniel N. Greenbaum

*Name*



*Signature*