

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

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV LLC			
	DEFENDANT(S) INVOLVED IN JUDGMENT Australian Gold, Inc.			
CASE INFO	COURT DOCKET NUMBER CIV 1503341		COURT NAME Marin County Superior Court	
	SHORT CASE NAME Shefa v. Concept II, et al.			
REPORT INFO	INJUNCTIVE RELIEF Reformulation			
	PAYMENT: CIVIL PENALTY \$2,000.00	PAYMENT: ATTORNEYS FEES \$17,900.00	PAYMENT: OTHER 0	For Internal Use Only
	DATE SUBMITTED TO COURT 04 / 24 / 2017	IS JUDGMENT PURSUANT TO SETTLEMENT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 04 / 24 / 2017	
	COPY OF JUDGMENT MUST BE ATTACHED			
NAME OF CONTACT Daniel N. Greenbaum, Esq.				
FILER INFO	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
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FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the judgment 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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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF MARIN
16 UNLIMITED CIVIL JURISDICTION

BY FAX

18 SHEFA LMV, LLC.,
19 Plaintiff,
20 vs.
21 CONCEPT II COSMETICS, LLC; and DOES 1
22 through 50, inclusive,
23 Defendants.

Case No. CIV 1503341
~~PROPOSED~~ CONSENT JUDGMENT
AS TO AUSTRALIAN GOLD, INC.
Action Filed: Sept. 10, 2015

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff
4 Shefa LMV, LLC (“**Shefa**” or “**Plaintiff**”) and Australian Gold, Inc. (“**AGI**” or “**Settling**
5 **Defendant**”), with Shefa and AGI individually referred to as a “**Party**” and collectively as the
6 “**Parties.**”

7 **1.2 Plaintiff**

8 Shefa is a limited liability company in California that seeks to promote awareness of
9 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
10 substances contained in consumer products.

11 **1.3 Settling Defendant**

12 AGI employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
14 Code section 25249.6 *et seq.* (“**Proposition 65**”).

15 **1.4 Products Covered**

16 The products covered by this Consent Judgment are sunscreen products alleged to
17 contain benzophenone that are manufactured, sold, or distributed for sale in California by AGI
18 including, but not limited to, Australian Gold SPF 50+ Continuous Spray Sport (UPC:
19 054402260463) (collectively, “**Covered Products**”).

20 **1.5 General Allegations**

21 Shefa alleges that AGI manufactures, imports, sells, or distributes, for sale in the state of
22 California, sunscreen products that contain benzophenone without first providing a clear and
23 reasonable warning required by Proposition 65. Benzophenone (CAS # 119-61-9) is a chemical
24 listed under Proposition 65 as a chemical “known to the state to cause cancer” as Proposition 65
25 defines that term. 27 CCR 25000. AGI denies these allegations.

26 **1.6 Notice of Violation**

27 On April 15, 2015, Shefa served AGI, others, and the requisite public enforcement
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1 agencies with a 60-Day Notice of Violation (“**Notice**”) alleging that AGI violated Proposition 65
2 when it failed to warn its customers and consumers in California that the Covered Products
3 expose users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has
4 commenced and is diligently prosecuting the allegations set forth in the Notice.

5 **1.7 Complaint**

6 On September 10, 2015, Shefa filed a complaint in the Superior Court in and for the
7 County of Marin against Concept II Cosmetics, LLC and DOES 1-150, alleging violations of
8 California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in
9 certain products containing sunscreen sold in the State of California (the “**Complaint**”). On
10 April 26, 2016, Shefa filed a DOE Amendment under Code Civ. Proc. § 474, listing AGI as
11 DOE 25.

12 **1.8 No Admission**

13 AGI denies the material, factual, and legal allegations contained in the Notice and
14 Complaint and maintains that all of the products it has manufactured, sold, or distributed for sale
15 in California, including the Covered Products, have been, and are, in compliance with all laws.
16 Nothing in this Consent Judgment shall be construed as an admission by AGI of any fact,
17 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this
18 Consent Judgment constitute or be construed as an admission by AGI of any fact, finding,
19 conclusion of law, issue of law, or violation of law, the same being specifically denied by AGI.
20 This section shall not, however, diminish or otherwise affect AGI’s obligations, responsibilities,
21 and duties under this Consent Judgment.

22 **1.9 Consent to Jurisdiction**

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

2 **1.10 Effective Date**

3 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date
4 the Consent Judgment is approved and entered by the Court.

5 **2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS**

6 **2.1 Reformulation Standards**

7 “**Reformulated Products**” are defined as those Covered Products containing
8 benzophenone in concentrations less than or equal to 12.5 parts per million (“**ppm**”) when
9 analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection
10 Agency testing methodologies 3580A and 8270C or any other scientifically reliable
11 methodology for determining the benzophenone content in a substance of the form of the
12 Covered Products herein. As of the date of execution of this Consent Judgment, AGI represents
13 that it has actively engaged its suppliers of raw materials to comply with its reformulation
14 efforts. Commencing on May 1, 2017, and continuing thereafter, AGI shall not order, or cause
15 to be ordered, the raw ingredient octocrylene, used to manufacture the Covered Products to be
16 distributed, sold and/or offered for sale in California, unless the octocrylene contains levels of
17 benzophenone that will result in benzophenone concentrations in the Covered Products that are
18 below the level stated above. In order to ensure that the process for verifying that the
19 octocrylene suppliers meet AGI’s standards, AGI shall obtain an initial Certificate of Analysis
20 (“**COA**”) from each supplier of octocrylene, and thereafter obtain a COA from each octocrylene
21 supplier for each subsequent shipment, and keep the COAs for a period of two years from
22 receipt. Copies of these COAs shall be provided to Shefa upon request. Unless AGI chooses to
23 eliminate the use of octocrylene in the Covered Products, then AGI shall conduct at least one test
24 per year for benzophenone in the Covered Products for a period of two (2) years, and test results
25 shall be provided to Shefa upon request.

26 **2.2 Reformulation**

27 Commencing on May 1, 2017, and continuing thereafter, AGI shall not manufacture, or
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1 cause to be manufactured, for sale in California, or order for distribution or sale in California,
2 Covered Products unless they are Reformulated Products pursuant to Section 2.1 above.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty Payments**

5 AGI agrees to an assessment of \$2,000 as a civil penalty. Such penalty payment shall be
6 allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the
7 penalty amount paid to the California Office of Environmental Health Hazard Assessment
8 (“OEHHA”) and the remaining 25% of the penalty paid to Shefa. The civil payment is allocated
9 as follows: (a) \$1,500 payable to OEHHA; and (b) \$500 payable to Shefa LMV LLC.

10 **3.2 Reimbursement of Attorney Fees and Costs**

11 The Parties reached an accord on the compensation due to Shefa and its counsel under
12 general contract principles and the private attorney general doctrine codified at Code of Civil
13 Procedure section 1021.5 for all work performed in this matter. Under these legal principles,
14 \$17,900 shall be payable by AGI to the Law Office of Daniel N. Greenbaum for all fees and
15 costs through execution of this Consent Judgment, including fees and costs incurred
16 investigating, bringing this matter to the attention of AGI’s management, and negotiation of this
17 settlement.

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Shefa’s Public Release of AGI**

20 This Consent Judgment is a full, final, and binding resolution between Shefa and AGI of
21 any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf
22 of itself and in a representative capacity in the public interest under Cal. Health & Safety Code
23 § 25249.7, against AGI, its parents, subsidiaries, affiliated entities under common ownership,
24 manufacturers, suppliers, directors, officers, employees, attorneys, and the predecessors,
25 successors, or assigns of each of them, and each entity to whom AGI directly or indirectly
26 distributes or sells the Covered Products, including, without limitation, downstream distributors,
27 wholesalers, customers, retailers, franchisees, cooperative members, and licensees

1 (“Releasees”), based on failure to warn of alleged exposures to benzophenone from Covered
2 Products manufactured, sold or distributed for sale in California by AGI prior to the Effective
3 Date. The release in this Section 4.1 applies to all Covered Products that AGI manufactured,
4 distributed, or sold prior to the Effective Date, regardless of the date any other Releasee
5 distributes or sells the Covered Products.

6 Upon entry of this Consent Judgment by the Court, going forward, AGI’s compliance
7 with the terms of this Consent Judgment shall be deemed to constitute compliance with
8 Proposition 65 by AGI or any other Releasee with respect to benzophenone in Covered Products
9 manufactured, sold, or distributed for sale in California by AGI on and after March 24, 2016.

10 **4.2 Shefa’s Individual Release of Claims**

11 In further consideration of the promises and agreements herein contained, Shefa, on its
12 own behalf and on behalf of its past and current agents, representatives, attorneys, successors,
13 and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any
14 form of legal action, and releases all claims that it may have against AGI and Releasees,
15 including, without limitation, all actions and causes of action, suits, liabilities, demands,
16 obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation,
17 investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned
18 exposures to benzophenone from Covered Products manufactured, sold, or distributed for sale in
19 California by AGI prior to the Effective Date. The releases in Section 4.2 are provided in
20 Shefa’s individual capacity and are not releases on behalf of the public.

21 **4.3 AGI’s Release of Shefa**

22 AGI, on its own behalf and on behalf of its past and current agents, representatives,
23 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
24 Shefa and its attorneys and other representatives, for any and all actions taken or statements
25 made by Shefa and its attorneys and other representatives, whether in the course of investigating
26 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to
27 the Covered Products.

1 **5. 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 90
4 days after it has been fully executed by the Parties, or by such additional time as the Parties may
5 agree in writing.

6 **6. 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 comments 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 by Shefa to the Court for approval; 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 **7. 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. Benzophenone is listed pursuant to
20 Proposition 65 as a chemical that is known to the State of California to cause cancer. In the
21 event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
22 generally, or as to the Covered Products, including without limitation the delisting of
23 benzophenone, then AGI may provide written notice to Shefa of any asserted change in the law,
24 and with the exception of Sections 3.1 and 3.2 above, have no further obligations pursuant to this
25 Consent Judgment, with respect to, and to the extent that, the Covered Products are so affected.
26 None of the terms of this Consent Judgment shall have any application to Covered Products sold
27 outside of the State of California.

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1 **8. NOTICE**

2 Unless specified herein, all correspondence and notices required to be provided pursuant
3 to this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
4 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on
5 any Party by the other at the following addresses:

6 To AGI:

7 Frederick J. Ufkes, Esq.
8 Hinshaw & Culbertson LLP
9 11601 Wilshire Blvd, Suite 800
10 Los Angeles, California, 90025

To Shefa:

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

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

13 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

14 This Consent Judgment may be executed in counterparts, and by facsimile or portable
15 document format (PDF) signature, each of which shall be deemed an original, and all of which,
16 when taken together, shall constitute one and the same document.

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

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

20 **11. POST EXECUTION ACTIVITIES**

21 **11.1** The Parties acknowledge that, pursuant to California Health & Safety Code
22 § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this
23 Consent Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall
24 name Defendant AGI as a "Doe" Defendant in the above-captioned *Shefa LMV, LLC. v. Concept*
25 *II Cosmetics, LLC, et al.*, and shall proceed to submit this Consent Judgment to the Court with a
26 motion seeking Court approval.

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1 **12. MODIFICATION**

2 **12.1** In the event that any future settlement agreement or court approved consent
3 judgment entered into by Shefa involving another party, or any future court-approved consent
4 judgment entered into by any enforcer of Proposition 65 involving another party, sets out a
5 reformulation or compliance standard that is less stringent than that in Section 2.1 above for
6 benzophenone in substantially similar sunscreen products, then upon written notice to Shefa,
7 AGI is entitled to a corresponding modification to the corresponding standard set forth in section
8 2.1 of this Consent Judgment, with regard to the Covered Products.

9 **12.2** In the event OEHHA establishes a safe harbor No-Significant Risk Level
10 (“NSRL”) for benzophenone, which AGI asserts would allow for the Covered Products to
11 contain levels of benzophenone in amounts greater than those set forth above in Section 2.1, then
12 AGI may provide written notice to Shefa of any such assertion and the Parties shall confer
13 within 30 days to attempt to agree upon modification of this Consent Judgment. Should such
14 attempts at informal resolution of a modification fail, and in the event AGI still intends to change
15 its reformulation obligations, AGI will provide written notice to Shefa of its intent to adopt a
16 modified compliance standard. Upon receipt of AGI’s notice, Shefa shall have the right to
17 enforce the terms and conditions contained in the Consent Judgment by motion or any other
18 available remedy at law, with the sole issue to be adjudicated being the technical question of
19 whether the NSRL would allow for a higher benzophenone content in the Covered Products than
20 that set forth in Section 2.1.

21 **12.3** This Consent Judgment may only be modified by a written instrument executed
22 by the Party or Parties to be bound thereby, and after approval by the Court upon a noticed
23 motion. Any motion to modify shall be served on all Parties and the Office of the Attorney
24 General.

25 **13. DISPUTE RESOLUTION**

26 If Shefa determines at a future date that a violation of this Consent Judgment has
27 occurred, Shefa shall provide notice to AGI. Prior to bringing any action to enforce any
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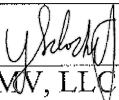
1 requirement of this Consent Judgment, the party alleging a violation of this Consent Judgment
2 shall provide the other party with written notice of the grounds for such allegation together with
3 all supporting information as well as a complete demand for the relief sought. The Parties shall
4 then meet and confer regarding the basis for the allegation in an attempt to resolve the matter
5 informally, including providing the party alleged to be in violation with a reasonable opportunity
6 of at least thirty (30) days to cure any alleged violation. Should such attempts at informal
7 resolution fail, the party alleging a violation may file its lawsuit seeking the proposed relief.

8 **14. AUTHORIZATION**

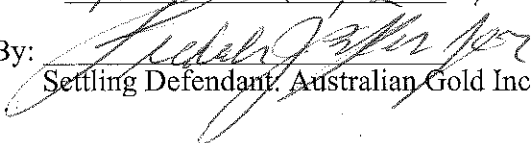
9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective Parties and have read, understood and agree to all of the terms and conditions of this
11 Consent Judgment.

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AGREED TO:

Date: 3/1/2017
By: 
Shefa LMV, LLC

AGREED TO:

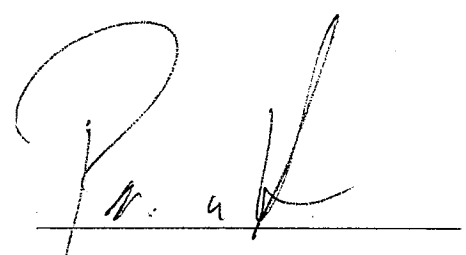
Date: March 1, 2017
By: 
Settling Defendant, Australian Gold Inc.

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ORDER AND JUDGMENT

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

Dated: 6-9-17



Judge of the Superior Court