

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 Carma Laboratories, Inc. | | | |
| CASE INFO | COURT DOCKET NUMBER CIV 1503341 | | COURT NAME Marin County Superior Court | |
| | SHORT CASE NAME Shefa LMV LLC v. Concept II Cosmetics, LLC | | | |
| REPORT INFO | INJUNCTIVE RELIEF Reformulation | | | |
| | PAYMENT: CIVIL PENALTY \$16,000.00 | PAYMENT: ATTORNEYS FEES \$22,000.00 | PAYMENT: OTHER 0 | For Internal Use Only |
| | DATE SUBMITTED TO COURT 12 / 2 / 2016 | IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="radio"/> Yes <input type="radio"/> No | IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 12 / 2 / 2016 | |
| | 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.

FILED

JAN 20 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Berg, Deputy

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9 Attorney for Plaintiff
10 Shefa LMV LLC

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION

14 **BY FAX**

15 SHEFA LMV, LLC.,

16 Plaintiff,

17 vs.

18 CONCEPT II COSMETICS, LLC, et al.,

19 Defendants.

20 Case No. CIV 1503341

21 ~~PROPOSED~~ CONSENT JUDGMENT AS
22 TO DEFENDANT CARMA
23 LABORATORIES, INC.

24 Action Filed: Sept. 10, 2015

25 1/20/17

26 1:30p

27 E

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 Carma Laboratories, Inc. (“**Carma**”), with Shefa and
5 Carma collectively referred to as the “**Parties**” and individually as a “**Party**.”

6 **1.2 Plaintiff**

7 Shefa is a California Limited Liability Company that purportedly seeks to promote
8 awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating
9 hazardous substances contained in consumer and commercial products. Shefa alleges Carma
10 individually employs ten or more persons and is a person in the course of doing business for
11 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
12 Safety Code § 25249.6, *et seq.* (“**Proposition 65**”).

13 **1.3 Defendant and Listed Chemical**

14 Carma manufactures, and/or distributes, and/or sells lip balms. One ingredient used in such
15 products to enhance their ability to provide protection from the sun is octocrylene, an active
16 ingredient approved for use in sunscreens by the Federal Food & Drug Administration (“**FDA**”)
17 (*See* 76 Fed. Reg. 35620; 21 C.F.R. §§ 352.10, 352.20 (stayed)). Octocrylene can at times contain
18 benzophenone. Benzophenone (CAS # 119-61-9) is a chemical listed under The Safe Drinking
19 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.*
20 (commonly known as “**Proposition 65**”) as a chemical “known to the state to cause cancer” as
21 Proposition 65 defines that phrase. 27 CCR 25000.

22 **1.4 Products Covered**

23 This Consent Judgment covers and applies to lip balms that are manufactured and/or
24 distributed for sale in California and/or sold in California and that contain benzophenone (“**Covered**
25 **Products**”). All sizes, types, brands, packaging, formulations, delivery forms (e.g., sprays or lotions
26 applied by hand), intended uses (e.g., “**faces**,” children’s products, “**sport**,” “**moisturizing**,” cosmetic
27 purposes) are included. This Consent Judgment, and all of its terms, applies to all **Covered**
28 **Products**, including without limitation new products and brands introduced, developed, or acquired

1 in the future by Carma which would today meet the definition of Covered Products if they currently
2 were being manufactured or distributed for sale, or being sold, in California.

3 **1.5 General Allegations**

4 Plaintiff alleges in the Complaints that Carma manufactured, and/or distributed for sale in
5 California, and/or sold in California, Covered Products containing benzophenone, and continues to
6 do so, without “a clear and reasonable warning” as Proposition 65 defines that phrase. Plaintiff
7 asserts this settlement is necessary to assure compliance with Proposition 65 now and in the future
8 and to settle Plaintiff’s alleged claims.

9 **1.6 Notices of Violation**

10 On May 8, 2015, Plaintiff served Carma and the requisite public enforcement agencies with
11 60-Day Notices of Violation (“Notices”), alleging that Carma was in violation of Proposition 65 for
12 failing to warn consumers in California that their Covered Products exposed users to benzophenone.
13 To the best of the Parties’ knowledge, no public enforcer has either commenced or is prosecuting
14 the allegations set forth in any of the Notices.

15 **1.7 Complaint**

16 On September 10, 2015 Plaintiff filed a complaint in the Superior Court in and for the
17 County of Marin against Concept II Cosmetics, LLC and DOES 1-150, alleging violations of
18 California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in
19 Covered Products sold by Defendants in the State of California. On November 10, 2015, Shefa
20 filed a DOE amendment naming Carma as a defendant in this action.

21 **1.8 No Admission**

22 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
23 were raised in the Notice and Complaint, or that could have been raised in the Complaint, arising
24 out of the facts or conduct alleged therein. Carma denies all the respective material, factual, and
25 legal allegations contained in the Notices and Complaints. Carma maintains that all of its Covered
26 Products have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
27 construed as an admission against interest by Carma of any fact, finding, conclusion, issue of law,
28 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as

1 an admission against interest by Carma, its officers, directors, employees, or parent, subsidiary or
2 affiliated entities of any fact, finding, conclusion, issue of law, or violation of law. This section
3 shall not, however, diminish or otherwise affect Carma's obligations, responsibilities, and duties
4 under this Consent Judgment.

5 **1.9 Consent to Jurisdiction**

6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
7 jurisdiction over Carma as to the allegations in the Complaint, that venue is proper in the County of
8 Marin, Carma agrees that it employs or has employed ten or more persons during time periods
9 relevant to the Complaint and that this Court has jurisdiction over the Parties to enter and enforce
10 the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure §
11 664.6.

12 **1.10 Effective Date**

13 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
14 Plaintiff serves notice on Carma that this Consent Judgment is approved and entered by the Court.

15 **2. INJUNCTIVE RELIEF: REFORMULATION STANDARD; NOTIFICATION**

16 **2.1 Reformulation Standard**

17 (a) Carma, based on inquiry for purposes of this Consent Judgment, has not identified
18 any ingredient in its respective Covered Products other than octocrylene that is a source of
19 detectable benzophenone in such Covered Products. Further, based upon inquiry for purposes of
20 this Consent Judgment, Carma represents that it has investigated and concluded that there are only a
21 few major suppliers of octocrylene for the domestic market and that time and phasing is needed for
22 the marketplace of octocrylene suppliers to make the adjustments necessary to deliver octocrylene
23 with benzophenone meeting the Octocrylene Reformulation Standards.

24 (b) As of June 1, 2018, Carma shall only manufacture, or cause to be manufactured;
25 either Covered Products containing no more than (i) 50 parts per million ("ppm") benzophenone in
26 the finished Covered Products; or (ii) 500 ppm of benzophenone in the ingredient octocrylene used
27 in the finished Covered Products. These first standards are interim standards.
28

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

5 (d) The dates and reformulations of the Covered Products as listed in Section 2.1 (b) and
6 (c) shall be referred to collectively as the “**Reformulation Standards,**” consisting of either the
7 Sections 2.1 (b)(i) and (c)(i) (the “**Finished Product Reformulation Standards**”) or Sections 2.1
8 (b)(ii) and (c)(ii) (the “**Octocrylene Reformulation Standards**”). Carma may at any time, at its
9 own election, comply with either, both, or any combination of the applicable Finished Product
10 Reformulation Standard or the Octocrylene Reformulation Standard with respect to any Covered
11 Product.

12 (e) The Reformulation Standards shall apply to Covered Products which are
13 manufactured by or on behalf of Carma on or after the applicable Reformulation Standard dates.

14 **2.2. Notifications**

15 Carma has provided to Plaintiff documentation that its current octocrylene supplier or
16 suppliers are using reasonable efforts to provide only octocrylene which complies with the
17 Octocrylene Reformulation Standard (the “**Octocrylene Supplier Letter**”).

18 **2.3 Compliance with Reformulation Standard**

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

28 (b) If Carma elects to meet the Octocrylene Reformulation Standard, it shall obtain a

1 Certificate of Analysis or analytical testing report for each lot of octocrylene used in the
2 manufacture of Covered Products. If, after Carma has advised its octocrylene suppliers to include a
3 Certificate of Analysis with each lot of delivered octocrylene, an octocrylene supplier fails to
4 include a Certificate of Analysis, Carma may correct the lapse upon discovery.

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

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

14 **3. MONETARY PAYMENTS**

15 **3.1 Civil Penalty**

16 Pursuant to Health and Safety Code section 25249.7(b), Carma shall pay a civil penalty as
17 specified in this Section 3.1. Carma shall issue two (2) separate checks for the total amounts
18 identified in Section 3.1.1 as penalties pursuant to Health & Safety Code § 25249.12: (a) one check
19 made payable to the State of California's Office of Environmental Hazard Assessment ("OEHHA")
20 representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC, representing 25% of
21 the total penalty. The payment to OEHHA shall be delivered to: Office of Environmental Health
22 Hazard Assessment, Attn.: Mike Gyurics, Fiscal Operations Branch Chief, Office of Environmental
23 Health Hazard Assessment, P.O. Box 4010 Sacramento, CA 95812-4010. The payment to Shefa
24 shall be delivered to: Shefa LMV, LLC c/o Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
25 Avenue, Suite 320, Van Nuys, CA 91406.

26 **3.1.1 Civil Penalty Payment.** Within ten (10) business days of the Effective Date
27 Carma shall pay an initial civil penalty of \$16,000. Carma shall issue (a) one check made payable to
28 the State of California's Office of Environmental Hazard Assessment ("OEHHA") in the amount of

1 \$12,000, representing 75% of the total penalty; and (b) one check to Shefa LMV, LLC in the
2 amount of \$4,000, representing 25% of the total penalty.

3 **3.2 Reimbursement of Fees and Costs**

4 The Parties acknowledge that Shefa and its counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
6 to be resolved after the material terms of the agreement had been settled. Shortly after the other
7 settlement terms had been finalized, Carma expressed a desire to resolve Shefa's fees and costs.
8 Carma agrees to pay Shefa and its counsel under the private attorney general doctrine codified at
9 California Code of Civil Procedure section 1021.5, for all work performed through the mutual
10 execution of this agreement, including without limitation the fees and costs incurred as a result of
11 investigating, bringing this matter to the Carma's attention, negotiating a settlement, and obtaining
12 court approval of the same. Carma agrees to pay the amount of \$22,000 within ten (10) business
13 days of the Effective Date. Payment shall be delivered to Daniel N. Greenbaum, Law Office of
14 Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

15 **4. CLAIMS COVERED AND RELEASED**

16 **4.1 Plaintiff's Public Release of Proposition 65 Claims**

17 This Consent Judgment is a full, final and binding resolution of all claims that were or could
18 have been asserted in the Complaints arising out of Carma's alleged failure to provide Proposition
19 65 warnings for exposures to benzophenone in their respective Covered Products. Plaintiff, acting
20 on its own behalf and in the public interest, releases Carma and its parents, subsidiaries, affiliated
21 entities under (full or partial) common ownership, manufacturers, suppliers and the directors,
22 officers, employees, attorneys, and predecessors, successors or assigns of each of them
23 ("**Releasees**") and each entity to whom Carma directly or indirectly distributes or sells the Covered
24 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
25 franchisers, cooperative members, licensors and licensees, and including, without limitation, and
26 including any and all subsidiaries, parents, marketplace retailers and/or affiliates of the foregoing
27 retailers (collectively, the "**Distribution Chain Releasees**") for violations arising under
28 Proposition 65 for unwarned exposures to benzophenone from the Covered Products manufactured,

1 distributed, or sold by Carma prior to the Effective Date. Plaintiff's release of claims applies to all
2 Covered Products which Carma either manufactured, and/or distributed and/or sold prior to the
3 Effective Date, regardless of the date any other person distributes or sells the subject Covered
4 Products.

5 Upon entry of this Consent Judgment by the Court, going forward, Carma's compliance with
6 the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
7 with respect to benzophenone in Carma's prior, current and future Covered Products.

8 **4.2 Plaintiff's Individual Release of Claims**

9 Plaintiff, in its individual capacity only and *not* in its representative capacity, also provides a
10 release to Carma, Releasees, and Distribution Chain Releasees, which release shall be effective as a
11 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
12 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Plaintiff of any nature,
13 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
14 actual exposures to benzophenone in Covered Products manufactured, distributed, or sold by Carma
15 prior to the Effective Date. With respect to the foregoing waivers and releases in this paragraph,
16 Shefa hereby specifically waives any and all rights and benefits which it now has, or in the future
17 may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
18 provides as follows:

19
20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
21 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
22 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
23 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
24 SETTLEMENT WITH THE DEBTOR.

24 **4.3 Carma's Release of Shefa**

25 Carma, on behalf of itself, its past and current agents, representatives, attorneys, successors
26 and assignees, hereby waives any and all claims against Shefa and its attorneys and other
27 representatives, for any and all actions taken or statements made by Shefa and its attorneys and
28 other representatives, whether in the course of investigating claims, otherwise seeking to enforce

1 Proposition 65 against it in this matter, or with respect to the Covered Products up through the
2 Effective Date.

3 **4.4 Release and Dismissal of Retailer Defendant**

4 This Consent Judgment provides a “downstream” release which resolves all claims in the
5 Complaints for all Covered Products manufactured by, or on behalf of, distributed, or sold by
6 Carma. Any retailer who has been named in one or more Complaints (a “**Retailer Defendant**”) due
7 to its sale of one or more such Covered Products shall be dismissed without prejudice unless, prior
8 to the date this Consent Judgment was lodged, that Retailer Defendant had also received a Notice
9 that identified an exemplar product not manufactured or supplied by either Carma or an entity that
10 has previously resolved Plaintiff’s claims with a downstream release.

11 **5. FORCE MAJEURE**

12 In the event that it is not feasible for Carma to obtain conforming octocrylene necessary so
13 as to comply with any Reformulation Standard due to an Act of God (including fire, flood,
14 earthquake, storm, hurricane or other natural disaster) or loss of adequate supplier ability to supply
15 octocrylene on an uninterrupted basis compliant with the applicable Octocrylene Reformulation
16 Standard, the provisions of this paragraph will dictate whether the applicable dates for meeting the
17 Reformulation Standards for that Carma shall be extended. The criteria for determining whether it
18 is feasible to obtain conforming octocrylene shall include the following factors: availability and
19 reliability of supply that meets the applicable Octocrylene Reformulation Standard, cost of such
20 conforming octocrylene and resulting increase in manufacturers’ prices resulting from the use of
21 conforming octocrylene, performance characteristics of conforming octocrylene and of the resulting
22 Covered Products, including but not limited to formulation, performance, safety, efficacy, consumer
23 acceptance, and stability.

24 Carma(s) shall provide notice to Plaintiff and to JAMS mediator Judge James Warren, or if
25 he is not available, another mediator from JAMS mutually agreed to by the Parties or, if necessary,
26 as referred by the Court. Included in the notice shall be the specific reason or reasons for invoking
27 the Force Majeure clause, along with a reasonable estimate of the time period during which the
28 Carma will be unable to comply with the applicable Reformulation Standard. During the time

1 invoked by the Carma, the Reformulation Standard shall be revised to 100 ppm for the Finished
2 Product Reformulation Standard and 1,000 ppm for the Octocrylene Reformulation Standard.

3 If the Parties disagree as to whether Carma has a valid reason to invoke the Force Majeure
4 clause or disagree as to the length of time necessary for such Carma to comply with the
5 Reformulation Standard, they shall attempt to resolve their differences through one or more sessions
6 with Judge Warren, or if he is not available, another mediator from JAMS mutually agreed to by the
7 Parties or, if necessary, as referred by the Court. Shefa's reasonable fees and costs of the mediation
8 sessions under this Section shall be borne solely by Carma unless otherwise allocated by Judge
9 Warren or other mediator from JAMS, who shall consider whether mediation was necessary and/or
10 whether a Party asserted unreasonable or extreme positions. If the Parties cannot reach resolution
11 via a meet and confer or the JAMS process, an aggrieved Party may move the Court via a noticed
12 motion on all Parties, with a copy to the Office of the Attorney General, for such additional relief as
13 that Party deems necessary.

14 **6. COURT APPROVAL**

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

19 **7. GOVERNING LAW**

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

28 **8. FUTURE FEDERAL REGULATION OF OCTOCRYLENE OR BENZOPHENONE**

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

6 Notwithstanding the foregoing, if FDA authorizes the percentage of octocrylene to increase
7 above the current limit of 10% in Covered Products, then this Consent Judgment shall by operation
8 of law be amended to allow benzophenone in finished Covered Products to rise in proportion to the
9 percentage increase. Carma shall notify Plaintiff of the date this Section operates to change any
10 Finished Product Reformulation Standard. This notice obligation shall sunset on June 1, 2023.
11 Carma represents that other than as described in the proceedings and papers referenced in their
12 briefs in these consolidated cases, they are not aware that the FDA currently has published or made
13 public plans to raise the allowable levels of octocrylene in the Covered Products.

14 **10. NOTICE**

15 Unless specified herein, all correspondence and notice required to be provided pursuant to
16 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class
17 registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the
18 other at the following addresses:

19 To Carma:

20 Michael Best & Freidrich
21 Seth A. Mailhot, Esq.
22 Donald Best, Esq.
23 Seth Mailhot
24 601 Pennsylvania Ave. NW
Suite 700 South
Washington DC 20004

To Shefa:

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

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

27 **11. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

28

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

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

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

7 **13. COURT APPROVAL.**

8 13.1 The Parties acknowledge that, pursuant to California Health & Safety Code §
9 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent
10 Judgment. Carma will support approval this Consent Judgment.

11 13.2 This Consent Judgment is not effective until it is approved and entered by the Court
12 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
13 year after it has been fully executed by all parties. In such case, the Parties agree to meet and confer
14 on how to proceed and if such agreement is not reached within 30-days, the case shall proceed on its
15 normal course.

16 13.3 If the Court approves this Consent Judgment and is reversed or vacated by an
17 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
18 Judgment. If the Parties do not jointly agree on a course of action to take, any monies that have been
19 paid to Plaintiff pursuant to Section 3 shall be refunded within 15 days after remittitur to the trial
20 court, and the case shall proceed on its normal course on the trial court's calendar.

21 **14. MODIFICATION**

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

25 **15. ENFORCEMENT**

26 **15.1 Carma**

27 In order to assert a potential violation of the Consent Judgment, Plaintiff shall provide notice
28 to Carma as set forth in this paragraph ("**Notice of Breach**"): (a) Plaintiff shall provide all results of

1 testing conducted on a specific Covered Product during the three month period for which the
2 violation is alleged; (b) such testing must be of no less than five (5) lots of the same Covered
3 Product (irrespective of the volume size of the container) collected within the three (3) month
4 period, from five different retail vendors; (c) the average of all test results for that period exceed the
5 finished Product Reformulation Standard; and (d) Plaintiff shall provide the alleged violator a copy
6 of (i) the purchase information for the allegedly violating Covered Product and (ii) a digital image
7 of the allegedly violating Covered Product showing the SKU/UPC and, if present on the container,
8 the Lot/Batch number(s).

9 Carma and Plaintiff shall, within thirty (30) days of receipt of the Notice of Breach, meet
10 and confer regarding the alleged violation, during which time Plaintiff shall not file any motion,
11 application, action, or pleading regarding the alleged violation.

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

22 In the event that, thereafter, Plaintiff provides a Notice of Breach pertaining to a second
23 alleged violation for the same Covered Product, he must do so in accordance with this section. For
24 the second alleged violation noticed by Plaintiff of the same Covered Product, Carma may
25 demonstrate compliance with the terms of the Consent Judgment by providing test results, using
26 scientifically appropriate test methodologies, conducted on five (5) units of the Covered Product or
27 on the first three (3) lots of octocrylene received more than 30 days after receipt of the written
28 response showing compliance with the Octocrylene Reformulation Standard received from the

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ORDER AND JUDGMENT

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

JAN 20 2017

Dated: _____

PAUL M. HAAKENSEN

Judge of the Superior Court