

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV LLC			
	DEFENDANT(S) INVOLVED IN SETTLEMENT Blistex, Inc.			
CASE INFO	COURT DOCKET NUMBER N/A		COURT NAME N/A	
	SHORT CASE NAME N/A			
REPORT INFO	INJUNCTIVE RELIEF Reformulation and/or Warning Label			
	PAYMENT: CIVIL PENALTY \$10,000	PAYMENT: ATTORNEYS FEES \$50,000	PAYMENT: OTHER 0.00	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 3 / 24 / 2016	
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum			
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698	
	CITY Van Nuys	STATE ZIP CA 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com	

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties. This Settlement Agreement is entered into by and between Shefa LMV, LLC (“Shefa”) and Blistex Inc. (“Blistex”), with Shefa and Blistex individually referred to as a “Party” and collectively as the “Parties.” Shefa is a limited liability company in California that seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Blistex employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations. Shefa alleges that Blistex manufactures, imports, sells, or distributes for sale in the state of California, lip protector that contains benzophenone without first providing a clear and reasonable warning required by Proposition 65. Blistex denies these allegations.

1.3 Product Description. The products covered by this Settlement Agreement are lip protectors alleged to contain benzophenone that are manufactured, sold, or distributed for sale in California by Blistex including, but not limited to, Blistex Five Star Lip Protection (UPC 041388002231) (collectively, “Products”).

1.4 Notice of Violation. On March 26, 2015, Shefa served Blistex, others, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Blistex violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission. Blistex denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Blistex of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Blistex of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Blistex. This section shall not, however, diminish or otherwise affect Blistex's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which this Settlement Agreement is executed by both Parties.

2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products containing benzophenone in concentrations less than or equal to 12.5 parts per million ("ppm") when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology for determining the benzophenone content in a substance of the form of the Products herein.

2.2 Reformulation or Warnings

Commencing on the Effective Date, and continuing thereafter, Blistex shall not manufacture, or cause to be manufactured, for sale in California, or order for distribution or sale in California, Products unless they are Reformulated Products pursuant to Section 2.1 above, or Blistex provides a clear and reasonable warning in such a conspicuously and prominent manner that will assure the warning is made available and likely to be read, seen, or heard by the

consumer prior to exposure. The Parties agree that product labeling stating: “WARNING: This product contains chemicals known to the State of California to cause cancer” shall constitute a compliant warning for purposes of Proposition 65.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Blistex agrees to an assessment of \$10,000.00 as civil penalties. Such penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Shefa. Blistex shall provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$ 7,500.00; and (b) “Shefa LMV, LLC” in the amount of \$ 2,500.00. The payments are to be delivered to Shefa and OEHHA at the addresses provided in section 3.3.

3.2 Attorney Fees and Costs. The Parties reached an accord on the compensation due to Shefa and its counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Blistex shall pay \$50,000 for all fees and costs through execution of this Settlement Agreement, including fees and costs incurred investigating, bringing this matter to the attention of Blistex’s management, and negotiation of this settlement.

3.3 Payment Procedures. All payments under this Settlement Agreement are due on or before the date that is 15 days following the Effective Date and shall be delivered according to the following subsections.

3.3.1 Payment Address for Shefa and Its Counsel. All payments and tax documentation required for Shefa and its counsel under this Settlement Agreement shall be delivered to the following address:

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

3.3.2 Payment Addresses for OEHHA. All payments and tax documentation required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line "Prop. 65 Penalties") to one of the following addresses, as appropriate:

For United States Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Courier or other Non-U.S. Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

with a copy of the checks payable to OEHHA mailed to Shefa's counsel at the address set forth in 3.3.1 as proof of payment to OEHHA.

4. CLAIMS COVERED AND RELEASED

4.1 Shefa's Release of Blistex. This Settlement Agreement is a full, final, and binding resolution between Shefa and Blistex of any violation of Proposition 65 that was or could have been asserted by Shefa, on behalf of itself and not in its representative capacity, or on behalf of its past and current agents, representatives, attorneys, successors, and assignees, against

Blistex, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Blistex directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to benzophenone from Products manufactured, sold or distributed for sale in California by Blistex prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Shefa, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that it may have against Blistex and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to benzophenone from Products manufactured, sold, or distributed for sale in California by Blistex prior to the Effective Date. The releases in Section 4.1 are provided in Shefa’s individual capacity and are not releases on behalf of the public.

4.2 Blistex’s Release of Shefa. Blistex, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Shefa and its attorneys and other representatives, for any and all actions taken or statements made by Shefa and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. **SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. **GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. Benzophenone is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, including the delisting of benzophenone, then Blistex may provide written notice to Shefa of any asserted change in the law, and with the exception of sections 3.1 and 3.2 above, have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

7. **NOTICE**

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

For Blistex:

Chief Operating Officer
Blistex Inc.
1800 Swift Drive
Oak Brook, Illinois 60523-1574

With a copy to:

Trenton H. Norris
Arnold & Porter LLP

Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024

For Shefa:

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

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

8. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES

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

9. POST-EXECUTION ACTIVITIES

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

10. MODIFICATION

(a) In the event that any future settlement agreement or court approved consent judgment entered into by Shefa involving another party, or any future court-approved consent judgment entered into by any enforcer of Proposition 65 involving another party, sets out a reformulation or compliance standard above that which is found in section 2.1 above for benzophenone in substantially similar lip protectant products, then upon written notice to Shefa, Blistex is entitled to a corresponding modification to the corresponding standard set forth in section 2.1, with regard to the Products of this Settlement Agreement.

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

(c) In the event that any future settlement agreement or court approved consent judgment entered into by Shefa involving another entity sets out a reformulation or compliance standard above that which is found in section 2.1 above for benzophenone in substantially similar products, then upon written notice by Blistex, the Parties shall confer and exercise reasonable efforts to consider agreement on a corresponding modification to the corresponding standard set forth in section 2.1, with regard to the Products of this Settlement Agreement.

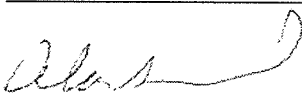
11. DISPUTE RESOLUTION

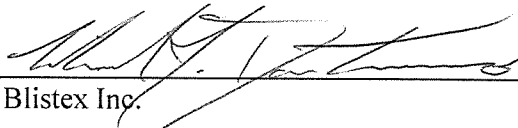
If Shefa determines at a future date that a violation of this agreement has occurred, Shefa shall provide notice to Blistex. Prior to bringing any action to enforce any requirement of this settlement agreement, the party alleging a violation of this settlement agreement shall provide the

other party with written notice of the grounds for such allegation together with all supporting information as well as a complete demand for the relief sought. The Parties shall then meet and confer regarding the basis for the allegation in an attempt to resolve the matter informally, including providing the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail, the party alleging a violation may file its lawsuit seeking the proposed relief.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:
Date: 03/24/2016
By: 
Shefa LMV, LLC

AGREED TO:
Date: 3/24/2016
By: 
Blistex Inc.