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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF MARIN
18 UNLIMITED CIVIL JURISDICTION
19

20 SHEFA LMV, LLC.,)	Case No. CIV 1503341
21 Plaintiff,)	[PROPOSED] CONSENT JUDGMENT AS TO BLISTEX INC.
22 vs.)	
23 CONCEPT II COSMETICS, LLC; and DOES 1)	Action Filed: Sept. 10, 2015
24 through 50, inclusive,)	
25 Defendants.)	

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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 Blistex Inc. (“**Blistex**” or “**Settling Defendant**”),
5 with Shefa and Blistex individually referred to as a “**Party**” and collectively as the “**Parties.**”

6 **1.2 Plaintiff**

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

10 **1.3 Settling Defendant**

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

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are lip protectors alleged to contain
16 benzophenone that are manufactured, sold, or distributed for sale in California by Blistex
17 including, but not limited to, Blistex Five Star Lip Protection (UPC 041388002231)
18 (collectively, “**Covered Products**”).

19 **1.5 General Allegations**

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

25 **1.6 Notice of Violation**

26 On March 26, 2015, Shefa served Blistex, others, and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation (“**Notice**”) alleging that Blistex violated Proposition
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1 65 when it failed to warn its customers and consumers in California that the Covered Products
2 expose users to benzophenone. To the best of the Parties' knowledge, no public enforcer has
3 commenced and is diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Settlement Agreement**

5 The Parties previously executed an agreement dated March 24, 2016 to settle the claims
6 asserted in the Notice ("Settlement Agreement"). The Parties agree that upon the Parties'
7 execution of this Consent Judgment, the Settlement Agreement shall be rescinded.

8 Pursuant to the Settlement Agreement, Blistex previously remitted the payments
9 specified in Section 3. The Parties agree that the Law Office of Daniel N. Greenbaum shall
10 retain in trust all funds paid under the Settlement Agreement -- other than the civil penalty
11 payment to be distributed to OEHHA -- pending the Court's consideration of the motion to
12 approve this Consent Judgment. Should this Consent Judgment not be approved, the funds shall
13 be returned to Blistex within ten (10) business days unless otherwise agreed by the Parties.
14 Upon entry of this Consent Judgment, the funds previously paid by Blistex pursuant to the
15 Settlement Agreement shall be deemed to satisfy all the monetary requirements of this Consent
16 Judgment, as set forth in Section 3.

17 **1.8 Complaint**

18 On September 10, 2015, Shefa filed a complaint in the Superior Court in and for the
19 County of Marin against Concept II Cosmetics, LLC and DOES 1-150, alleging violations of
20 California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in
21 certain products containing sunscreen sold in the State of California (the "**Complaint**"). On
22 April 26, 2016, Shefa filed a DOE Amendment under Code Civ. Proc. § 474, listing Blistex as
23 DOE 23.

24 **1.9 No Admission**

25 Blistex denies the material, factual, and legal allegations contained in the Notice and
26 Complaint and maintains that all of the products it has manufactured, sold, or distributed for sale
27 in California, including the Covered Products, have been, and are, in compliance with all laws.
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1 Nothing in this Consent Judgment shall be construed as an admission by Blistex of any fact,
2 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this
3 Consent Judgment constitute or be construed as an admission by Blistex of any fact, finding,
4 conclusion of law, issue of law, or violation of law, the same being specifically denied by
5 Blistex. This section shall not, however, diminish or otherwise affect Blistex's obligations,
6 responsibilities, and duties under this Consent Judgment.

7 **1.10 Consent to Jurisdiction**

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

14 **1.11 Effective Date**

15 For purposes of this Consent Judgment, the term "**Effective Date**" shall mean the date
16 the Consent Judgment is approved and entered by the Court.

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

18 **2.1 Reformulation Standards**

19 "**Reformulated Products**" are defined as those Covered Products containing
20 benzophenone in concentrations less than or equal to 12.5 parts per million ("**ppm**") when
21 analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection
22 Agency testing methodologies 3580A and 8270C or any other scientifically reliable
23 methodology for determining the benzophenone content in a substance of the form of the
24 Covered Products herein. As of the date of execution of this Consent Judgment, Blistex
25 represents that it has actively engaged its suppliers of raw materials to comply with its
26 reformulation efforts. Commencing on March 24, 2016, and continuing thereafter, Blistex shall
27 not order, or cause to be ordered, the raw ingredient octocrylene, used to manufacture the
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1 Covered Products to be distributed, sold and/or offered for sale in California, unless the
2 octocrylene contains levels of benzophenone that will result in benzophenone concentrations in
3 the Covered Products that are below the level stated above. In order to ensure that the process
4 for verifying that the octocrylene suppliers meet Blistex's standards, Blistex shall obtain an
5 initial Certificate of Analysis ("COA") from each supplier of octocrylene, and thereafter obtain a
6 COA from each octocrylene supplier for each subsequent shipment, and keep the COAs for a
7 period of two years from receipt. Copies of these COAs shall be provided to Shefa upon request.
8 Unless Blistex chooses to eliminate the use of octocrylene in the Covered Products, then Blistex
9 shall conduct at least one test per year for benzophenone in the Covered Products for a period of
10 two (2) years, and test results shall be provided to Shefa upon request.

11 2.2 Reformulation

12 Commencing on March 24, 2016, and continuing thereafter, Blistex shall not
13 manufacture, or cause to be manufactured, for sale in California, or order for distribution or sale
14 in California, Covered Products unless they are Reformulated Products pursuant to Section 2.1
15 above.

16 3. MONETARY SETTLEMENT TERMS

17 3.1 Civil Penalty Payments

18 Blistex agrees to an assessment of \$10,000 as a civil penalty. Such penalty payment shall
19 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of
20 the penalty amount paid to the California Office of Environmental Health Hazard Assessment
21 ("OEHHA") and the remaining 25% of the penalty paid to Shefa. The civil payment is allocated
22 as follows: (a) \$7,500 payable to OEHHA; and (b) \$2,500 payable to Shefa.

23 3.2 Reimbursement of Attorney Fees and Costs

24 The Parties reached an accord on the compensation due to Shefa and its counsel under
25 general contract principles and the private attorney general doctrine codified at Code of Civil
26 Procedure section 1021.5 for all work performed in this matter. Under these legal principles,
27 \$50,000 shall be payable by Blistex to the Law Office of Daniel N. Greenbaum for all fees and
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1 costs through execution of this Consent Judgment, including fees and costs incurred
2 investigating, bringing this matter to the attention of Blistex's management, and negotiation of
3 this settlement.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 Shefa's Public Release of Blistex**

6 This Consent Judgment is a full, final, and binding resolution between Shefa and Blistex
7 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on
8 behalf of itself and in a representative capacity in the public interest under Cal. Health & Safety
9 Code § 25249.7, against Blistex, its parents, subsidiaries, affiliated entities under common
10 ownership, manufacturers, suppliers, directors, officers, employees, attorneys, and the
11 predecessors, successors, or assigns of each of them, and each entity to whom Blistex directly or
12 indirectly distributes or sells the Covered Products, including, without limitation, downstream
13 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
14 ("Releasees"), based on failure to warn of alleged exposures to benzophenone from Covered
15 Products manufactured, sold or distributed for sale in California by Blistex prior to the Effective
16 Date. The release in this Section 4.1 applies to all Covered Products that Blistex manufactured,
17 distributed, or sold prior to the Effective Date, regardless of the date any other Releasee
18 distributes or sells the Covered Products.

19 Upon entry of this Consent Judgment by the Court, going forward, Blistex's compliance
20 with the terms of this Consent Judgment shall be deemed to constitute compliance with
21 Proposition 65 by Blistex or any other Releasee with respect to benzophenone in Covered
22 Products manufactured, sold, or distributed for sale in California by Blistex on and after March
23 24, 2016.

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

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

8 **4.3 Blistex's Release of Shefa**

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

15 **5. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and
17 shall be null and void if, for any reason, it is not approved and entered by the Court within 90
18 days after it has been fully executed by the Parties, or by such additional time as the Parties may
19 agree in writing.

20 **6. SEVERABILITY**

21 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
22 Judgment is held by a court to be void or unenforceable, or the Parties agree to modify any terms
23 due to comments from the Office of the Attorney General or after a hearing before the Court in
24 connection with Shefa's Motion to Approve, or for other good cause, each Party to be bound by
25 any such modified terms must re-execute the modified Consent Judgment and such modified
26 Consent Judgment then shall be presented by Shefa to the Court for approval; provided,
27 however, that if a provision of this Consent Judgment declared void or unenforceable is material
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1 to the Party for whom such term provided a benefit or protection, that Party can seek other
2 remedies, including, without limitation, rescission or reformation, based on the provision being
3 declared void or unenforceable.

4 **7. GOVERNING LAW**

5 The terms of this Consent Judgment shall be governed by the laws of the State of
6 California and apply within the State of California. Benzophenone is listed pursuant to
7 Proposition 65 as a chemical that is known to the State of California to cause cancer. In the
8 event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
9 generally, or as to the Covered Products, including without limitation the delisting of
10 benzophenone, then Blistex may provide written notice to Shefa of any asserted change in the
11 law, and with the exception of Sections 3.1 and 3.2 above, have no further obligations pursuant
12 to this Consent Judgment, with respect to, and to the extent that, the Covered Products are so
13 affected. None of the terms of this Consent Judgment shall have any application to Covered
14 Products sold outside of the State of California.

15 **8. NOTICE**

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

20 To Blistex:

21 Chief Operating Officer
22 Blistex Inc.
23 1800 Swift Drive
24 Oak Brook, Illinois 60523-1574

To Shefa:

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

25 With a copy to:

26 Trenton H. Norris
27 Arnold & Porter LLP
28 Three Embarcadero Center,
29 10th Floor
30 San Francisco, CA 94111-4024

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

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

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

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

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

10 **11. POST EXECUTION ACTIVITIES**

11 **11.1** The Parties acknowledge that, pursuant to California Health & Safety Code
12 § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this
13 Consent Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall
14 proceed to submit this Consent Judgment to the Court with a motion seeking Court approval.

15 **12. MODIFICATION**

16 **12.1** In the event that any future settlement agreement or court approved consent
17 judgment entered into by Shefa involving another party, or any future court-approved consent
18 judgment entered into by any enforcer of Proposition 65 involving another party, sets out a
19 reformulation or compliance standard that is less stringent than that in Section 2.1 above for
20 benzophenone in substantially similar lip protectant products, then upon written notice to Shefa,
21 Blistex is entitled to a corresponding modification to the corresponding standard set forth in
22 section 2.1 of this Consent Judgment, with regard to the Covered Products.

23 **12.2** In the event OEHHA establishes a safe harbor No-Significant Risk Level
24 ("NSRL") for benzophenone, which Blistex asserts would allow for the Covered Products to
25 contain levels of benzophenone in amounts greater than those set forth above in Section 2.1, then
26 Blistex may provide written notice to Shefa of any such assertion and the Parties shall confer
27 within 30 days to attempt to agree upon modification of this Consent Judgment. Should such
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1 attempts at informal resolution of a modification fail, and in the event Blistex still intends to
2 change its reformulation obligations, Blistex will provide written notice to Shefa of its intent to
3 adopt a modified compliance standard. Upon receipt of Blistex's notice, Shefa shall have the
4 right to enforce the terms and conditions contained in the Consent Judgment by motion or any
5 other available remedy at law, with the sole issue to be adjudicated being the technical question
6 of whether the NSRL would allow for a higher benzophenone content in the Covered Products
7 than that set forth in Section 2.1.

8 **12.3** This Consent Judgment may only be modified by a written instrument executed
9 by the Party or Parties to be bound thereby, and after approval by the Court upon a noticed
10 motion. Any motion to modify shall be served on all Parties and the Office of the Attorney
11 General.

12 **13. DISPUTE RESOLUTION**

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

22 **14. AUTHORIZATION**

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

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AGREED TO:

Date: 5/10/2016

By: 
Shefa LMV, LLC

AGREED TO:

Date: 5-9-16

By: 
Settling Defendant: Blistex Inc.

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ORDER AND JUDGMENT

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

Dated: _____

Judge of the Superior Court