

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 Galderma Laboratories LP			
CASE INFO	COURT DOCKET NUMBER CIV 1504055		COURT NAME Marin County Superior Court	
	SHORT CASE NAME Shefa LMV LLC vs. Galderma Laboratories LP			
REPORT INFO	INJUNCTIVE RELIEF Reformulation			
	PAYMENT: CIVIL PENALTY \$16,000	PAYMENT: ATTORNEYS FEES \$22,000	PAYMENT: OTHER 0.00	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input 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 6 / 8 / 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	
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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 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.

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12 Attorneys for Defendant GALDERMA LABORATORIES LP
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF MARIN
16 UNLIMITED CIVIL JURISDICTION
17

18 SHEFA LMV, LLC.,) Case No. CIV 1504055
19 Plaintiff,)
20 vs.) **[PROPOSED] MODIFIED CONSENT**
21 GALDERMA LABORATORIES LP; and) **JUDGMENT AS TO GALDERMA**
22 DOES 1 through 50, inclusive,) **LABORATORIES LP**
23 Defendants.) Action Filed: Nov. 6, 2015

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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 Covered Products, they hereby agree as follows:

8 **1. INTRODUCTION**

9 **1.1 Parties**

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

14 **1.2 Plaintiff**

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

21 **1.3 Defendant and Listed Chemical**

22 Settling Defendant manufactures, and/or distributes, and/or sells personal care products
23 that are labeled as having a Sun Protection Factor Value ("**SPF Products**"). (*See* 21 C.F.R.
24 § 352.3). One ingredient used in such products to enhance their ability to provide protection
25 from the sun is octocrylene, an active ingredient approved for use in sunscreens by the Federal
26 Food & Drug Administration ("**FDA**"). (*See* 76 Fed. Reg. 35620; 21 C.F.R. §§ 352.10, 352.20
27 (stayed)). Octocrylene can at times contain benzophenone. Benzophenone (CAS # 119-61-9) is
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1 a chemical listed under The Safe Drinking Water and Toxic Enforcement Act of 1986, California
2 Health & Safety Code § 25249.5 *et seq.* (commonly known as “**Proposition 65**”) as a chemical
3 “known to the state to cause cancer” as Proposition 65 defines that phrase. 27 CCR § 25000.

4 **1.4 Products Covered**

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

18 **1.5 General Allegations**

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

24 **1.6 Notice of Violation**

25 On April 15, 2015, Plaintiff served Settling Defendant and the requisite public enforcement
26 agencies with a 60-Day Notice of Violation (“**Notice**”), alleging that Settling Defendant was in
27 violation of Proposition 65 for failing to warn consumers in California that its personal care
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1 products exposed users to benzophenone. The Notice applicable to Settling Defendant or its
2 Covered Products is attached at Exhibit A. To the best of the Parties' knowledge, no public
3 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On September 10, 2015 Plaintiff filed a complaint in the Superior Court in and for the
6 County of Marin against Concept II Cosmetics, LLC and DOES 1-150, alleging violations of
7 California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in
8 personal care products sold by Settling Defendant in the State of California. The complaint shall
9 be deemed amended by this Consent Judgment to include the allegations set forth in the
10 Supplemental Notices on the day that the sixty-day notice period has passed if no authorized
11 public prosecutor has, prior to that date, filed a Proposition 65 enforcement action with respect to
12 the allegations in the Supplemental Notices. On November 6, 2015, Shefa filed the present
13 action in the Superior Court in and for the County of Marin, *Shefa LMV, LLC v. Galderma*
14 *Laboratories, LP, et al.*, Marin Superior Court Case No. CIV 1504055 alleging violations of
15 California Health & Safety Code § 25249.6, based on the alleged exposures to benzophenone
16 contained in personal care products sold in the State of California.

17 **1.8 No Admission**

18 Settling Defendant denies all the respective material, factual, and legal allegations
19 contained in the Notice and Complaint. Settling Defendant maintains that all of its Covered
20 Products have been and are in compliance with all laws. Nothing in this Consent Judgment shall
21 be construed as an admission against interest by Settling Defendant of any fact, finding,
22 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
23 constitute or be construed as an admission against interest by Settling Defendant of any fact,
24 finding, conclusion, issue of law, or violation of law. This Section shall not, however, diminish
25 or otherwise affect Settling Defendant's obligations, responsibilities, and duties under this
26 Consent Judgment.

1 **1.9 Consent to Jurisdiction**

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

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
10 that Plaintiff serves notice on Settling Defendant that this Consent Judgment is approved and
11 entered by the Court.

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

13 **2.1 Reformulation Standard**

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

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

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

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

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

16 **2.2. Notifications**

17 Settling Defendant shall provide, no later than fourteen (14) days after the Effective Date,
18 written notice (the “**Octocrylene Supplier Letter**”) to its current respective octocrylene supplier
19 or suppliers, informing said supplier or suppliers of the Octocrylene Reformulation Standard and
20 urging each supplier to use reasonable efforts to provide expeditiously only octocrylene which
21 complies with the Octocrylene Reformulation Standards. Settling Defendant shall not include
22 statements in the Octocrylene Supplier Letter that will encourage a supplier to delay compliance
23 with the Octocrylene Reformulation Standards. Settling Defendant shall include a statement in
24 its Octocrylene Supplier Letter requesting that its supplier use any and all commercially
25 reasonable efforts to achieve an Octocrylene Reformulation Standard of 200 ppm by June 1,
26 2020.

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1 **2.3 Compliance with Reformulation Standard**

2 (a) Should Settling Defendant elect to meet the Finished Product Reformulation
3 Standard, it may, at its option, either (i) test the Covered Product pursuant to a scientifically
4 appropriate application of U.S. Environmental Protection Agency testing methodologies 3580A,
5 8270C, or any other scientifically appropriate methodology for determining the benzophenone
6 content in a substance of the form of the specific Covered Product being tested, or (ii) may use
7 the appropriate mathematical calculation based on octocrylene percentage in the Covered
8 Product and the benzophenone concentration in the lot of octocrylene used in the finished
9 Covered Product, based either on testing of the octocrylene lot or on a certificate of analysis
10 documenting benzophenone content from the octocrylene supplier (the “**Certificate of**
11 **Analysis**”) at Settling Defendant’s option.

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

18 (c) Settling Defendant may, absent grounds to question the accuracy, demonstrate
19 compliance with either Reformulation Standard by relying in good faith on an octocrylene
20 supplier’s Certificate of Analysis or comparable verified quantitative benzophenone content
21 information. Such good faith reliance establishes compliance with the Reformulation Standards.
22 Octocrylene suppliers shall rely on any scientifically appropriate testing methodology for
23 determining the benzophenone content of octocrylene.

24 (d) Settling Defendant shall retain compliance documentation for three years after
25 delivery of a lot of octocrylene and compliance documentation shall be made available within
26 30 days of a written request by Plaintiff, who may make no more than two such requests
27 annually.

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1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty**

3 Pursuant to Health and Safety Code section 25249.7(b), Settling Defendant shall pay
4 initial civil penalties of \$16,000.00 and, if applicable, final civil penalties in the amounts
5 identified in Section 15.1. Settling Defendant shall issue two (2) separate checks for the total
6 amount of \$16,000.00 penalties pursuant to Health & Safety Code § 25249.12: (a) one check
7 made payable to the State of California's Office of Environmental Hazard Assessment
8 (“**OEHHA**”) in the amount of \$12,000.00, representing 75% of the total penalty; and (b) one
9 check to Shefa LMV, LLC in the amount of \$4,000.00, representing 25% of the total penalty.
10 The payment to OEHHA shall be delivered to: Office of Environmental Health Hazard
11 Assessment, Attn.: Mike Gyurics, Fiscal Operations Branch Chief, Office of Environmental
12 Health Hazard Assessment, P.O. Box 4010 Sacramento, CA 95812-4010. The payment to Shefa
13 shall be delivered to: Shefa LMV, LLC c/o Law Office of Daniel N. Greenbaum, 7120
14 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

15 **3.1.1 Initial Civil Penalty.** Within ten (10) business days of the Effective Date
16 Settling Defendant shall issue checks in the amounts identified in 3.1 as the Initial Civil Penalty.

17 **3.1.2 Final Civil Penalty.** On or before June 30, 2018 Settling Defendant shall
18 pay a final civil penalty (the “**Final Civil Penalty**”) in the amount of \$16,000.00. However, the
19 Final Civil Penalty shall be waived in its entirety if Settling Defendant certifies that all Covered
20 Products subject to this Consent Judgment manufactured by or on behalf of that Settling
21 Defendant on or after June 1, 2018 meets a Final Reformulation Standard. A responsible official
22 with personal knowledge, after due inquiry, of Settling Defendant that has exercised this election
23 shall provide Plaintiff with a written certification confirming compliance with the above
24 conditions on or before June 15, 2018.

25 **3.2 Reimbursement of Fees and Costs**

26 The Parties acknowledge that Shefa and its counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
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1 leaving the issue to be resolved after the material terms of the agreement had been settled.
2 Shortly after the other settlement terms had been finalized, Settling Defendant expressed a desire
3 to resolve Shefa's fees and costs. Settling Defendant agrees to pay Shefa and its counsel under
4 the private attorney general doctrine codified at California Code of Civil Procedure section
5 1021.5, for all work performed through the mutual execution of this agreement, including
6 without limitation the fees and costs incurred as a result of investigating, bringing this matter to
7 Settling Defendant's attention, negotiating a settlement, and seeking court approval of the same.
8 Settling Defendant agrees to pay the amount of fees and costs of \$22,000.00 within ten (10)
9 business days of the Effective Date. Payment shall be delivered to Daniel N. Greenbaum, Law
10 Office of Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Plaintiff's Public Release of Proposition 65 Claims**

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

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

7 **4.2 Plaintiff's Individual Release of Claims**

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

15 **4.3 Settling Defendant's Release of Shefa**

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

22 **4.4 Release and Dismissal of Retailer Defendant**

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

4 **5. FORCE MAJEURE**

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

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

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

10 **6. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 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 the Parties, or by such additional time as the Parties may
14 agree in writing.

15 **7. SEVERABILITY**

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

26 **8. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of
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1 California and apply within the State of California. In the event that Proposition 65 is repealed
2 or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products,
3 including without limitation the delisting of benzophenone, then Settling Defendant may provide
4 written notice to Plaintiff of any asserted change in the law, and with the exception of Sections
5 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with respect
6 to, and to the extent that, the Covered Products are so affected. None of the terms of this
7 Consent Judgment shall have any application to Covered Products sold outside of the State of
8 California.

9 **9. FUTURE FEDERAL REGULATION OF OCTOCRYLENE OR**
10 **BENZOPHENONE**

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

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

1 **10. NOTICE**

2 Unless specified herein, all correspondence and notice 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) overnight courier on any party by the
5 other at the following addresses:

6 To Settling Defendant:

7 Gary Roberts, Esq.
8 Dentons US LLP
9 601 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

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

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

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

17 **12. 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 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

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

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1 **14. MODIFICATION**

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

5 **15. ENFORCEMENT**

6 **15.1 Settling Defendant**

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

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

20 For the first alleged violation as to any specific Covered Product for which Plaintiff
21 provides Notice of Breach, Settling Defendant may demonstrate compliance by providing (1) a
22 Certificate of Analysis or comparable verified quantitative benzophenone content information
23 for five (5) units of the Covered Product or for the lot(s) of octocrylene from the supplier(s) of
24 the octocrylene in the Covered Product at issue showing levels of benzophenone meeting the
25 Octocrylene Reformulation Standard, or (2) a prior test result, using scientifically appropriate
26 test methodologies, of the lot(s) of octocrylene used in the finished product which is the subject
27 of the Notice of Breach, showing levels of benzophenone meeting the Octocrylene

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1 Reformulation Standard. If Settling Defendant cannot demonstrate compliance, it must pay a
2 stipulated civil penalty of \$25,000 to be allocated according to Section 3.1.

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

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

19 **15.2 Retailer Defendant**

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

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16. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 6/7/2016

Date: 6-7-16

By: 
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: _____

Judge of the Superior Court