

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 Taylor James LLC dba Supergoop			
CASE INFO	COURT DOCKET NUMBER CIV 1503341		COURT NAME Marin County Superior Court	
	SHORT CASE NAME Shefa LMV LLC v. Concept II Cosmetics, et al.			
REPORT INFO	INJUNCTIVE RELIEF Reformulation			
	PAYMENT: CIVIL PENALTY \$5,500	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 5 / 23 / 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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9 Attorney for Plaintiff
10 Shefa LMV LLC

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

14 SHEFA LMV, LLC.,

15 Plaintiff,

16 vs.

17 CONCEPT II COSMETICS, LLC, et al.,

18 Defendants.

19) Case No. CIV 1503341

20)
21) **[PROPOSED] CONSENT JUDGMENT AS**
22) **TO DEFENDANT TAYLOR JAMES, LLC**

23)
24) Action Filed: Sept. 10, 2015
25)
26)
27)
28)

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 Taylor James LLC D.B.A. Supergoop, with Shefa
5 and Taylor James collectively referred to as the “Parties” and individually as a “Party.”

6 **1.2 Plaintiff**

7 Shefa is a California Limited Liability Company that seeks to promote awareness of
8 exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products. Shefa alleges Taylor James
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 Taylor James manufactures, and/or distributes, and/or sells sunscreens, lip balms, face
15 lotions, lip tints, and skin creams that contain benzophenone. One ingredient used in such products
16 to enhance their ability to provide protection from the sun is octocrylene, an active ingredient
17 approved for use in sunscreens by the Federal Food & Drug Administration (“**FDA**”) (*See* 76 Fed.
18 Reg. 35620; 21 C.F.R. §§ 352.10, 352.20 (stayed)). Octocrylene can at times contain
19 benzophenone. Benzophenone (CAS # 119-61-9) is a chemical listed under The Safe Drinking
20 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.*
21 (commonly known as “**Proposition 65**”) as a chemical “known to the state to cause cancer” as
22 Proposition 65 defines that phrase. 27 CCR 25000.

23 **1.4 Products Covered**

24 This Consent Judgment covers and applies to sunscreens, lip balms, face lotions, lip tints,
25 and skin creams that contain benzophenone, that are manufactured and/or distributed for sale in
26 California and/or sold in California and that contain benzophenone. All sizes, types, brands,
27 packaging, formulations, delivery forms (e.g., sprays or lotions applied by hand), intended uses
28 (e.g., “faces,” children’s products, “sport,” “moisturizing,” cosmetic purposes) are included. This

1 Consent Judgment, and all of its terms, applies to all Covered Products, including without limitation
2 new products and brands introduced, developed, or acquired in the future by Taylor James which
3 would today meet the definition of Covered Products if they currently were being manufactured or
4 distributed for sale, or being sold, in California.

5 **1.5 General Allegations**

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

11 **1.6 Notices of Violation**

12 On May 8, 2015, Plaintiff served Taylor James and the requisite public enforcement
13 agencies with 60-Day Notices of Violation (“**Notices**”), alleging that Taylor James was in violation
14 of Proposition 65 for failing to warn consumers in California that their personal care products
15 exposed users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has
16 commenced and is diligently prosecuting the allegations set forth in any of the Notices.

17 **1.7 Complaint**

18 On September 10, 2015 Plaintiff 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 Covered Products sold by Defendants in the State of California. On September 21, 2015, Shefa
22 filed a DOE amendment naming Taylor James as a defendant in this action.

23 **1.8 No Admission**

24 Taylor James denies all the respective material, factual, and legal allegations contained in
25 the Notices and Complaints. Taylor James maintains that all of its Covered Products have been and
26 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
27 admission against interest by Taylor James of any fact, finding, conclusion, issue of law, or
28 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an

1 admission against interest by Taylor James of any fact, finding, conclusion, issue of law, or
2 violation of law. This section shall not, however, diminish or otherwise affect Taylor James’s
3 obligations, responsibilities, and duties under this Consent Judgment.

4 **1.9 Consent to Jurisdiction**

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

11 **1.10 Effective Date**

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

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

16 **2.1 Reformulation Standard**

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

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

1 (c) As of June 1, 2020, Taylor James 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 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**”). Taylor James may at any time,
9 at its 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 Taylor James on or after the applicable Reformulation Standard
14 dates.

15 **2.2. Notifications**

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

25 **2.3 Compliance with Reformulation Standard**

26 (a) If Taylor James elects to meet the Finished Product Reformulation Standard may, at
27 its option, either (i) test the Covered Product pursuant to a scientifically appropriate application of
28 U.S. Environmental Protection Agency testing methodologies 3580A, 8270C, or any other
scientifically appropriate methodology for determining the benzophenone content in a substance of

1 the form of the specific Covered Product being tested, or (ii) may use the appropriate mathematical
2 calculation based on octocrylene percentage in the Covered Product and the benzophenone
3 concentration in the lot of octocrylene used in the finished Covered Product, based either on testing
4 of the octocrylene lot or on a certificate of analysis documenting benzophenone content from the
5 octocrylene supplier (the “**Certificate of Analysis**”).

6 (b) If Taylor James elects to meet the Octocrylene Reformulation Standard, it shall
7 obtain a Certificate of Analysis or analytical testing report for each lot of octocrylene used in the
8 manufacture of Covered Products. If, after Taylor James has advised its octocrylene suppliers to
9 include a Certificate of Analysis with each lot of delivered octocrylene, an octocrylene supplier fails
10 to include a Certificate of Analysis, a Taylor James may correct the lapse upon discovery.

11 (c) Taylor James may, absent grounds to question the accuracy, demonstrate compliance
12 with either Reformulation Standard by relying in good faith on an octocrylene supplier’s Certificate
13 of Analysis or comparable verified quantitative benzophenone content information. Such good faith
14 reliance establishes compliance with the Octocrylene Reformulation Standard. Octocrylene
15 suppliers shall rely on any scientifically appropriate testing methodology for determining the
16 benzophenone content of octocrylene.

17 (d) Taylor James shall retain compliance documentation for three years after delivery of
18 a lot of octocrylene and compliance documentation shall be made available within 30 days of a
19 written request by Plaintiff, who may make no more than two such requests annually.

20 **3. MONETARY PAYMENTS**

21 **3.1 Civil Penalty**

22 Pursuant to Health and Safety Code section 25249.7(b), Taylor James shall pay initial civil
23 penalties and, if applicable, final civil penalties, as specified in this Section 3.1. Taylor James shall
24 issue two (2) separate checks for the total amounts identified in Sections 3.1.1 and 3.1.2 as penalties
25 pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of
26 California's Office of Environmental Hazard Assessment (“**OEHHA**”) representing 75% of the total
27 penalty; and (b) one check to Shefa LMV, LLC, representing 25% of the total penalty. The payment
28 to OEHHA shall be delivered to: Office of Environmental Health Hazard Assessment, Attn.: Mike

1 Gyurics, Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P.O.
2 Box 4010 Sacramento, CA 95812-4010. The payment to Shefa shall be delivered to: Shefa LMV,
3 LLC c/o Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys,
4 CA 91406.

5 **3.1.1 Initial Civil Penalty.** Within ten (10) business days of the Effective Date
6 Taylor James shall pay an initial civil penalty of \$5,500. Taylor James shall issue (a) one check
7 made payable to the State of California's Office of Environmental Hazard Assessment (“**OEHHA**”)
8 in the amount of \$4,125, representing 75% of the total penalty; and (b) one check to Shefa LMV,
9 LLC in the amount of \$1,375, representing 25% of the total penalty.

10 **3.1.2 Final Civil Penalty.** On or before June 30, 2018 Taylor James shall pay a
11 final civil penalty (the “**Final Civil Penalty**”) of \$5,500. Taylor James shall issue (a) one check
12 made payable to the State of California's Office of Environmental Hazard Assessment (“**OEHHA**”)
13 in the amount of \$4,125, representing 75% of the total penalty; and (b) one check to Shefa LMV,
14 LLC in the amount of \$1,375, representing 25% of the total penalty. However, the Final Civil
15 Penalty shall be waived in its entirety if Taylor James certifies that all Covered Products subject to
16 this Consent Judgment manufactured by or on behalf of that Taylor James on or after June 1, 2018
17 meets the Final Reformulation Standard. A responsible official with personal knowledge, after due
18 inquiry, shall provide Plaintiff with a written certification confirming compliance with the above
19 conditions on or before June 15, 2018.

20 **3.2 Reimbursement of Fees and Costs**

21 The Parties acknowledge that Shefa and its counsel offered to resolve this dispute without
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
23 to be resolved after the material terms of the agreement had been settled. Shortly after the other
24 settlement terms had been finalized, Taylor James expressed a desire to resolve Shefa’s fees and
25 costs. Taylor James agrees to pay Shefa and its counsel under the private attorney general doctrine
26 codified at California Code of Civil Procedure section 1021.5, for all work performed through the
27 mutual execution of this agreement, including without limitation the fees and costs incurred as a
28 result of investigating, bringing this matter to the Taylor James’s attention, negotiating a settlement,

1 and seeking court approval of the same. Taylor James agrees to pay the amount of \$22,000 within
2 ten (10) business days of the Effective Date. Payment shall be delivered to Daniel N. Greenbaum,
3 Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 Plaintiff's Public Release of Proposition 65 Claims**

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

22 Upon entry of this Consent Judgment by the Court, going forward, Taylor James's
23 compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with
24 Proposition 65 with respect to benzophenone in Taylor James's prior, current and future Covered
25 Products.

26 **4.2 Plaintiff's Individual Release of Claims**

27 Plaintiff, in its individual capacity only and *not* in its representative capacity, also provides a
28 release to Taylor James, Releasees, and Distribution Chain Releasees, which release shall be

1 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
2 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
3 Plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected,
4 arising out of alleged or actual exposures to benzophenone in Covered Products manufactured,
5 distributed, or sold by Taylor James prior to the Effective Date. With respect to the foregoing
6 waivers and releases in this paragraph, Shefa hereby specifically waives any and all rights and
7 benefits which it now has, or in the future may have, conferred by virtue of the provisions of
8 Section 1542 of the California Civil Code, which provides as follows:

9
10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
11 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
12 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
13 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
14 DEBTOR.

13 **4.3 Taylor James's Release of Shefa**

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

20 **4.4 Release and Dismissal of Retailer Defendant**

21 This Consent Judgment provides a "downstream" release which resolves all claims in the
22 Complaints for all Covered Products manufactured by, or on behalf of, distributed, or sold by
23 Taylor James. Any retailer who has been named in one or more Complaints (a "**Retailer**
24 **Defendant**") due to its sale of one or more such Covered Products shall be dismissed without
25 prejudice unless, prior to the date this Consent Judgment was lodged, that Retailer Defendant had
26 also received a Notice that identified an exemplar product not manufactured or supplied by either
27 Taylor James or an entity that has previously resolved Plaintiff's claims with a downstream release.
28

1 **5. FORCE MAJEURE**

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

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

22 If the Parties disagree as to whether Taylor James has a valid reason to invoke the Force
23 Majeure clause or disagree as to the length of time necessary for such Taylor James to comply with
24 the Reformulation Standard, they shall attempt to resolve their differences through one or more
25 sessions with Judge Warren, or if he is not available, another mediator from JAMS mutually agreed
26 to by the Parties or, if necessary, as referred by the Court. Shefa's reasonable fees and costs of the
27 mediation sessions under this Section shall be borne solely by Taylor James unless otherwise
28 allocated by Judge Warren or other mediator from JAMS, who shall consider whether mediation

1 was necessary and/or whether a Party asserted unreasonable or extreme positions. If the Parties
2 cannot reach resolution via a meet and confer or the JAMS process, an aggrieved Party may move
3 the Court via a noticed motion on all Parties, with a copy to the Office of the Attorney General, for
4 such additional relief as that Party deems necessary.

5 **6. COURT APPROVAL**

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

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of California
12 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
13 rendered inapplicable by reason of law generally, or as to the Covered Products, including without
14 limitation the delisting of benzophenone, then Taylor James may provide written notice to Plaintiff
15 of any asserted change in the law, and with the exception of Sections 3.1 and 3.2 above, have no
16 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
17 Covered Products are so affected. None of the terms of this Consent Judgment shall have any
18 application to Covered Products sold outside of the State of California.

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

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

25 Notwithstanding the foregoing, if FDA authorizes the percentage of octocrylene to increase
26 above the current limit of 10% in Covered Products, then this Consent Judgment shall by operation
27 of law be amended to allow benzophenone in finished Covered Products to rise in proportion to the
28 percentage increase. Taylor James shall notify Plaintiff of the date this Section operates to change

1 any Finished Product Reformulation Standard. This notice obligation shall sunset on June 1, 2023.
2 Even if FDA changes the level of permissible octocrylene prior to June 1, 2018, the civil penalty
3 provisions of Section 3.1.2 shall apply as written, not to any standards as modified by this Section 9.
4 Taylor James represents that other than as described in the proceedings and papers referenced in
5 their briefs in these consolidated cases, they are not aware that the FDA currently has published or
6 made public plans to raise the allowable levels of octocrylene in the Covered Products.

7 **10. NOTICE**

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

12 To Taylor James:

13 Holly Thaggard
14 Supergoop
200 East Grayson, Suite 112
15 San Antonio, TX 78215

16 Jeffrey Margulies, Esq.
Norton Rose Fulbright US LLP
17 555 South Flower Street
Forty First Floor
18 Los Angeles, CA 90071

To Shefa:

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

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

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

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

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

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

28 **13. COURT APPROVAL.**

1 13.1 The Parties acknowledge that, pursuant to California Health & Safety Code §
2 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent
3 Judgment. Taylor James will support approval this Consent Judgment.

4 13.2 This Consent Judgment is not effective until it is approved and entered by the Court
5 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
6 year after it has been fully executed by all parties. In such case, the Parties agree to meet and confer
7 on how to proceed and if such agreement is not reached within 30-days, the case shall proceed on its
8 normal course.

9 13.3 If the Court approves this Consent Judgment and is reversed or vacated by an
10 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
11 Judgment. If the Parties do not jointly agree on a course of action to take, any monies that have been
12 paid to Plaintiff pursuant to Section 3 shall be refunded within 15 days after remittitur to the trial
13 court, and the case shall proceed on its normal course on the trial court's calendar.

14 **14. MODIFICATION**

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

18 **15. ENFORCEMENT**

19 **15.1 Taylor James**

20 In order to assert a potential violation of the Consent Judgment, Plaintiff shall provide notice
21 to Taylor James as set forth in this paragraph ("**Notice of Breach**"): (a) Plaintiff shall provide all
22 results of testing conducted on a specific Covered Product during the three month period for which
23 the violation is alleged; (b) such testing must be of no less than five (5) of the same Covered
24 Product (irrespective of the volume size of the container) collected within the three (3) month
25 period, from five different retail vendors; (c) the average of all test results for that period exceed the
26 finished Product Reformulation Standard; and (d) Plaintiff shall provide the alleged violator a copy
27 of (i) the purchase information for the allegedly violating Covered Product and (ii) a digital image
28 of the allegedly violating Covered Product showing the SKU/UPC and, if present on the container,

1 the Lot/Batch number(s).

2 Taylor James and Plaintiff shall, within thirty (30) days of receipt of the Notice of Breach,
3 meet and confer regarding the alleged violation, during which time Plaintiff shall not file any
4 motion, application, action, or pleading regarding the alleged violation.

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

15 In the event that, thereafter, Plaintiff provides a Notice of Breach pertaining to a second
16 alleged violation for the same Covered Product, he must do so in accordance with this section. For
17 the second alleged violation noticed by Plaintiff of the same Covered Product, Taylor James may
18 demonstrate compliance with the terms of the Consent Judgment by providing test results, using
19 scientifically appropriate test methodologies, conducted on five (5) units of the Covered Product or
20 on the first three (3) lots of octocrylene received more than 30 days after receipt of the written
21 response showing compliance with the Octocrylene Reformulation Standard received from the
22 supplier of the octocrylene used to make the finished product which was the subject of the first
23 Notice of Breach, and used to manufacture that finished product. If fewer than three (3) lots are
24 received during the relevant time period, testing is required only for such lots as were received.
25 Such a showing shall constitute compliance.

26 In the event that Taylor James cannot demonstrate compliance in the manner set forth above
27 after receipt of a second Notice of Breach for the same Covered Product, and Plaintiff thereafter
28 provides notice in accordance with the provisions in this Section of a third alleged violation for the

1 same Covered Product, Taylor James shall pay a stipulated penalty of \$10,000 for each such second
2 or subsequent violation.

3 **15.2 Retailer Defendant**

4 If Plaintiff sends a Notice of Breach to a Retailer Defendant, that Retailer Defendant shall be
5 allowed to tender such notice to the manufacturer, distributor or seller of the subject Covered
6 Product who is a Taylor James. Thereafter, Plaintiff shall proceed with such Taylor James in
7 accordance with Section 15.1 in lieu of the Retailer Defendant.

8 **16. AUTHORIZATION**


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

12
13 AGREED TO:

AGREED TO:

14 Date: 5/23/16

Date: May 18, 2016

15
16 By: 
17 Shefa LMV, LLC

15
16 By: 
17 TAYLOR JAMES LLC DBA SUPERGOOP

