

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

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S) <b>Shefa LMV LLC</b>			
	DEFENDANT(S) INVOLVED IN SETTLEMENT <b>Boots Retail USA, Inc.</b>			
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>CIV 1503341</b>		COURT NAME <b>Marin County Superior Court</b>	
	SHORT CASE NAME <b>Shefa LMV LLC v. Concept II Cosmetics, et al.</b>			
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Reformulation</b>			
	PAYMENT: CIVIL PENALTY <b>\$5,500</b>	PAYMENT: ATTORNEYS FEES <b>\$22,000</b>	PAYMENT: OTHER <b>0.00</b>	
	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 <b>5 / 23 / 2016</b>	
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>			
<b>FILER INFO</b>	NAME OF CONTACT <b>Daniel N. Greenbaum</b>			
	ORGANIZATION <b>Law Office of Daniel Greenbaum</b>		TELEPHONE NUMBER ( <b>818</b> ) <b>809-2199</b>	
	ADDRESS <b>7120 Hayvenhurst Ave., Suite 320</b>		FAX NUMBER ( <b>424</b> ) <b>243-7698</b>	
	CITY <b>Van Nuys</b>	STATE <b>CA</b>	ZIP <b>91406</b>	E-MAIL ADDRESS <b>dgreenbaum@greenbaumlawfirm.com</b>

**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.

1 Daniel N. Greenbaum, Esq. (SBN 268104)  
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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 ) **[PROPOSED] CONSENT JUDGMENT**

21 ) Action Filed: Sept. 10, 2015

1 WHEREAS Plaintiff has issued Notices and filed Complaints against Settling Defendants  
2 regarding the presence of benzophenone in Covered Products, as further described in this Consent  
3 Judgment; and

4 WHEREAS the Parties acknowledge that the Notices to each Settling Defendant were  
5 intended to cover all of that Defendants' Covered Products; and  
6

7 WHEREAS the Parties, therefore, wish to resolve all Proposition 65 claims regarding  
8 benzophenone in Settling Defendants' personal care products, they hereby agree as follows:  
9

10 **1. INTRODUCTION**

11 **1.1 Parties**

12 This consent judgment ("**Consent Judgment**") is entered into by and between plaintiff  
13 Shefa LMV, LLC ("**Shefa**" or "**Plaintiff**") and the defendants identified in the attached Exhibits A-  
14 K (individually, "**Settling Defendant**" and, collectively, "**Settling Defendants**"), with Shefa and  
15 Settling Defendants collectively referred to as the "**Parties**" and individually as a "**Party**."

16 **1.2 Plaintiff**

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

23 **1.3 Defendants and Listed Chemical**

24 Defendants manufacture, and/or distribute, and/or sell personal care products, including  
25 products that are labeled as having a Sun Protection Factor Value (SPF Products) (*See* 21 C.F.R. §  
26 352.3), sunscreen products, and products such as face creams, body lotions, lip balms, cosmetics  
27 (including lipsticks and foundation make up), hair products and other sun protection creams, sprays,  
28 foams, gels, oils, sticks and lotions. One ingredient used in such products to enhance their ability to

1 provide protection from the sun is octocrylene, an active ingredient approved for use in sunscreens  
2 by the Federal Food & Drug Administration (“**FDA**”) (*See* 76 Fed. Reg. 35620; 21 C.F.R. §§  
3 352.10, 352.20 (stayed)). Octocrylene can at times contain benzophenone. Benzophenone (CAS #  
4 119-61-9) is a chemical listed under The Safe Drinking Water and Toxic Enforcement Act of 1986,  
5 California Health & Safety Code § 25249.5 *et seq.* (commonly known as “**Proposition 65**”) as a  
6 chemical “known to the state to cause cancer” as Proposition 65 defines that phrase. 27 CCR  
7 25000.

#### 8 **1.4 Products Covered**

9 This Consent Judgment covers and applies to all personal care products, including but not  
10 limited to the categories described in Section 1.3, that are manufactured and/or distributed for sale  
11 in California and/or sold in California and that contain benzophenone (“**Covered Products**”). All  
12 sizes, types, brands, packaging, formulations, delivery forms (e.g., sprays or lotions applied by  
13 hand), intended uses (e.g., “faces,” children’s products, “sport,” “moisturizing,” cosmetic purposes)  
14 are included. The brands of each Settling Defendant and examples of the product categories subject  
15 to this Consent Judgment for each Settling Defendant are set forth in the Exhibits A-K for that  
16 Settling Defendant. The Parties agree that the Notices to each Settling Defendant cover all of that  
17 Defendants’ Covered Products. This Consent Judgment, and all of its terms, applies to all Covered  
18 Products, including without limitation new products and brands introduced, developed, or acquired  
19 in the future by any Settling Defendant which would today meet the definition of Covered Products  
20 if they currently were being manufactured or distributed for sale, or being sold, in California. The  
21 term Covered Product, as used hereafter in this Consent Judgment, includes such future products  
22 and brands.

#### 23 **1.5 General Allegations**

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

1           **1.6    Notices of Violation**

2           On the date(s) listed for each respective Settling Defendant in Exhibits A-K, Plaintiff served  
3           Settling Defendants and the requisite public enforcement agencies with 60-Day Notices of Violation  
4           (“**Notices**”), alleging that Settling Defendants were in violation of Proposition 65 for failing to warn  
5           consumers in California that their personal care products exposed users to benzophenone.  
6           Examples of such Notices applicable to the Settling Defendants or their Covered Products are  
7           attached at Exhibit L. To the best of the Parties’ knowledge, no public enforcer has commenced  
8           and is diligently prosecuting the allegations set forth in any of the Notices. This Consent Judgment  
9           is executed with the understanding that some of the Notices identified in Exhibits A-K were served  
10          less than sixty days prior to execution of this Consent Judgment (“**Supplemental Notices**”). In  
11          those instances where such Supplemental Notices have been served, they have been served so as to  
12          clarify and better define the scope of Covered Products.

13           **1.7    Complaint**

14          On September 10, 2015 Plaintiff filed a complaint in the Superior Court in and for the  
15          County of Marin against Concept II Cosmetics, LLC and DOES 1-150, alleging violations of  
16          California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in  
17          personal care products sold by Settling Defendants in the State of California. The complaint shall  
18          be deemed amended by this Consent Judgment to include the allegations set forth in the  
19          Supplemental Notices on the day that the sixty-day notice period has passed if no authorized public  
20          prosecutor has, prior to that date, filed a Proposition 65 enforcement action with respect to the  
21          allegations in the Supplemental Notices. On November 6, 2015, Shefa filed a complaint in the  
22          Superior Court in and for the County of Marin, *Shefa LMV, LLC v. Galderma Laboratories, LP, et*  
23          *al.*, Marin Superior Court Case No. CIV 1504055 alleging violations of California Health & Safety  
24          Code § 25249.6, based on the alleged exposures to benzophenone contained in personal care  
25          products sold in the State of California. Collectively, these two complaints are referred to as the  
26          Complaints.

1           **1.8    No Admission**

2           Each Settling Defendant denies all the respective material, factual, and legal allegations  
3 contained in the Notices and Complaints. Each Settling Defendant maintains that all of its Covered  
4 Products have been and are in compliance with all laws. Nothing in this Consent Judgment shall be  
5 construed as an admission against interest by a Settling Defendant of any fact, finding, conclusion,  
6 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
7 construed as an admission against interest by any Settling Defendant of any fact, finding,  
8 conclusion, issue of law, or violation of law. This section shall not, however, diminish or otherwise  
9 affect any Settling Defendant’s obligations, responsibilities, and duties under this Consent  
10 Judgment.

11           **1.9    Consent to Jurisdiction**

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

18           **1.10   Effective Date**

19           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
20 Plaintiff serves notice on Settling Defendants that this Consent Judgment is approved and entered  
21 by the Court.

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

23           **2.1    Reformulation Standard**

24           (a)   Whereas, each Settling Defendant, based on inquiry for purposes of this Consent  
25 Judgment, has not identified any ingredient in its respective Covered Products other than  
26 octocrylene that is a source of detectable benzophenone in such Covered Products. Further, based  
27 upon inquiry for purposes of this Consent Judgment, each Settling Defendant represents that it has  
28 investigated and concluded that there are only a few major suppliers of octocrylene for the domestic

1 market and that time and phasing is needed for the marketplace of octocrylene suppliers to make the  
2 adjustments necessary to deliver octocrylene with benzophenone meeting the Octocrylene  
3 Reformulation Standards.

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

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

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

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

## 22 **2.2. Notifications**

23 Each Settling Defendant shall provide, no later than fourteen (14) days after the Effective  
24 Date, written notice (the “**Octocrylene Supplier Letter**”) to its current respective octocrylene  
25 supplier or suppliers, informing said supplier or suppliers of the Octocrylene Reformulation  
26 Standard and urging each supplier to use reasonable efforts to provide expeditiously only  
27 octocrylene which complies with the Octocrylene Reformulation Standard. Settling Defendants  
28 shall not include statements in the Octocrylene Supplier Letter that will encourage a supplier to

1 delay compliance with the Octocrylene Reformulation Standard. Each Settling Defendant shall  
2 include a statement in its Octocrylene Supplier Letter requesting that its supplier use any and all  
3 commercially reasonable efforts to achieve an Octocrylene Reformulation Standard of 200 ppm by  
4 June 1, 2020.

5 **2.3 Compliance with Reformulation Standard**

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

16 (b) Settling Defendants electing to meet the Octocrylene Reformulation Standard shall  
17 obtain a Certificate of Analysis or analytical testing report for each lot of octocrylene used in the  
18 manufacture of Covered Products. If, after a Settling Defendant has advised its octocrylene  
19 suppliers to include a Certificate of Analysis with each lot of delivered octocrylene, an octocrylene  
20 supplier fails to include a Certificate of Analysis, a Settling Defendant may correct the lapse upon  
21 discovery.

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

28 (d) A Settling Defendant shall retain compliance documentation for three years after  
delivery of a lot of octocrylene and compliance documentation shall be made available within 30



1 days of a written request by Plaintiff, who may make no more than two such requests annually per  
2 Settling Defendant.

3 **3. MONETARY PAYMENTS**

4 **3.1 Civil Penalty**

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

17 **3.1.1 Initial Civil Penalty.** Within ten (10) business days of the Effective Date  
18 each Settling Defendant shall issue checks in the amounts identified in its respective Exhibit A-K as  
19 the Initial Civil Penalty.

20 **3.1.2 Final Civil Penalty.** On or before June 30, 2018 each Settling Defendant  
21 shall pay a final civil penalty (the “**Final Civil Penalty**”) in the amounts identified on the Settling  
22 Defendant’s respective Exhibit A-K. However, the Final Civil Penalty shall be waived in its  
23 entirety if the Settling Defendant certifies that all Covered Products subject to this Consent  
24 Judgment manufactured by or on behalf of that Settling Defendant on or after June 1, 2018 meets a  
25 Final Reformulation Standard. A responsible official with personal knowledge, after due inquiry, of  
26 a Settling Defendant that has exercised this election shall provide Plaintiff with a written  
27 certification confirming compliance with the above conditions on or before June 15, 2018.  
28

1                                   **3.2           Reimbursement of Fees and Costs**

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

15                                   **4.           CLAIMS COVERED AND RELEASED**

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

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

1 exposures to benzophenone from the Covered Products by each Settling Defendant prior to the  
2 Effective Date. Plaintiff’s release of claims applies to all Covered Products which a Settling  
3 Defendant (or its manufacturer) either manufactured, and/or distributed and/or sold prior to the  
4 Effective Date, regardless of the date any person distributes or sells the subject Covered Products.

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

#### 9 **4.2 Plaintiff’s Individual Release of Claims**

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

#### 17 **4.3 Settling Defendants’ Release of Shefa**

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

#### 24 **4.4 Release and Dismissal of Retailer Defendants**

25 This Consent Judgment provides a “downstream” release which resolves all claims in the  
26 Complaints for all Covered Products manufactured by, or on behalf of, distributed, or sold by a  
27 Settling Defendant. Any retailer who has been named in one or more Complaints (a “**Retailer**  
28 **Defendant**”) due to its sale of one or more such Covered Products shall be dismissed without

1 prejudice unless, prior to the date this Consent Judgment was lodged, that Retailer Defendant had  
2 also received a Notice that identified an exemplar product not manufactured or supplied by either a  
3 Settling Defendant or an entity that has previously resolved Plaintiff's claims with a downstream  
4 release.

5 **5. FORCE MAJEURE**

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

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

26 If the Parties disagree as to whether a Settling Defendant has a valid reason to invoke the  
27 Force Majeure clause or disagree as to the length of time necessary for such Settling Defendant to  
28 comply with the Reformulation Standard, they shall attempt to resolve their differences through one

1 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 fees  
3 and costs of the mediation sessions under this Section shall be borne solely by the participating  
4 Settling Defendants unless otherwise allocated by Judge Warren or other mediator from JAMS, who  
5 shall consider whether mediation was necessary and/or whether a Party asserted unreasonable or  
6 extreme positions. If the Parties cannot reach resolution via a meet and confer or the JAMS  
7 process, an aggrieved Party may move the Court via a noticed motion on all Parties, with a copy to  
8 the Office of the Attorney General, for such additional relief as that Party deems necessary.

9 **6. COURT APPROVAL**

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

14 **7. SEVERABILITY**

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

25 **8. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California  
27 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
28 rendered inapplicable by reason of law generally, or as to the Covered Products, including without

1 limitation the delisting of benzophenone, then Settling Defendants may provide written notice to  
2 Plaintiff of any asserted change in the law, and with the exception of Sections 3.1 and 3.2 above,  
3 have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent  
4 that, the Covered Products are so affected. None of the terms of this Consent Judgment shall have  
5 any application to Covered Products sold outside of the State of California.

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

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

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

23 **10. NOTICE**

24 Unless specified herein, all correspondence and notice required to be provided pursuant to  
25 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class  
26 registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the  
27 other at the following addresses:  
28

1 To Settling Defendants:

To Shefa:

2 At address(es) shown on Exhibits  
3 A-K

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

4  
5 Any Party, from time to time, may specify in writing to the other Party a change of address to which  
6 all notices and other communications shall be sent.

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

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

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

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

14 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

15 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),  
16 Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.  
17 Settling Defendants agree to urge the Court to approve this Consent Judgment. If any third party  
18 objection to the noticed motion is filed, Plaintiff and Settling Defendants agree to work together to  
19 the extent appropriate, and shall appear at any hearing before the Court to urge the Court to approve  
20 the Consent Judgment.

21 **14. MODIFICATION**

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

25 **15. ENFORCEMENT**

26 **15.1 Settling Defendants**

27 In order to assert a potential violation of the Consent Judgment, Plaintiff shall provide notice  
28 to the allegedly violating Settling Defendant as set forth in this paragraph (“**Notice of Breach**”): (a)

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

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

12 For the first alleged violation as to any specific Covered Product for which Plaintiff provides  
13 Notice of Breach, the Settling Defendant whose Covered Product is alleged to be in violation may  
14 demonstrate compliance by providing (1) a Certificate of Analysis or comparable verified  
15 quantitative benzophenone content information for five (5) units of the Covered Product or for the  
16 lot(s) of octocrylene from the supplier(s) of the octocrylene in the Covered Product at issue showing  
17 levels of benzophenone meeting the Octocrylene Reformulation Standard, or (2) a prior test result,  
18 using scientifically appropriate test methodologies, of the lot(s) of octocrylene used in the finished  
19 product which is the subject of the Notice of Breach, showing levels of benzophenone meeting the  
20 Octocrylene Reformulation Standard. If the Settling Defendant cannot demonstrate compliance, it  
21 must pay a stipulated civil penalty of \$25,000 to be allocated according to Section 3.1.

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



1 from the supplier of the octocrylene used to make the finished product which was the subject of the  
2 first Notice of Breach, and used to manufacture that finished product. If fewer than three (3) lots  
3 are received during the relevant time period, testing is required only for such lots as were received.  
4 Such a showing shall constitute compliance.

5 In the event that a Settling Defendant cannot demonstrate compliance in the manner set forth  
6 above after receipt of a second Notice of Breach for the same Covered Product, and Plaintiff  
7 thereafter provides notice in accordance with the provisions in this Section of a third alleged  
8 violation for the same Covered Product, Settling Defendant shall pay a stipulated penalty of  
9 \$50,000 for each such second or subsequent violation.

10 **15.2 Retailer Defendants**

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

15 **16. AUTHORIZATION**


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

19 AGREED TO:

AGREED TO:

20 Date: 5/23/16

20 Date: May 19<sup>th</sup>, 2016


21 By:   
22 Shefa LMV, LLC

21 By:   
22 THE ESTEE LAUDER COMPANIES INC.

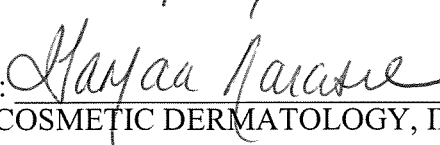
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24 SVP GLOBAL R&D

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Date: 5/23/16

By:   
Shefa LMV, LLC

Date: 5/23/2016

By:   
COSMETIC DERMATOLOGY, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Shefa LMV, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
CROWN LABORATORIES, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Shefa LMV, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
FIRST AID BEAUTY, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Shefa LMV, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
PETER THOMAS ROTH LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Shefa LMV, LLC


Date: \_\_\_\_\_

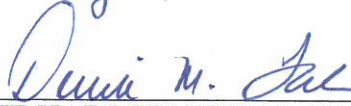
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BOOTS RETAIL USA, INC.

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Date: 5/23/16

Date: May 20, 2016

By:   
Shefa LMV, LLC

By:   
THE HAIN CELESTIAL GROUP, INC.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Shefa LMV, LLC

By: \_\_\_\_\_  
MARKWINS BEAUTY PRODUCTS,  
INC. and PHYSICIANS FORMULA,  
INC.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Shefa LMV, LLC

By: \_\_\_\_\_  
KISS MY FACE

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Shefa LMV, LLC

By: \_\_\_\_\_  
STRIVECTIN OPERATING CO., INC.  
aka NIADYNE, INC.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Shefa LMV, LLC

By: \_\_\_\_\_  
BEIERSDORF, INC.

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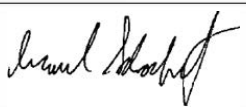
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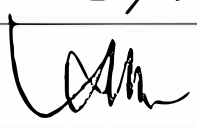
By: \_\_\_\_\_  
Shefa LMV, LLC

By: \_\_\_\_\_  
THE HAIN CELESTIAL GROUP, INC.

Date: 5/23/16

Date: 05/20/2016

By:   
Shefa LMV, LLC

By:   
MARKWINS BEAUTY PRODUCTS,  
INC. and PHYSICIANS FORMULA,  
INC.

Date: \_\_\_\_\_

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Shefa LMV, LLC

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KISS MY FACE

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Shefa LMV, LLC

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STRIVECTIN OPERATING CO., INC.  
aka NIADYNE, INC.

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BEIERSDORF, INC.

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Date: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
Shefa LMV, LLC THE HAIN CELESTRIAL GROUP, INC.

Date: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
Shefa LMV, LLC MARKWINS BEAUTY PRODUCTS,  
INC. aka PHYSICIANS FORMULA, INC.

Date: 5/23/16 Date: 5-20-2016

By:  By:   
Shefa LMV, LLC KISS MY FACE

Date: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
Shefa LMV, LLC STRIVECTIN OPERATING CO., INC.  
aka NIADYNE, INC.

Date: \_\_\_\_\_ Date: \_\_\_\_\_

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Shefa LMV, LLC BEIERSDORF, INC.

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THE HAIN CELESTRIAL GROUP, INC.

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Shefa LMV, LLC

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MARKWINS BEAUTY PRODUCTS,  
INC. aka PHYSICIANS FORMULA, INC.

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KISS MY FACE

Date: 5/23/16

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STRIVECTIN OPERATING CO., INC.  
NIADYNE, INC.

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Shefa LMV, LLC THE HAIN CELESTRIAL GROUP, INC.

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Shefa LMV, LLC MARKWINS BEAUTY PRODUCTS,  
INC. aka PHYSICIANS FORMULA, INC.

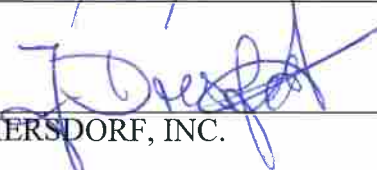
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Shefa LMV, LLC KISS MY FACE

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Shefa LMV, LLC STRIVECTIN OPERATING CO., INC.  
aka NIADYNE, INC.

Date: 5/23/16 Date: 5/20/2016

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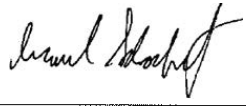
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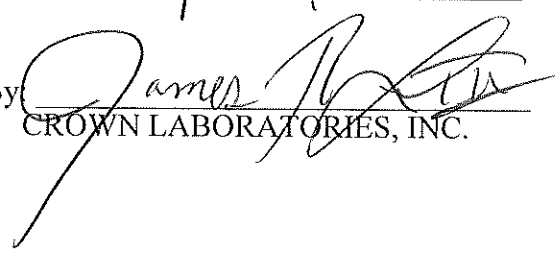
By: \_\_\_\_\_  
Shefa LMV, LLC

By: \_\_\_\_\_  
COSMETIC DERMATOLOGY, INC.

Date: 5/23/16

Date: May 18, 2016

By:   
Shefa LMV, LLC

By:   
CROWN LABORATORIES, INC.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Shefa LMV, LLC

By: \_\_\_\_\_  
FIRST AID BEAUTY, INC.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Shefa LMV, LLC

By: \_\_\_\_\_  
PETER THOMAS ROTH LLC

Date: \_\_\_\_\_

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By: \_\_\_\_\_  
Shefa LMV, LLC

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BOOTS RETAIL USA, INC.




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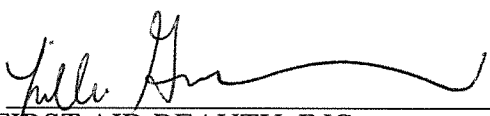
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CROWN LABORATORIES, INC.

Date: 5/23/16

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FIRST AID BEAUTY, INC.

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PETER THOMAS ROTH LLC

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By: \_\_\_\_\_ By: \_\_\_\_\_  
Shefa LMV, LLC COSMETIC DERMATOLOGY, INC.


Date: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
Shefa LMV, LLC CROWN LABORATORIES, INC.

Date: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
Shefa LMV, LLC FIRST AID BEAUTY, INC.

Date: 5/23/16 Date: 5/20/16

By:  By:   
Shefa LMV, LLC PETER THOMAS ROTH LLC

Date: \_\_\_\_\_ Date: \_\_\_\_\_

By: \_\_\_\_\_ By: \_\_\_\_\_  
Shefa LMV, LLC BOOTS RETAIL USA, INC.

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Shefa LMV, LLC

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COSMETIC DERMATOLOGY, INC.

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Shefa LMV, LLC

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CROWN LABORATORIES, INC.

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Shefa LMV, LLC

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FIRST AID BEAUTY, INC.

Date: \_\_\_\_\_

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By: \_\_\_\_\_  
Shefa LMV, LLC

By: \_\_\_\_\_  
PETER THOMAS ROTH LLC

Date: 5/23/16

Date: 5/24/16

By:   
Shefa LMV, LLC

By:   
BOOTS RETAIL USA, INC.

**EXHIBIT A**

I. Name of Settling Defendant (Mandatory)

**THE ESTÉE LAUDER COMPANIES INC. (previously named subsidiaries include ORIGINS NATURAL RESOURCES, INC. as DOE 20 and CLINIQUE LABORATORIES, LLC [incorrectly sued as CLINIQUE LABORATORIES, INC.] as DOE 22)**

II. Date(s) of 60-Day Notices of Violation (Mandatory)

**August 14, 2015**

**May 20, 2016**

III. Names of Releasees (Optional; May be Partial)

**Partial and not exhaustive list of releasees: drugstore.com, overstock.com, Nordstrom, Inc.**

IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants)

**Personal care products under the following illustrative and not intended to be exhaustive list of brand names: Aerin, Aramis, Aveda, Bobbi Brown, by Kilian, Bumble and bumble, Clinique, Coach, Darphin, Donna Karan New York, Editions de Parfums Frederic Malle, Ermenegilo Zegna, Estee Lauder, GLAMGLOW, GoodSkin Labs, Jo Malone London, Kiton, La Mer, Lab Series, Le Labo, MAC, Marni, Michael Kors, Ojon, Origins, Osiao, Prescriptives, RODIN olio lusso, Smashbox, Tom Ford, Tommy Hilfger, Tory Burch**

V. Settling Defendant's Required Settlement Payments (TBD for Each Settling Defendant)

A. Initial Civil Penalty: **\$16,000.00; (75%) to OEHHA: \$12,000.00; (25%) to Shefa: \$4,000.00**

B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): **\$47,000.00; (75%) to OEHHA: \$35,250.00; (25%) to Shefa: \$11,750.00.**

C. Reimbursement of attorneys' fees and costs: **\$22,000.00**

VI. Recipient of any notices pursuant to Section 9:

**Michèle Corash  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105**

**Andrea Lewis Allan  
Vice President and Legal Counsel  
The Estée Lauder Companies  
767 Fifth Avenue  
New York, NY 10153**

**Alejandro Bras  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105**

1 **EXHIBIT B**

2 I. Name of Settling Defendant (Mandatory)

3 **THE HAIN CELESTIAL GROUP, INC. as DOE 5**

4  
5 II. Date(s) of 60-Day Notices of Violation (Mandatory)

6 **May 8, 2015**

7 **May 20, 2016**

8 III. Names of Releasees (Optional; May be Partial)

9 **Partial list of releasees: drugstore.com, soap.com, Bristol Farms**

10  
11 IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in  
California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants)

12 **Illustrative and not intended to be exhaustive list of brand names: Alba Botanica, JASON**

13  
14 V. Settling Defendant's Required Settlement Payments

15 A. Initial Civil Penalty: **\$10,000.00; (75%) to OEHHA: \$7,500.00; (25%) to Shefa:  
\$2,500.00**

16 B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): **\$10,000.00; (75%) to  
17 OEHHA: \$7,500.00; (25%) to Shefa: \$2,500.00**

18 C. Reimbursement of attorneys' fees and costs: **\$22,000.00**

19 VI. Recipient of any notices pursuant to Section 9:

20  
21 **Trenton H. Norris**  
22 **Arnold & Porter LLP**  
23 **Three Embarcadero Center**  
24 **10<sup>th</sup> Floor**  
25 **San Francisco, CA 94111**

26 **Denise Faltischek**  
27 **Executive Vice President and**  
28 **General Counsel, Chief Compliance Officer**  
**The Hain Celestial Group, Inc.**  
**1111 Marcus Ave., Bldg. 1**  
**Lake Success, NY 11042**

1 **EXHIBIT C**

2 I. Name of Settling Defendant (Mandatory)

3 **MARKWINS BEAUTY PRODUCTS, INC. as DOE 33 and PHYSICIANS FORMULA, INC.**  
4 **as DOE 7**

5  
6 II. Date(s) of 60-Day Notices of Violation (Mandatory)

7 **May 8, 2015**  
8 **May 26, 2015**  
9 **May 20, 2016**

10 III. Names of Releasees (Optional; May be Partial)

11 **Partial list of releasees: Markwins International Corporation, Rite Aid Corporation,**  
12 **Walgreen Co., drugstore.com, Target Corporation**

13 IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in  
14 California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants)

15 **Illustrative and not intended to be exhaustive list of brand names: Physicians Formula, Wet n**  
16 **Wild, Black Radiance, Bonne Bell, Lip Smacker**

17 V. Settling Defendant's Required Settlement Payments

- 18 A. Initial Civil Penalty: **\$10,000.00; (75%) to OEHHA: \$7,500.00; (25%) to Shefa:**  
19 **\$2,500.00**
- 20 B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): **\$10,000.00; (75%) to**  
21 **OEHHA: \$7,500.00; (25%) to Shefa: \$2,500.00**
- 22 C. Reimbursement of attorneys' fees and costs: **\$22,000.00**

23 VI. Recipient of any notices pursuant to Section 9:

24 **Trenton H. Norris**  
25 **Arnold & Porter LLP**  
26 **Three Embarcadero Center**  
27 **10<sup>th</sup> Floor**  
28 **San Francisco, CA 94111**

**Roger Lin**  
**Markwins Beauty Products, Inc.**  
**Physicians Formula, Inc.**  
**22067 Ferrero Parkway**  
**City of Industry, CA 91789**

**EXHIBIT D**

I. Name of Settling Defendant (Mandatory)

KISS MY FACE, LLC as DOE 14

II. Date(s) of 60-Day Notices of Violation (Mandatory)

May 8, 2015  
May 20, 2016

III. Names of Releasees (Optional; May be Partial)

Partial list of Releasees: drugstore.com

IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants)

Kiss My Face

V. Settling Defendant's Required Settlement Payments  
(TBD for Each Settling Defendant)

- A. Initial Civil Penalty: \$10,000.00; (75%) to OEHHA: \$7,500.00; (25%) to Shefa: \$2,500.00
- B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): \$10,000.00; (75%) to OEHHA: \$7,500.00; (25%) to Shefa: \$2,500.00.
- C. Reimbursement of attorneys' fees and costs: \$22,000.00

VI. Recipient of any notices pursuant to Section 9:

Steve Michaelson, CEO  
Kiss My Face, LLC  
144 Main Street  
Gardiner, NY 12525

Peg Carew Toledo  
Peg Carew Toledo, Law Corporation  
3001 Douglas Blvd., Suite 340  
Roseville, CA 95658

**EXHIBIT E**

I. Name of Settling Defendant (Mandatory)

STRIVECTIN OPERATING CO., INC. as DOE 31; NIADYNE, INC. as DOE 30

II. Date(s) of 60-Day Notices of Violation (Mandatory)

May 8, 2015, May 14, 2015 and May 20, 2016

III. Names of Releasees (Optional; May be Partial)

Ulta Salon, Cosmetics and Fragrance, Inc.

IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants)

NIA 24 Sun Damage Prevention Broad Spectrum SPF 30 UVA/UVB Sunscreen  
StriVectin Repair & Protect Moisturizer Broad Spectrum SPF 30  
StriVectin Clinical Corrector Anti-Aging Lip Tint SPF 20 (all shades)  
StriVectin Advanced Retinol Day Moisturizer Broad Spectrum SPF 30  
StriVectin-SH Age Protect SPF 30  
StriVectin-WH Photo-White Day Lotion SPF 30  
StriVectin CC plum SPF 20; UPC: 817777007183  
NIA24 Niacin-Powered Skin Therapy; UPC: 852103000773

V. Settling Defendant's Required Settlement Payments  
(TBD for Each Settling Defendant)

- A. Initial Civil Penalty: \$10,000.00; (75%) to OEHHA: \$7,500.00; (25%) to Shefa: \$2,500.00
- B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): \$10,000.00; (75%) to OEHHA: \$7,500.00; (25%) to Shefa: \$2,500.00.
- C. Reimbursement of attorneys' fees and costs: \$22,000.00

VI. Recipient of any notices pursuant to Section 9:

Jason Kerr  
Counsel  
Price, Parkinson & Kerr  
5742 W. Harold Gatty Drive  
Salt Lake City, Utah 84116

Cori Aleardi  
Chief Financial Officer  
StriVectin Operating Company, Inc.  
Niadyne, Inc.  
1601 West 26<sup>th</sup> Street  
Suite 105  
New York, NY 10001



**EXHIBIT F**

I. Name of Settling Defendant (Mandatory)

BEIERSDORF, INC. as DOE 2

II. Date(s) of 60-Day Notices of Violation (Mandatory)

March 26, 2015

III. Names of Releasees (Optional; May be Partial)

\_\_\_\_\_  
\_\_\_\_\_

IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants)

Aquaphor Broad Spectrum SPF 30; UPC: 072140010119

V. Settling Defendant's Required Settlement Payments  
(TBD for Each Settling Defendant)

A. Initial Civil Penalty: \$10,000.00 (total amount), comprising of (75%) to OEHHA: \$7,500.00; (25%) to Shefa: \$2,500.00

B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): \$10,000.00 (total amount), comprising of (75%) to OEHHA: \$7,500.00; (25%) to Shefa: \$2,500.00.

C. Reimbursement of attorneys' fees and costs: \$22,000.00

VI. Recipient of any notices pursuant to Section 9:

\_\_\_\_\_  
Legal Department  
Beiersdorf, Inc.  
45 Danbury Road  
Wilton, CT, 06897  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Gregory Sperla  
  
Greenberg Traurig, LLP  
  
1201 K St., Suite 1100  
Sacramento, CA 95814  
\_\_\_\_\_

**EXHIBIT G**

I. Name of Settling Defendant (Mandatory)

COSMETIC DERMATOLOGY, INC. as DOE 19

II. Date(s) of 60-Day Notices of Violation (Mandatory)

May 8, 2015 and Supplemental Notice on May 20, 2016

III. Names of Releasees (Optional; May be Partial)

Includes but is not limited to Cosmetic Dermatology, Inc. and Drugstore.com.

IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants), but not limited to:

- Dr. Brandt BB cream; UPC: 663963008249

- Dr. Brandt personal care products

V. Settling Defendant's Required Settlement Payments

A. Initial Civil Penalty: \$5,500.00; (75%) to OEHHA: \$4,125.00; (25%) to Shefa: \$1,375.00

B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): \$5,000.00; (75%) to OEHHA: \$3,750.00; (25%) to Shefa: \$1,250.00.

C. Reimbursement of attorneys' fees and costs: \$22,000.00

VI. Recipient of any notices pursuant to Section 9:

Name: Tamara Narcisse  
Title: Executive Director of Finance  
Address: Cosmetic Dermatology, Inc.  
8798 NW 15th Street  
Miami, FL 33172

Name: Julie Hussey, Esq.  
Title: Attorney  
Address: Perkins Coie LLP  
11988 El Camino Real  
Suite 350  
San Diego, California 92130

**EXHIBIT H**

I. Name of Settling Defendant (Mandatory)

CROWN LABORATORIES, INC. as DOE 16

II. Date(s) of 60-Day Notices of Violation (Mandatory)

May 26, 2015

III. Names of Releasees (Optional; May be Partial)

Crown Laboratories, Inc; Drugstore.com

IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants)

All BLUE LIZARD Sport Sunscreen, including but not limited to UPC Nos. 600270788 and 303162020504.

BLUE LIZARD Regular Sunscreen, including but not limited to UPC No. 600027000108.

V. Settling Defendant's Required Settlement Payments  
(TBD for Each Settling Defendant)

A. Initial Civil Penalty: \$5,500.00; (75%) to OEHHA: \$4,125.00; (25%) to Shefa: \$1,375.00

B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): \$5,000.00; (75%) to OEHHA: \$3,750.00; (25%) to Shefa: \$1,250.00

C. Reimbursement of attorneys' fees and costs: \$22,000.00

VI. Recipient of any notices pursuant to Section 9:

James R. Lawrence, III \_\_\_\_\_  
Name

Jeffery A. Bedard \_\_\_\_\_  
Name

General Counsel \_\_\_\_\_  
Title

Chief Executive Officer \_\_\_\_\_  
Title

349 Lafe Cox Drive, Johnson City, TN 37604 \_\_\_\_\_  
Address

349 Lafe Cox Drive, Johnson City, TN 37604 \_\_\_\_\_  
Address

**EXHIBIT I**

I. Name of Settling Defendant (Mandatory)

**FIRST AID BEAUTY, INC. as DOE 32**

II. Date(s) of 60-Day Notices of Violation (Mandatory)

**May 26, 2015**

III. Names of Releasees (Optional; May be Partial)

**Partial list of Releasees includes, but is not limited to, Drugstore.com.**

IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants)

**5 in 1 Face Cream SPF 30; UPC: 851939002081**

V. Settling Defendant's Required Settlement Payments

A. Initial Civil Penalty: **\$5,500.00**; (75%) to OEHHA: \$4,125.00; (25%) to Shefa: \$1,375.00

B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): \$5,000.00; (75%) to OEHHA: \$3,750.00; (25%) to Shefa: \$1,250.00.

C. Reimbursement of attorneys' fees and costs: **\$22,000.00**

VI. Recipient of any notices pursuant to Section 9:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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**EXHIBIT J**

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I. Name of Settling Defendant (Mandatory)

**PETER THOMAS ROTH LABS LLC as DOE 24**

II. Date(s) of 60-Day Notices of Violation (Mandatory)

**March 26, 2015**

III. Names of Releasees (Optional; May be Partial)

**Partial list of Releasees includes, but is not limited to, Beauty and Supplement Emporium.**

IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants)

**Peter Thomas Roth Max Sheer All Day Moisture Defense; UPC: 670367013243**

V. Settling Defendant's Required Settlement Payments

A. Initial Civil Penalty: **\$5,500.00**; (75%) to OEHHA: \$4,125.00; (25%) to Shefa: \$1,375.00

B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): \$5,000.00; (75%) to OEHHA: \$3,750.00; (25%) to Shefa: \$1,250.00.

C. Reimbursement of attorneys' fees and costs: \$22,000.00

VI. Recipient of any notices pursuant to Section 9:

\_\_\_\_\_

Name

\_\_\_\_\_

Name

\_\_\_\_\_

Title

\_\_\_\_\_

Title

\_\_\_\_\_

Address

\_\_\_\_\_

Address

**EXHIBIT K**

I. Name of Settling Defendant (Mandatory)

BOOTS RETAIL USA, INC. as DOE 28

II. Date(s) of 60-Day Notices of Violation (Mandatory)

May 8, 2015

May 20, 2016

III. Names of Releasees (Optional; May be Partial)

All entities subject to sections 4.1, 4.2, 4.3, including, but not limited to:

1. ULTA SALON, COSMETICS & FRAGRANCE, INC
2. Target Corporation
3. Walgreen Co.

IV. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in California, or sold in California by Settling Defendant (Mandatory for all Settling Defendants)

No. 7 Dual Action SPF 15; Botanics Organic Hydrating Day Cream

V. Settling Defendant's Required Settlement Payments  
(TBD for Each Settling Defendant)

- A. Initial Civil Penalty: \$5,500.00; (75%) to OEHHA: \$4,125.00; (25%) to Shefa: \$1,375.00
- B. Final Civil Penalty (Unless waived pursuant to Section 3.1.2): \$5,000.00; (75%) to OEHHA: \$3,750.00; (25%) to Shefa: \$1,250.00.
- C. Reimbursement of attorneys' fees and costs: \$22,000.00

VI. Recipient of any notices pursuant to Section 9:

Anthony Cortez  
Greenberg Traurig, LLP  
1201 K St., Suite 1100  
Sacramento, CA 95814

Legal Department  
Boots Retail USA Inc.  
40 Wall Street,  
22nd Floor,  
New York, NY 10005

# **EXHIBIT L**

## 60-DAY NOTICE OF VIOLATION

*SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)*

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**DATE: May 8, 2015**

**To:** Drugstore.com; Soap.com; Supergoop; Taylor James, Ltd; Valeant Pharmaceuticals North America LLC; Chums, Inc.; The Hain Celestial Group, Inc.; Lotus Brands, Inc.; Pierre Fabre Dermo Cosmetique USA, Inc.; Kiss My Face; Boots Retail USA, Inc.; C&K, LLC; The Hain Celestial Group, Inc.; Children's Healthcare Research Group, LLC; StriVectin Operating Company Inc.; Concept II Cosmetics Inc.; No-ad Products, LLC; Carma Laboratories Inc.; Physicians Formula, Inc.; Colour Prevails LLC; and

California Attorney General's Office;

District Attorney's Office for 58 Counties; and

City Attorney's Office for Los Angeles, San Diego, San Jose and San Francisco.

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**From:** Shefa LMV, LLC

### I. INTRODUCTION

Our name is Shefa LMV, LLC. We are citizens and a Limited Liability Company of the State of California acting in the interest of the general public. We seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve public health and safety by reducing the hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6, et seq. ("Proposition 65"). The violations alleged by this Notice consist of product exposures, routes of exposures, and types of harm that may potentially result from exposures to the toxic chemical ("listed chemical") identified below:

<b>Product Exposure:</b>	<b>See Section VII, Exhibit A</b>
<b>Listed Chemical:</b>	<b>Benzophenone;</b>
<b>Routes of Exposure:</b>	<b>Dermal absorption;</b>
	<b>Ingestion; and Inhalation</b>
<b>Types of Harm:</b>	<b>Carcinogen</b>

### II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and which is the subject of this Notice, is listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the "products." The sales of these products in California dating at least as far back as **June 23, 2013** are subject to this Notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and responsible warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products from dermal and ingestion exposure as well as inhalation, California citizenry lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.



Through the act of buying, acquiring and using the products, citizens of California are exposed to the listed chemical in homes, workplaces and elsewhere throughout California where these products are utilized. Exposure to consumers includes, but is not limited to, application to their bodies, their pets or their children. Exposure to consumers includes, but is not limited to, when handling the product Benzophenone is absorbed through dermal, and other migration pathways, including but not limited to incidental ingestion after one touch's the chemical and then touch's food or otherwise places his hands on or near his lips where his tongue can or will continue this pathway to ingestion exposure. Exposure may continue to occur for a significant period after the initial contact. People likely to be exposed are women, men, infants and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed by the state as known to cause cancer.

### **III. CONTACT INFORMATION**

Please direct all questions concerning this notice to us through our counsel's offices at the following address:

Daniel N. Greenbaum, Esq.  
7120 Hayvenhurst Avenue, Suite 320  
Van Nuys, CA 91406  
Main: (818) 809-2199  
Fax: (424) 243-7689  
Email: [dgreenbaum@greenbaumlawfirm.com](mailto:dgreenbaum@greenbaumlawfirm.com)

### **IV. PROPOSITION 65 INFORMATION**

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment ("OEHHA") in the Proposition 65 Implementation Office at (916) 445-6900. For the alleged Violator(s), I have attached a copy of "Proposition 65 in Plain Language" which has been prepared by OEHHA.

### **V. RESOLUTION OF NOTICED CLAIMS**

Based on the allegations set forth in this Notice, we intend to file a citizen enforcement lawsuit against the alleged Violator(s), unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future, or reformulate such products to eliminate the Benzophenone exposures.

If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day Notice period elapses; nor (2) speak for the Attorney General or any District Attorney or City Attorney who received this Notice. Therefore, while reaching an agreement that will resolve my claims, such an agreement may not be approved by the Attorney General after referral to them, or by the court as the last voice on settlements.

## VI. ADDITIONAL INFORMATION

### Product

Sunscreen; Face lotion; Lip tint;  
Lip Balm; Skin Cream

### Retailer(s)

Drugstore.com; Soap.com

### Manufacturer(s)/Distributor(s)

Supergoop; Taylor James, Ltd.;  
Valeant Pharmaceuticals North  
America LLC; Chums, Inc.; The  
Hain Celestial Group, Inc.; Lotus  
Brands, Inc.; Pierre Fabre Dermo  
Cosmetique USA, Inc.; Kiss My  
Face; Boots Retail USA, Inc.; C&K,  
LLC; The Hain Celestial Group,  
Inc.; Children's Healthcare Research  
Group, LLC; StriVectin Operating  
Company Inc.; Concept II Cosmetics  
Inc.; No-ad Products, LLC; Carma  
Laboratories Inc.; Physicians  
Formula, Inc.; Colour Prevails LLC

## VII. EXHIBIT A

Identified below are named products which contain the alleged chemicals at issue, and this reference is supportive of the material facts that are a part of my counsels Certificate of Merit that is attached hereto as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warnings” at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business to business, through the internet, and/or via catalog by the alleged Violator(s) and other distributors and retailers of the product.

<b>Product Category</b>	<b>Specific Product</b>	<b>UPC</b>	<b>Sold by</b>	<b>Manufacturer/Distributor</b>
Sunscreen	Supergoop! SPF 30 w/ vitamin C	894280001662	drugstore.com	Supergoop / Taylor James, Ltd.
Sunscreen	CeraVe wet skin spray SPF 50	301872206010	drugstore.com	Valeant Pharmaceuticals North America LLC
Sunscreen	Beyond Coastal Active Facestick SPF 30	093039150167	drugstore.com	Chums, Inc.
Sunscreen	Alba Botanica Hawaiian Greentea SPF 45	724742008277	drugstore.com	The Hain Celestial Group, Inc.
Face Lotion	BWC daily facial lotion SPF 18	000056454154	drugstore.com	Lotus Brands, Inc.
Sunscreen	Eau Thermale Avene SPF 50	838760007898	drugstore.com	Pierre Fabre Dermo Cosmetique USA, Inc.
Sunscreen	Kiss my Face Kids defense spray SPF 50	028367841975	drugstore.com	Kiss My Face
Skin Cream	No. 7 Dual Action SPF 15	5000167143218	drugstore.com	Boots Retail USA, Inc.
Sunscreen	Coola Sport Unscented SPF 50	853319002735	drugstore.com	C&K, LLC
Sunscreen	Jason Sun Sport Sunscreen SPF 45	078522083207	Soap.com	The Hain Celestial Group, Inc.
Sunscreen	Baby blanket faces SPF 50	050778150032	drugstore.com	Children's Healthcare Research Group, LLC
Lip Tint	Strivectin CC plum SPF 20	817777007183	drugstore.com	StriVectin Operating Co. Inc.
Sunscreen	SolScents Broad Spectrum Flower BlastSPF 50	763319108620	drugstore.com	Concept II Cosmetics Inc.
Sunscreen	No-Ad Broad Spectrum SPF 85	897640002286	drugstore.com	No-ad Products, LLC
Lip Balm	Carmex Cherry Lip Balm	083078000301	drugstore.com	Carma Laboratories Inc.
Skin Cream	Physicians Formula Wrinkle Corrector SPF 15	044386075276	drugstore.com	Physicians Formula, Inc.
Skin Cream	Nonie Crème Colour Prevails Spectrum SPF 20	812580020091	drugstore.com	Colour Prevails LLC

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this case or action. My business address is: **7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406**

A True and Correct copy of the documents entitled **60 DAY NOTICE OF VIOLATION; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** will be served or was served in the manner stated below:

I. Interested Parties (Served via Certified Mail): On May 8, 2015, I served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, postage prepaid, and addressed as follows:

Drugstore.com	ATTN: CEO or President	12835 Old Virginia Rd., Reno, NV 89521
Soap.com	ATTN: CEO or President	PO Box 483, Jersey City NJ 07303
Supergoop	ATTN: CEO or President	200 E GRAYSON ST STE 112, SAN ANTONIO, TX 78215-1269
Supergoop	ATTN: Holly Thaggard	2843 Thomas Ave., Dallas TX 75204
Taylor James Ltd.	ATTN: Taylor Thaggard	314 E. Commerce Street Suite 300, San Antonio TX 78205
Valeant Pharmaceuticals North America LLC	ATTN: CEO or President	700 RTE 202, BRIDGEWATER, NJ 08807
Valeant Pharmaceuticals North America LLC	ATTN: CEO or President	280 S. Mangum Street, Suite 210, Durham NC 27701
Valeant Pharmaceuticals North America LLC	ATTN: CEO or President	400 Somerset Corporate Blvd., Bridgewater NJ 08807
Chums, Inc.	ATTN: Charles Ferries	2424 South 2570 West, Salt Lake City, UT 84119
The Hain Celestial Group, Inc.	ATTN: General Counsel	1111 MARCUS AVE., NEW HYDE PARK, NY 11042-1221
Lotus Brands, Inc.	ATTN: Santosh Krinsky	1100 Lotus Drive Building 3, Silver Lake, WI 53170
Pierre Fabre Dermo Cosmetique USA, Inc.	ATTN: CEO or President	8 Campus Dr, Parsippany, NJ 07054
Kiss My Face	ATTN: CEO or President	144 MAIN ST., GARDINER, NY 12525-5245
C/O CT CORPORATION SYSTEM	Kiss My Face	111 8 <sup>th</sup> Ave., New York NY 10011
Boots Retail USA, Inc.	ATTN: CEO or President	383 Main Ave., 7th Floor, Norwalk, CT 06851
Corporation Service Company	c/o Boots Retail USA, Inc.	50 Weston Street, Hartford CT 06120
C & K, LLC	ATTN: CEO or President	1726 ORD WAY, OCEANSIDE, CA 92056-1501
C & K, LLC	ATTN: Julie Cardin	1726 ORD WAY, OCEANSIDE, CA 92056-1501
Children's Healthcare Research Group, LLC	ATTN: CEO or President	1504 BREAKERS WEST BLVD., WEST PALM BEACH, FL 33411
Children's Healthcare Research Group, LLC	C/O Kevin Richardson, Esq.	1401 Forum Way, Suite 720, West Palm Beach FL 33401
The Mercer Group LTD	ATTN: CEO or President	254 Hornbine Road, Rehoboth MA 02769
The Mercer Group LTD	ATTN: John Mercer	1628 Highland Ave., Fall River MA 02720
StriVectin Operating Company Inc.	ATTN: CEO or President	601 W 26TH ST., Suite 1505, NEW YORK, NY 10001-1138
Richard D. Gersten & Jonathan H. Owsley	StriVectin Operating Co, Inc.	7 Greenwich O.P. Ste 200, 599 West Putnam Ave., Greenwich CT 06830
Concept II Cosmetics	ATTN: CEO or President	2200 NW 92ND AVE., MIAMI, FL 33172-4813

Concept II Cosmetics	ATTN: Daniel Bittner	2200 NW 92ND AVE., MIAMI, FL 33172-4813
No-ad Products, LLC	ATTN: CEO or President	851 GREENSBORO RD., COCOA, FL 32926-4516
Carma Laboratories, Inc.	ATTN: CEO or President	9750 S FRANKLIN DR., FRANKLIN, WI 53132-8848
Carma Laboratories, Inc.	ATTN: Paul A. Woelbing	5801 W. Airways Ave., Franklin WI 53132
Physicians Formula, Inc.	ATTN: CEO or President	22067 FERRERO PKWY, CITY OF INDUSTRY, CA 91789-5214
Physicians Formula, Inc.	ATTN: Leslie Keegan	22067 FERRERO PKWY, CITY OF INDUSTRY, CA 91789-5214
Colour Prevails LLC	ATTN: CEO or President	950 3RD AVE., 3 <sup>rd</sup> Floor, NEW YORK, NY 10022-2705
Colour Prevails LLC	ATTN: Stuart J. Litman	950 3RD AVE., 3 <sup>rd</sup> Floor, NEW YORK, NY 10022-2705

II. California Attorney General (via website Portal): On May 8, 2015, I uploaded a true and correct copy thereof as a PDF file via the California Attorney General's website.

III. District and City Attorneys (via U.S. Mail): On May 8, 2015, I served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and addressed as follows **See attached pages for full service list**

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

May 8, 2015

Daniel N. Greenbaum, Esq.

*Date*

*Printed Name*



*Signature*

District Attorney  
ALAMEDA COUNTY  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney  
ALPINE COUNTY  
PO Box 248  
Markleeville, CA 96120

District Attorney  
AMADOR COUNTY  
708 Court Street, #202  
Jackson, CA 95642

District Attorney  
BUTTE COUNTY  
25 County Center Drive —  
Administration Building  
Oroville, CA 95965

District Attorney  
CALAVERAS COUNTY  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney  
COLUSA COUNTY  
346 5th Street, Suite. 101  
Colusa, CA 95932

District Attorney  
CONTRA COSTA COUNTY  
900 Ward Street  
Martinez, CA 94553

District Attorney  
DEL NORTE COUNTY  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney  
EL DORADO COUNTY  
515 Main Street  
Placerville, CA 95667

District Attorney  
FRESNO COUNTY  
2220 Tulare Street, Suite. 1000  
Fresno, CA 93721

District Attorney  
GLENN COUNTY  
PO Box 430  
Willows, CA 95988

District Attorney  
HUMBOLDT COUNTY  
825 5th Street  
Eureka, CA 95501

District Attorney  
IMPERIAL COUNTY  
940 West Main Street, Suite. 102  
El Centro, CA 92243

District Attorney  
INYO COUNTY  
168 North Edwards  
Independence, CA 93526

District Attorney  
KERN COUNTY  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney  
KINGS COUNTY  
1400 West Lacey Blvd.  
Hanford, CA 93230

District Attorney  
LAKE COUNTY  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney  
LASSEN COUNTY  
220 S. Lassen Street, Suite. 8  
Susanville, CA 96130

District Attorney  
LOS ANGELES COUNTY  
210 W. Temple Street  
Los Angeles, CA 90012

District Attorney  
MADERA COUNTY  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney  
MARIN COUNTY  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

District Attorney  
MARIPOSA COUNTY  
PO BOX 730  
Mariposa, CA 95338

District Attorney  
MENDOCINO COUNTY  
PO BOX 1000  
Ukiah, CA 95482

District Attorney  
MERCED COUNTY  
550 West Main Street  
Merced, CA 95340

District Attorney  
MODOC COUNTY  
204 S. Court Street, Room 202  
Alturas, CA 96101

District Attorney  
MONO COUNTY  
PO BOX 2053  
Mammoth Lakes, CA 93546

District Attorney  
MONTEREY COUNTY  
PO BOX 1131  
Salinas, CA 93902

District Attorney  
NAPA COUNTY  
PO BOX 720  
Napa, CA 94559

District Attorney  
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1355 West Street  
Redding, CA 96001

District Attorney  
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100 Courthouse Square  
Downieville, CA 95936

District Attorney  
SISKIYOU COUNTY  
PO BOX 986  
Yreka, CA 96097

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Fairfield, CA 94533

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Weaverville, CA 96093

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TULARE COUNTY  
221 South Mooney Blvd., Suite 224  
Visalia, CA 93291

District Attorney  
TUOLUMNE COUNTY  
423 No. Washington Street  
Sonora, CA 95370

District Attorney  
VENTURA COUNTY  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney  
YOLO COUNTY  
301 Second Street  
Woodland, CA 95695

District Attorney  
YUBA COUNTY  
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San Jose, CA 95113

Dennis J. Herrera  
City Attorney  
CITY OF SAN FRANCISCO  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

## CERTIFICATE OF MERIT

I, Daniel N. Greenbaum, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

(2) I am the attorney for the noticing party.

(3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.

(4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

(5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

May 8, 2015

Daniel N. Greenbaum, Esq.



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*Date*

---

*Printed Name*

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*Signature*



## 60-DAY NOTICE OF VIOLATION

*SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)*

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**DATE: May 26, 2015**

**To:** Drugstore.com; PEY Beauty and Health LLC; Crown Laboratories, Inc.; First Aid Beauty LLC; Markwins Beauty Products, Inc. and

California Attorney General's Office;

District Attorney's Office for 58 Counties; and

City Attorney's Office for Los Angeles, San Diego, San Jose and San Francisco.

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**From:** Shefa LMV, LLC

### I. INTRODUCTION

Our name is Shefa LMV, LLC. We are citizens and a Limited Liability Company of the State of California acting in the interest of the general public. We seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve public health and safety by reducing the hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6, et seq. ("Proposition 65"). The violations alleged by this Notice consist of product exposures, routes of exposures, and types of harm that may potentially result from exposures to the toxic chemical ("listed chemical") identified below:

<b>Product Exposure:</b>	<b>See Section VII, Exhibit A</b>
<b>Listed Chemical:</b>	<b>Benzophenone;</b>
<b>Routes of Exposure:</b>	<b>Dermal absorption;</b>
	<b>Ingestion; and Inhalation</b>
<b>Types of Harm:</b>	<b>Carcinogen</b>

### II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and which is the subject of this Notice, is listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the "products." The sales of these products in California dating at least as far back as **June 23, 2013** are subject to this Notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and responsible warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products from dermal and ingestion exposure as well as inhalation, California citizenry lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

Through the act of buying, acquiring and using the products, citizens of California are exposed to the listed chemical in homes, workplaces and elsewhere throughout California where these products are utilized. Exposure to consumers includes, but is not limited to, application to their bodies, their pets or their children. Exposure to consumers includes, but is not limited to, when handling the product

Benzophenone is absorbed through dermal, and other migration pathways, including but not limited to incidental ingestion after one touch's the chemical and then touch's food or otherwise places his hands on or near his lips where his tongue can or will continue this pathway to ingestion exposure. Exposure may continue to occur for a significant period after the initial contact. People likely to be exposed are women, men, infants and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed by the state as known to cause cancer.

### **III. CONTACT INFORMATION**

Please direct all questions concerning this notice to us through our counsel's offices at the following address:

Daniel N. Greenbaum, Esq.  
7120 Hayvenhurst Avenue, Suite 320  
Van Nuys, CA 91406  
Main: (818) 809-2199  
Fax: (424) 243-7689  
Email: [dgreenbaum@greenbaumlawfirm.com](mailto:dgreenbaum@greenbaumlawfirm.com)

### **IV. PROPOSITION 65 INFORMATION**

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment ("OEHHA") in the Proposition 65 Implementation Office at (916) 445-6900. For the alleged Violator(s), I have attached a copy of "Proposition 65 in Plain Language" which has been prepared by OEHHA.

### **V. RESOLUTION OF NOTICED CLAIMS**

Based on the allegations set forth in this Notice, we intend to file a citizen enforcement lawsuit against the alleged Violator(s), unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future, or reformulate such products to eliminate the Benzophenone exposures.

If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day Notice period elapses; nor (2) speak for the Attorney General or any District Attorney or City Attorney who received this Notice. Therefore, while reaching an agreement that will resolve my claims, such an agreement may not be approved by the Attorney General after referral to them, or by the court as the last voice on settlements.

## VI. ADDITIONAL INFORMATION

<u>Product</u>	<u>Retailer(s)</u>	<u>Manufacturer(s)/Distributor(s)</u>
Sunscreen; Skin Cream; Face Cream	Drugstore.com	PEY Beauty and Health LLC; Crown Laboratories, Inc.; First Aid Beauty LLC; Markwins Beauty Products, Inc.

## VII. EXHIBIT A

Identified below are named products which contain the alleged chemicals at issue, and this reference is supportive of the material facts that are a part of my counsels Certificate of Merit that is attached hereto as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warnings” at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business to business, through the internet, and/or via catalog by the alleged Violator(s) and other distributors and retailers of the product.

<b>Product Category</b>	<b>Specific Product</b>	<b>UPC</b>	<b>Sold by</b>	<b>Manufacturer/Distributor</b>
Skin Cream	Happy Me anti aging hand repair SPF 30	856114000647	Drugstore.com	PEY Beauty and Health LLC
Sunscreen	Blue Lizard Australian Sunscreen Sport SPF 30+	600027000375	Drugstore.com	Crown Laboratories, Inc.
Face Cream	5 in 1 Face Cream SPF 30	851939002081	Drugstore.com	First Aid Beauty LLC
Skin Cream	Black Radiance BB Cream SPF 15	077802645340	Drugstore.com	Markwins Beauty Products Inc.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this case or action. My business address is: **7120 Hayvenhurst Avenue, Suite 320, Van Nuys, CA 91406**

A True and Correct copy of the documents entitled **60 DAY NOTICE OF VIOLATION; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** will be served or was served in the manner stated below:

I. Interested Parties (Served via Certified Mail): On May 26, 2015, I served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, postage prepaid, and addressed as follows:

Drugstore.com	ATTN: CEO or President	12835 Old Virginia Rd., Reno, NV 89521
PEY Beauty and Health LLC	ATTN: Nate Dakar	1456 S DURANGO AVE., LOS ANGELES CA 90035
Crown Laboratories, Inc.	ATTN: Libby Erwin	349 Lafe Cox Drive, Johnson City, TN 37604
First Aid Beauty	ATTN: CEO or President	246 WALNUT ST., STE 302, NEWTON, MA 02460-1639
CT Corporation System	c/o First Aid Beauty	155 Federal St., Suite 700, Boston MA 02110
First Aid Beauty LLC	ATTN: Lilli Gordon	51 WATER ST. STE. 202, WATERTOWN, MA 02472
Markwins Beauty Products, Inc.	ATTN: CEO or President	22067 FERRERO PKWY., CITY OF INDUSTRY, CA 91789
Markwins Beauty Products, Inc.	ATTN: Frederick Gartside	1900 Avenue of the Stars, 7 <sup>th</sup> Floor, Los Angeles CA 90067

II. California Attorney General (via website Portal): On May 26, 2015, I uploaded a true and correct copy thereof as a PDF file via the California Attorney General's website.

III. District and City Attorneys (via U.S. Mail): On May 26, 2015, I served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and addressed as follows **See attached pages for full service list**

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

May 26, 2015

*Date*

Daniel N. Greenbaum, Esq.

*Printed Name*



*Signature*

District Attorney  
ALAMEDA COUNTY  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney  
ALPINE COUNTY  
PO Box 248  
Markleeville, CA 96120

District Attorney  
AMADOR COUNTY  
708 Court Street, #202  
Jackson, CA 95642

District Attorney  
BUTTE COUNTY  
25 County Center Drive —  
Administration Building  
Oroville, CA 95965

District Attorney  
CALAVERAS COUNTY  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney  
COLUSA COUNTY  
346 5th Street, Suite. 101  
Colusa, CA 95932

District Attorney  
CONTRA COSTA COUNTY  
900 Ward Street  
Martinez, CA 94553

District Attorney  
DEL NORTE COUNTY  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney  
EL DORADO COUNTY  
515 Main Street  
Placerville, CA 95667

District Attorney  
FRESNO COUNTY  
2220 Tulare Street, Suite. 1000  
Fresno, CA 93721

District Attorney  
GLENN COUNTY  
PO Box 430  
Willows, CA 95988

District Attorney  
HUMBOLDT COUNTY  
825 5th Street  
Eureka, CA 95501

District Attorney  
IMPERIAL COUNTY  
940 West Main Street, Suite. 102  
El Centro, CA 92243

District Attorney  
INYO COUNTY  
168 North Edwards  
Independence, CA 93526

District Attorney  
KERN COUNTY  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney  
KINGS COUNTY  
1400 West Lacey Blvd.  
Hanford, CA 93230

District Attorney  
LAKE COUNTY  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney  
LASSEN COUNTY  
220 S. Lassen Street, Suite. 8  
Susanville, CA 96130

District Attorney  
LOS ANGELES COUNTY  
210 W. Temple Street  
Los Angeles, CA 90012

District Attorney  
MADERA COUNTY  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney  
MARIN COUNTY  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

District Attorney  
MARIPOSA COUNTY  
PO BOX 730  
Mariposa, CA 95338

District Attorney  
MENDOCINO COUNTY  
PO BOX 1000  
Ukiah, CA 95482

District Attorney  
MERCED COUNTY  
550 West Main Street  
Merced, CA 95340

District Attorney  
MODOC COUNTY  
204 S. Court Street, Room 202  
Alturas, CA 96101

District Attorney  
MONO COUNTY  
PO BOX 2053  
Mammoth Lakes, CA 93546

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## CERTIFICATE OF MERIT

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(2) I am the attorney for the noticing party.

(3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.

(4) Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

(5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

May 26, 2015

Daniel N. Greenbaum, Esq.



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*Date*

---

*Printed Name*

---

*Signature*