

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

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

FORM JUS 1501
(03-01)

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

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV LLC			
	DEFENDANT(S) INVOLVED IN SETTLEMENT Colour Prevails LLC			
CASE INFO	COURT DOCKET NUMBER CIV1503341		COURT NAME Marin County Superior Court	
	SHORT CASE NAME Shefa LMV LLC v. Concept II Cosmetics			
REPORT INFO	INJUNCTIVE RELIEF Reformulation and/or warning label			
	PAYMENT: CIVIL PENALTY \$2,500	PAYMENT: ATTORNEYS FEES \$11,000	PAYMENT: OTHER 0.00	For Internal Use Only
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 5 / 23 / 2016	
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum			
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698	
	CITY Van Nuys	STATE ZIP CA 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com	

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

1 LAW OFFICE OF DANIEL N. GREENBAUM
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4 Van Nuys, CA 91406
Telephone: (818) 809-2199
5 Facsimile: (424) 243-7689
6 Email: dgreenbaum@greenbaumlawfirm.com

7 Attorney for Plaintiff SHEFA LMV, LLC

8 LOEB & LOEB LLP
Albert M. Cohen, Esq.
9 10100 Santa Monica Blvd., Suite 2200
Los Angeles CA 90067
10 Telephone: (310) 282-2228
Facsimile: (310) 919-3825
11 Email: acohen@loeb.com

12 Attorneys for Defendant COLOUR PREVAILS LLC

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

18 SHEFA LMV, LLC.,) Case No. CIV 1503341
19 Plaintiff,)
20 vs.) **[PROPOSED] CONSENT JUDGMENT**
21 CONCEPT II COSMETICS, LLC; and DOES 1) **AS TO COLOUR PREVAILS LLC**
22 through 50, inclusive,)
23 Defendants.)
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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff
4 Shefa LMV, LLC (“**Shefa**” or “**Plaintiff**”) and Colour Prevails LLC (“**Colour Prevails**” or
5 “**Settling Defendant**”), with Shefa and Colour Prevails individually referred to as a “**Party**” and
6 collectively as the “**Parties.**”

7 **1.2 Plaintiff**

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

11 **1.3 Settling Defendant**

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

15 **1.4 Products Covered**

16 The products covered by this Consent Judgment are skin creams alleged to contain
17 benzophenone that are manufactured, sold, or distributed for sale in California by Colour
18 Prevails including, but not limited to, Nonie Crème Colour Prevails Spectrum SPF 20; UPC:
19 31 580020091 (collectively, “**Covered Products**”).

20 **1.5 General Allegations**

21 Shefa alleges that Colour Prevails manufactures, imported, sold, or distributed, for sale in
22 the state of California, skin creams that contained benzophenone without first providing a clear
23 and reasonable warning required by Proposition 65. Benzophenone (CAS # 119-61-9) is a
24 chemical listed under Proposition 65 as a chemical “known to the state to cause cancer” as
25 Proposition 65 defines that term. 27 CCR 25000. Colour Prevails denies these allegations.

26 **1.6 Notice of Violation**

27 On May 8, 2015, Shefa served Colour Prevails, others, and the requisite public
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1 enforcement agencies with a 60-Day Notice of Violation (“**Notice**”) alleging that Colour
2 Prevails violated Proposition 65 when it failed to warn its customers and consumers in California
3 that the Covered Products expose users to benzophenone. To the best of the Parties’ knowledge,
4 no public enforcer has commenced and is diligently prosecuting the allegations set forth in the
5 Notice.

6 **1.7 Settlement Agreement**

7 The parties previously executed an agreement dated December 4, 2015 to settle the
8 claims asserted in the Notice (“**Settlement Agreement**”). The Parties agree that upon the Parties’
9 execution of this Consent Judgment, the Settlement Agreement shall be rescinded.

10 Pursuant to the Settlement Agreement, Colour Prevails previously remitted the payments
11 specified in Section 3. The Parties agree that the Law Office of Daniel N. Greenbaum shall
12 retain in trust all funds paid under the Settlement Agreement -- other than the civil penalty
13 payment to be distributed to OEHHA -- pending the Court’s consideration of the motion to
14 approve this Consent Judgment. Upon entry of this Consent Judgment, the funds previously
15 paid by Colour Prevails pursuant to the Settlement Agreement shall be deemed to satisfy all the
16 monetary requirements of this Consent Judgment, as set forth in Section 3.

17 **1.8 Complaint**

18 On September 10, 2015, Shefa filed a complaint in the Superior Court in and for the
19 County of Marin against Concept II Cosmetics, LLC and DOES 1-150, alleging violations of
20 California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in
21 certain products containing sunscreen sold in the State of California (the “**Complaint**”). On
22 May 23, 2016, Shefa filed a DOE Amendment under Code Civ. Proc. § 474, listing Colour
23 Prevails LLC as DOE 37.

24 **1.9 No Admission**

25 Colour Prevails denies the material, factual, and legal allegations contained in the Notice
26 and Complaint and maintains that all of the products it has manufactured, sold, or distributed for
27 sale in California, including the Covered Products, have been, and are, in compliance with all

1 laws. Nothing in this Consent Judgment shall be construed as an admission by Colour Prevails
2 of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance
3 with this Consent Judgment constitute or be construed as an admission by Colour Prevails of any
4 fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically
5 denied by Colour Prevails. This section shall not, however, diminish or otherwise affect Colour
6 Prevails's obligations, responsibilities, and duties under this Consent Judgment.

7 **1.10 Consent to Jurisdiction**

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

14 **1.11 Effective Date**

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

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

18 **2.1 Reformulation Standards**

19 "**Reformulated Products**" are defined as those Covered Products containing
20 benzophenone in concentrations less than or equal to 12.5 parts per million ("**ppm**") when
21 analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection
22 Agency testing methodologies 3580A and 8270C or any other scientifically reliable
23 methodology for determining the benzophenone content in a substance of the form of the
24 Covered Products herein. As of the date of execution of this Consent Judgment, Colour Prevails
25 represents that it has ceased selling the Covered Products. Commencing on March 24, 2016, and
26 continuing thereafter, Colour Prevails shall not order, or cause to be ordered, the raw ingredient
27 octocrylene, used to manufacture the Covered Products to be distributed, sold and/or offered for

1 sale in California, unless the octocrylene contains levels of benzophenone that will result in
2 benzophenone concentrations in the Covered Products that are below the level stated above. In
3 order to ensure that the process for verifying that the octocrylene suppliers meet Colour
4 Prevails's standards, Colour Prevails shall obtain an initial Certificate of Analysis ("COA") from
5 each supplier of octocrylene, and thereafter obtain a COA from each octocrylene supplier for
6 each subsequent shipment, and keep the COAs for a period of two years from receipt. Copies of
7 these COAs shall be provided to Shefa upon request.

8 2.2 Reformulation and Warning Label

9 Commencing on March 24, 2016, and continuing thereafter, Colour Prevails shall not
10 manufacture, or cause to be manufactured, for sale in California, or order for distribution or sale
11 in California, Covered Products unless they are Reformulated Products pursuant to Section 2.1
12 above.

13 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent it
14 ships or sells any Covered Products in existing inventory that have not been reformulated, it will
15 provide warnings on such Covered Products that comply with Proposition 65.

16 The warnings shall be provided in such a conspicuously and prominent manner that will
17 assure the message is made available and likely to be read, seen, or heard by the consumer prior
18 to or at the time of the sale or purchase.

19 The Parties agree that product labeling stating that "**WARNING: This product contains**
20 **chemicals known to the State of California to cause cancer**" shall constitute compliance with
21 Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered
22 Products in existing inventory that had not been reformulated and were distributed and/or sold
23 by Releasees or Downstream Releasees after the Effective Date

24 3. MONETARY SETTLEMENT TERMS

25 3.1 Civil Penalty Payments

26 Colour Prevails agrees to an assessment of \$2,500 as a civil penalty. Such penalty
27 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d),
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1 with 75% of the penalty amount paid to the California Office of Environmental Health Hazard
2 Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Shefa. The civil
3 payment is allocated as follows: (a) \$1,875 payable to OEHHA; and (b) \$625 payable to Shefa.

4 **3.2 Reimbursement of Attorney Fees and Costs**

5 The Parties reached an accord on the compensation due to Shefa and its counsel under
6 general contract principles and the private attorney general doctrine codified at Code of Civil
7 Procedure section 1021.5 for all work performed in this matter. Under these legal principles,
8 \$11,000 shall be payable by Colour Prevails to the Law Office of Daniel N. Greenbaum for all
9 fees and costs through execution of this Consent Judgment, including fees and costs incurred
10 investigating, bringing this matter to the attention of Colour Prevails’s management, and
11 negotiation of this settlement.

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Shefa’s Public Release of Colour Prevails**

14 This Consent Judgment is a full, final, and binding resolution between Shefa and Colour
15 Prevails of any violation of Proposition 65 that was or could have been asserted by Shefa, acting
16 on behalf of itself and in a representative capacity in the public interest under Cal. Health &
17 Safety Code § 25249.7, against Colour Prevails, its parents, subsidiaries, affiliated entities under
18 common ownership, manufacturers, suppliers, directors, officers, employees, attorneys, and the
19 predecessors, successors, or assigns of each of them, and each entity to whom Colour Prevails
20 directly or indirectly distributes or sells the Covered Products, including, without limitation,
21 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
22 and licensees, and any other manufacturers, distributors, wholesalers, or formulators who
23 supplied Covered Products or their ingredients to Colour Prevails, including, but not limited
24 to, TPR Holdings, LLC, Jackel Inc. dba LFBeauty, Jackel Cosmetics Ltd., Pharmacos,
25 Walgreen Co, and Drugstorecom (“**Releasees**”), based on failure to warn of alleged exposures
26 to benzophenone from Covered Products manufactured, sold or distributed for sale in California
27 by Colour Prevails prior to the Effective Date. The release in this Section 4.1 applies to all

1 Covered Products that Colour Prevails manufactured, distributed, or sold prior to the Effective
2 Date, regardless of the date any other Releasee distributes or sells the Covered Products.

3 Upon entry of this Consent Judgment by the Court, going forward, Colour Prevails's
4 compliance with the terms of this Consent Judgment shall be deemed to constitute compliance
5 with Proposition 65 by Colour Prevails or any other Releasee with respect to benzophenone in
6 Covered Products manufactured, sold, or distributed for sale in California by Colour Prevails on
7 and after March 24, 2016.

8 **4.2 Shefa's Individual Release of Claims**

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

19 **4.3 Colour Prevails's Release of Shefa**

20 Colour Prevails, on its own behalf and on behalf of its past and current agents,
21 representatives, attorneys, successors, and assignees, hereby waives any and all claims that it
22 may have against Shefa and its attorneys and other representatives, for any and all actions taken
23 or statements made by Shefa and its attorneys and other representatives, whether in the course of
24 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
25 respect to the Covered Products.

26 **5. COURT APPROVAL**

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

4 **6. SEVERABILITY**

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

15 **7. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California and apply within the State of California. Benzophenone is listed pursuant to
18 Proposition 65 as a chemical that is known to the State of California to cause cancer. In the
19 event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
20 generally, or as to the Covered Products, including without limitation the delisting of
21 benzophenone, then Colour Prevails may provide written notice to Shefa of any asserted change
22 in the law, and with the exception of Sections 3.1 and 3.2 above, have no further obligations
23 pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered Products
24 are so affected. None of the terms of this Consent Judgment shall have any application to
25 Covered Products sold outside of the State of California.

26 **8. NOTICE**

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

4 To Colour Prevails:

5 Albert M. Cohen, Esq.
6 LOEB & LOEB LLP
7 10100 Santa Monica Blvd., Suite 2200
Los Angeles CA 90067

To Shefa:

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

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

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

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

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

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

17 **11. POST EXECUTION ACTIVITIES**

18 **11.1** The Parties acknowledge that, pursuant to California Health & Safety Code
19 § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this
20 Consent Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall
21 name Defendant Colour Prevails as a "Doe" Defendant in the above-captioned *Shefa LMV, LLC*.
22 *v. Concept II Cosmetics, LLC, et al.*, and shall proceed to submit this Consent Judgment to the
23 Court with a motion seeking Court approval.

24 **12. MODIFICATION**

25 **12.1** In the event that any future settlement agreement or court approved consent
26 judgment entered into by Shefa involving another party, or any future court-approved consent
27 judgment entered into by any enforcer of Proposition 65 involving another party, sets out a

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1 reformulation or compliance standard that is less stringent than that in Section 2.1 above for
2 benzophenone in substantially similar skin cream products, then upon written notice to Shefa,
3 Colour Prevails is entitled to a corresponding modification to the corresponding standard set
4 forth in section 2.1 of this Consent Judgment, with regard to the Covered Products.

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

17 **12.3** This Consent Judgment may only be modified by a written instrument executed
18 by the Party or Parties to be bound thereby, and after approval by the Court upon a noticed
19 motion. Any motion to modify shall be served on all Parties and the Office of the Attorney
20 General.

21 **13. DISPUTE RESOLUTION**

22 If Shefa determines at a future date that a violation of this Consent Judgment has
23 occurred, Shefa shall provide notice to Colour Prevails. Prior to bringing any action to enforce
24 any requirement of this Consent Judgment, the party alleging a violation of this Consent
25 Judgment shall provide the other party with written notice of the grounds for such allegation
26 together with all supporting information as well as a complete demand for the relief sought. The
27 Parties shall then meet and confer regarding the basis for the allegation in an attempt to resolve
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1 the matter informally, including providing the party alleged to be in violation with a reasonable
2 opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at
3 informal resolution fail, the party alleging a violation may file its lawsuit seeking the proposed
4 relief.

5 **14. AUTHORIZATION**

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

9
10 AGREED TO:
11 Date: 5/23/16
12 By: *Shefa LMV, LLC*
13 Shefa LMV, LLC

AGREED TO:
Date: 5/23/16
By: *[Signature]*
Settling Defendant: Colour Prevails LLC

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ORDER AND JUDGMENT

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

Dated: _____

Judge of the Superior Court