

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 Skinmedica, Inc.			
CASE INFO	COURT DOCKET NUMBER CIV 1503341		COURT NAME Marin County Superior Court	
	SHORT CASE NAME Shefa v. Concept II Cosmetics LLC			
REPORT INFO	INJUNCTIVE RELIEF Reformulation			
	PAYMENT: CIVIL PENALTY \$3,000	PAYMENT: ATTORNEYS FEES \$16,000	PAYMENT: OTHER 0.00	<i>For Internal Use Only</i>
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="radio"/> Yes <input type="radio"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 4 / 4 / 2017	
	COPY OF SETTLEMENT MUST BE ATTACHED			
NAME OF CONTACT Daniel N. Greenbaum				
FILER INFO	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
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FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

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9 Attorney for Plaintiff SHEFA LMV, LLC

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13 Los Angeles, CA 90071
14 Telephone: (213) 430-6273
15 Facsimile: (213) 430-4607
16 E-mail: bnicksin@omm.com

17 Attorneys for Defendant SKINMEDICA, INC., AND ITS SUCCESSOR-IN-INTEREST,
18 ALLERGAN SALES LLC

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF MARIN

21 SHEFA LMV, LLC,

22 Plaintiff,

23 vs.

24 CONCEPT II COSMETICS, LLC, and DOES 1
25 through 50, inclusive,

26 Defendants.

27 Case No. CIV 1503341

28 **[PROPOSED] CONSENT JUDGMENT
AS TO SKINMEDICA, INC., AND ITS
SUCCESSOR-IN-INTEREST, ALLERGAN
SALES LLC**

Action Filed: Sept. 10, 2015

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 SkinMedica, Inc., and its successor-in-interest,
5 Allergan Sales LLC (together, “**SMI**” or “**Settling Defendant**”), with Shefa and SMI individually
6 referred to as a “**Party**” and 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 For the purposes of this Consent Judgment only, SMI concedes that it is a person in the
13 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
14 1986, Health and Safety Code sections 25249.6 *et seq.* (“**Proposition 65**”).

15 **1.4 Products Covered**

16 The products covered by this Consent Judgment are sunscreen products alleged to contain
17 benzophenone that are manufactured, sold, or distributed for sale in California by SMI including,
18 but not limited to, SkinMedica Environmental Defense Sunscreen™ SPF 50+ (collectively,
19 “**Covered Products**”).

20 **1.5 General Allegations**

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

26 **1.6 Notice of Violation**

27 On January 15, 2016, Shefa served SMI, others, and the requisite public enforcement
28

1 agencies with a 60-Day Notice of Violation (“**Notice**”) alleging that SMI violated Proposition 65
2 when it failed to warn its customers and consumers in California that a Covered Product exposed
3 users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has commenced
4 and is diligently prosecuting the allegations set forth in the Notice.

5 **1.7 Complaint**

6 On September 10, 2015, Shefa filed a complaint in the Superior Court in and for the county
7 of Marin against Concept II Cosmetics, LLC, and DOES 1-15, alleging violations of Health &
8 Safety Code § 25249.6, based on exposures to benzophenone contained in certain products
9 containing sunscreen sold in California (the “**Complaint**”). On April 26, 2016, Shefa filed a DOE
10 Amendment under Code Civ. Proc. § 474, listing SMI as DOE 34.

11 **1.8 No Admission**

12 SMI denies the material, factual, and legal allegations contained in the Notice and
13 Complaint, and maintains that all the products it has manufactured, sold, or distributed for sale in
14 California, including the Covered Products, have been, and are, in compliance with all laws.
15 Nothing in this Consent Judgment shall be construed as an admission by SMI of any fact, finding,
16 conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
17 Judgment constitute or be construed as an admission by SMI of any fact, finding, conclusion of law,
18 issue of law, or violation of law, the same being specifically denied by SMI. This section shall not,
19 however, diminish or otherwise affect SMI’s obligations, responsibilities, and duties under this
20 Consent Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that: this Court has
23 jurisdiction over Settling Defendant as to the allegations in the Complaint; venue is proper in the
24 county of Marin; the Settling Defendant agrees that it employs or has employed ten or more persons
25 during time periods relevant to the Complaint; and this Court has jurisdiction over the Parties to
26 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of
27 Civil Procedure § 664.6.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the
3 Consent Judgment is approved and entered by the Court.

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

5 **2.1 Discontinuation of Covered Products**

6 As of the Effective Date, SMI intends to discontinue producing and/or selling to its
7 distributors and wholesalers the Covered Products for sale in California. If SMI continues to
8 produce the Covered Products, or, at any time in the future, produces or sells any products
9 containing the intentionally added ingredient benzophenone, then SMI will comply with the
10 reformulation standards in Sections 2.2 and 2.3.

11 **2.2 Reformulation Standards**

12 “**Reformulated Products**” are defined as those Covered Products containing benzophenone
13 in concentrations less than or equal to 12.5 parts per million (“**ppm**”) when analyzed pursuant to a
14 scientifically reliable application of U.S. Environmental Protection Agency testing methodologies
15 3580A and 8270C or any other scientifically reliable methodology for determining the
16 benzophenone content in a substance of the form of the Covered Products herein. Commencing on
17 the Effective Date, and continuing thereafter, SMI shall not order, or cause to be ordered, the raw
18 ingredient benzophenone for use in the manufacture of the Covered Products to be distributed, sold,
19 and/or offered for sale in California, unless the benzophenone contains levels of benzophenone that
20 will result in benzophenone concentrations in the Covered Products that are below the level stated
21 above

22 **2.3 Reformulation**

23 Commencing on Effective Date, and continuing thereafter, SMI shall not manufacture, or
24 cause to be manufactured, for sale in California, or order for distribution or sale in California,
25 Covered Products unless they are Reformulated Products pursuant to Section 2.1 above.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 SMI agrees to an assessment of \$3,000 as a civil penalty. Such penalty payment shall be
4 allocated according to Health and Safety Code sections 25249.12(c)(1) and (d), with 75% of the
5 penalty amount paid to the California Office of Environmental Health Hazard Assessment
6 (“OEHHA”) and the remaining 25% of the penalty paid to Shefa. The civil payment is allocated as
7 follows: (a) \$2,250.00 payable to OEHHA; and (b) \$750.00 payable to Shefa. SMI will issue two
8 separate checks to OEHHA and Shefa, respectively, as described above.

9 **3.2 Reimbursement of Attorney Fees and Costs**

10 The Parties reached an accord on the compensation due to Shefa and its counsel under
11 general contract principles and the private-attorney-general doctrine codified at Code of Civil
12 Procedure section 1021.5 for all work performed in this matter. Under these legal principles,
13 \$16,000 shall be payable by SMI to the Law Office of Daniel N. Greenbaum for all fees and costs
14 through execution of this Consent Judgment, including fees and costs incurred investigating,
15 bringing this matter to the attention of SMI’s management, and negotiation of this settlement.

16 **3.3 Payment Schedule**

17 Amounts described in sections 3.1 and 3.2 above shall be due and payable no later than the
18 date that is thirty (30) days after the Effective Date and receipt of the taxpayer identification
19 numbers. Prior to the Effective Date, Shefa will provide taxpayer identification numbers for
20 OEHHA, Shefa, and the Law Office of Daniel N. Greenbaum. Checks payable to OEHHA, Shefa,
21 and the Law Office of Daniel N. Greenbaum will be sent to the Law Office of Daniel N.
22 Greenbaum at the address stated herein.

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 Shefa’s Public Release of SMI**

25 This Consent Judgment is a full, final, and binding resolution between Shefa and SMI of any
26 violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of itself
27 and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
28

1 against SMI, its parents, subsidiaries, affiliated entities under common ownership, manufacturers,
2 suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of
3 each of them, and each entity to whom SMI directly or indirectly distributes or sells the Covered
4 Products, including, without limitation, downstream distributors, wholesalers, customers, retailers,
5 franchisees, cooperative members, and licensees (“**Releasees**”), based on failure to warn of alleged
6 exposures to benzophenone from Covered Products manufactured, sold, or distributed for sale in
7 California by SMI prior to the Effective Date. The release in this Section 4.1 applies to all Covered
8 Products that SMI manufactured, distributed, and/or sold prior to the Effective Date, regardless of
9 the date any other Releasee distributes or sells the Covered Products.

10 Upon entry of this Consent Judgment by the Court, going forward, SMI’s compliance with
11 the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
12 by SMI or any other Releasee with respect to benzophenone in Covered Products manufactured,
13 sold, or distributed for sale in California by SMI on and after the Effective Date.

14 **4.2 Shefa’s Individual Release of Claims**

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

25 **4.3 SMI’s Release of Shefa**

26 SMI, on its own behalf and on behalf of its past and current agents, representatives,
27 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
28

1 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
2 by Shefa and its attorneys and other representatives, whether in the course of investigating claims,
3 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered
4 Products.

5 **4.4 Release of Unknown Claims**

6 It is possible that other claims not known to the Parties arising out of the facts contained in
7 the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
8 discovered or developed. Shefa, on behalf of itself only, on the one hand, and SMI, on the other
9 hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such
10 claims through and including the Effective Date, including all rights of action therefor. Shefa and
11 SMI acknowledge that the claims released in Section 4 may include unknown claims, and
12 nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542,
13 which reads as follows:

14 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
15 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
16 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
17 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
18 **WITH THE DEBTOR.**

19 Shefa understands and acknowledges that the significance and consequence of this waiver of
20 California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting
21 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not
22 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
23 Shefa will not be able to make any claim for those damages against any of the Releasees.

24 **5. COURT APPROVAL**

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

1 **6. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
5 therein. There are no warranties, representations, or other agreements between the Parties except as
6 expressly set forth herein. No representations, oral or otherwise, express or implied, other than
7 those specifically referred to in this Consent Judgment have been made by any Party hereto. No
8 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed
9 to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced
10 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the
11 extent that they are expressly incorporated herein.

12 **7. SEVERABILITY**

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

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. Benzophenone is listed pursuant to Proposition 65 as a
26 chemical that is known to the State of California to cause cancer. In the event that Proposition 65 is
27 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
28

1 Products, including without limitation the delisting of benzophenone, then SMI may provide written
2 notice to Shefa of any asserted change in the law and, with the exception of Sections 3.1 and 3.2
3 above, have no further obligations pursuant to this Consent Judgment, with respect to, and to the
4 extent that, the Covered Products are so affected. None of the terms of this Consent Judgment shall
5 have any application to Covered Products sold outside of the State of California.

6 **9. NOTICE**

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

11 To Skinmedica, Inc.:

12 Robert S. Nicksin, Esq.
13 O'Melveny & Myers LLP
14 400 South Hope Street, 18th Floor
Los Angeles, CA 90071

To Shefa:

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

15
16 Any Party may, from time to time, specify in writing to the other Party a change of address to which
17 all notices and other communications shall be sent.

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

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

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

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

25 **12. POST-EXECUTION ACTIVITIES**

26 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7(f), Shefa is
27 obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.
28

1 **13. MODIFICATION**

2 **13.1** In the event that any future settlement agreement or court-approved consent
3 judgment entered into by Shefa involving another party, or any future court-approved consent
4 judgment entered into by any enforcer of Proposition 65 involving another party, sets out a
5 reformulation or compliance standard that is less stringent than that in Section 2.1 above for
6 benzophenone in substantially similar sunscreen products, then upon written notice to Shefa, SMI is
7 entitled to a corresponding modification to the corresponding standard set forth in section 2.1 of this
8 Consent Judgment, with regard to the Covered Products.

9 **13.2** In the event OEHHA establishes a safe harbor No-Significant Risk Level (“NSRL”)
10 for benzophenone, which SMI asserts would allow for the Covered Products to contain levels of
11 benzophenone in amounts greater than those set forth above in Section 2.1, then SMI may provide
12 written notice to Shefa of any such assertion and the Parties shall confer within 30 days to attempt
13 to agree upon modification of this Consent Judgment.

14 **13.3** Should such attempts at informal resolution of a modification fail, and in the event
15 SMI still intends to change its reformulation obligations, SMI will provide written notice to Shefa
16 of its intent to adopt a modified compliance standard.

17 **14. DISPUTE RESOLUTION**

18 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
19 Shefa shall provide notice to SMI. Prior to bringing any action to enforce any requirement of this
20 Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the other
21 party with written notice of the grounds for such allegation, together with all supporting information
22 as well as a complete demand for the relief sought. The Parties shall then meet and confer
23 regarding the basis for the allegation to resolve the matter informally, including providing the party
24 alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure any
25 alleged violation. Should such attempt at informal resolution fail, the party alleging a violation may
26 invoke binding arbitration in the state of California. The arbitration shall be conducted on a
27 confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration
28

1 Association. Any decision or award as a result of any such arbitration proceeding shall be in
2 writing and shall provide an explanation for all conclusions of law and fact. Costs, expenses, and
3 reasonable attorneys' fees shall be awarded to the prevailing party. An award of arbitration may be
4 confirmed in a court of competent jurisdiction.

5 **15. 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 the terms and conditions of this
8 Consent Judgment.


9
10 AGREED TO:

11 Date: 4/4/2017

12
13 By: 
14 Shefa LMV, LLC

10 AGREED TO:

11 Date: 4/4/17

12
13 By: 
14 Settling Defendant: Skinmedica, Inc.,
15 and its successor-in-interest, Allergan
16 Sales LLC

1 **ORDER AND JUDGMENT**

2 Based upon the stipulated Consent Judgment between Shefa LMV, LLC, and Skinmedica,
3 Inc., and its successor-in-interest, Allergan Sales LLC, the settlement is approved and the clerk is
4 directed to enter judgment in accordance with the terms herein.

5
6 Dated: _____

7
8 _____
9 Judge of the Superior Court