

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 Beyond Coastal LLC			
CASE INFO	COURT DOCKET NUMBER CIV 1503341		COURT NAME Marin County Superior Court	
	SHORT CASE NAME Shefa LMV LLC vs. Concept II Cosmetics LLC			
REPORT INFO	INJUNCTIVE RELIEF Reformulation			
	PAYMENT: CIVIL PENALTY \$4,000	PAYMENT: ATTORNEYS FEES \$16,000	PAYMENT: OTHER 0.00	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 7 / 7 / 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	
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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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7 Attorney for Plaintiff SHEFA LMV, LLC

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13 Attorneys for Defendant BEYOND COASTAL, LLC
14

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF MARIN
17 UNLIMITED CIVIL JURISDICTION
18

19 SHEFA LMV, LLC,) Case No. CIV 1503341
20)
Plaintiff,) [PROPOSED] CONSENT JUDGMENT
21) AS TO BEYOND COASTAL, LLC
vs.)
22)
CONCEPT II COSMETICS, LLC; and DOES 1) Action Filed: Sept. 10, 2015
23 through 50, inclusive,)
24 Defendants.)
25 _____)

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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 Beyond Coastal, LLC (“**BC**” or “**Settling**
5 **Defendant**”), with Shefa and BC individually referred to as a “**Party**” and collectively as the
6 “**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 BC is a limited liability company in Utah.

13 **1.4 Products Covered**

14 The products covered by this Consent Judgment are sunscreen products alleged to
15 contain benzophenone that are manufactured, imported, sold, or distributed for sale in California
16 by BC including, but not limited to, Beyond Coastal Active Facestick SPF 30; UPC
17 093039150167 (collectively, “**Covered Products**”).

18 **1.5 General Allegations**

19 Shefa alleges that BC manufactures, imports, sells, or distributes, for sale in the state of
20 California, sunscreen products that contain benzophenone without first providing a clear and
21 reasonable warning required by the Safe Drinking Water and Toxic Enforcement Act of 1986,
22 Health and Safety Code section 25249.6 *et seq.* (“**Proposition 65**”). Benzophenone (CAS #
23 119-61-9) is a chemical listed under Proposition 65 as a chemical “known to the state to cause
24 cancer” as Proposition 65 defines that term. 27 CCR 25000. BC denies these allegations.

25 **1.6 Notice of Violation**

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

4 **1.7 Complaint**

5 On September 10, 2015, Shefa filed a complaint in the Superior Court in and for the
6 County of Marin against Concept II Cosmetics, LLC and DOES 1-150, alleging violations of
7 California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in
8 certain products containing sunscreen sold in the State of California (the "**Complaint**"). On
9 April 26, 2016, Shefa filed a DOE Amendment under Code Civ. Proc. § 474, listing BC as DOE
10 27.

11 **1.8 No Admission**

12 BC denies the material, factual, and legal allegations contained in the Notice and
13 Complaint and maintains that all of the products it has manufactured, sold, or distributed for sale
14 in 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 BC 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 BC of any fact, finding, conclusion of
18 law, issue of law, or violation of law, the same being specifically denied by BC. This section
19 shall not, however, diminish or otherwise affect BC's obligations, responsibilities, and duties
20 under this 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, that venue is proper
24 in the County of Marin, and that this Court has jurisdiction over the Parties to enter and enforce
25 the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
26 § 664.6.

1 **1.10 Effective Date**

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

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

5 **2.1 Reformulation Standards**

6 “**Reformulated Products**” are defined as those Covered Products containing
7 benzophenone (a) in concentrations less than or equal to 12.5 parts per million (“**ppm**”) when
8 analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection
9 Agency testing methodologies 3580A and 8270C or any other scientifically reliable
10 methodology for determining the benzophenone content in a substance of the form of the
11 Covered Products herein, or (b) in the raw material octocrylene in less than or equal to 200 ppm
12 when analyzed by any scientifically reliable methodology for determining the benzophenone
13 content in the octocrylene used in the formulation of the Covered Products. As of the date of
14 execution of this Consent Judgment, BC represents that it has actively engaged its suppliers of
15 raw materials to comply with its reformulation efforts. Commencing on the Effective Date, BC
16 shall not order, or cause to be ordered, the raw ingredient octocrylene, used to manufacture the
17 Covered Products to be distributed, sold and/or offered for sale in California, unless the
18 octocrylene contains levels of benzophenone that will result in benzophenone concentrations in
19 the Covered Products that are below the level stated above, or that comply with the level of
20 benzophenone in the octocrylene stated above. In order to ensure that the process for verifying
21 that the octocrylene suppliers meet BC’s standards, BC shall obtain an initial Certificate of
22 Analysis (“COA”) from each supplier of octocrylene, and thereafter obtain a COA from each
23 octocrylene supplier for each subsequent shipment, and keep the COAs for a period of two years
24 from receipt. Copies of these COAs shall be provided to Shefa upon request. Unless BC
25 chooses to eliminate the use of octocrylene in the Covered Products, then BC shall conduct at
26 least one test per year for benzophenone in the Covered Products for a period of two (2) years,
27 and test results shall be provided to Shefa upon request.

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1 **2.2 Reformulation**

2 Commencing on the Effective Date, and continuing thereafter, BC shall not manufacture,
3 or cause to be manufactured, for sale in California, or order for distribution or sale in California,
4 Covered Products unless they are Reformulated Products pursuant to Section 2.1 above.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty Payments**

7 BC agrees to an assessment of \$4,000 as a civil penalty. Such penalty payment shall be
8 allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the
9 penalty amount paid to the California Office of Environmental Health Hazard Assessment
10 (“OEHHA”) and the remaining 25% of the penalty paid to Shefa. The civil payment is allocated
11 as follows: (a) \$3,000 payable to OEHHA; and (b) \$1,000 payable to Shefa.

12 **3.2 Reimbursement of Attorney Fees and Costs**

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

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1 Shefa’s Public Release of BC**

21 This Consent Judgment is a full, final, and binding resolution between Shefa and BC of
22 any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf
23 of itself and in a representative capacity in the public interest under Cal. Health & Safety Code
24 § 25249.7, against BC, its parents, subsidiaries, affiliated entities under common ownership,
25 manufacturers, suppliers, licensors, managers, members, owners, shareholders, directors,
26 officers, employees, representatives, agents, attorneys, and the predecessors, successors, or
27 assigns of each of them, and each entity to whom BC directly or indirectly distributes or sells the
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1 Covered Products, including, without limitation, downstream distributors, wholesalers,
2 customers, retailers, franchisees, cooperative members, and licensees (“**Releasees**”), based on
3 failure to warn of alleged exposures to benzophenone from Covered Products manufactured, sold
4 or distributed for sale in California by BC prior to the Effective Date. The release in this Section
5 4.1 applies to all Covered Products that BC manufactured, distributed, or sold prior to the
6 Effective Date, regardless of the date any other Releasee distributes or sells the Covered
7 Products.

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

12 **4.2 Shefa’s Individual Release of Claims**

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

23 **4.3 BC’s Release of Shefa**

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

3 **5. COURT APPROVAL**

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

8 **6. SEVERABILITY**

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

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California. Benzophenone is listed pursuant to
22 Proposition 65 as a chemical that is known to the State of California to cause cancer. In the
23 event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
24 generally, or as to the Covered Products, including without limitation the delisting of
25 benzophenone, then BC may provide written notice to Shefa of any asserted change in the law,
26 and with the exception of Sections 3.1 and 3.2 above, have no further obligations pursuant to this
27 Consent Judgment, with respect to, and to the extent that, the Covered Products are so affected.

1 None of the terms of this Consent Judgment shall have any application to Covered Products sold
2 outside of the State of California.

3 **8. NOTICE**

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

8 To BC:

9 John Conkle, Esq.
10 H. Kim Sim, Esq.
11 CONKLE, KREMER & ENGEL
12 3130 Wilshire Boulevard, Suite
13 500 Santa Monica, California 90403

To Shefa:

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

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

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

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

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

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

23 **11. POST EXECUTION ACTIVITIES**

24 **11.1** The Parties acknowledge that, pursuant to California Health & Safety Code
25 § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this
26 Consent Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall
27 proceed to submit this Consent Judgment to the Court with a motion seeking Court approval.

28 **12. MODIFICATION**

12.1 In the event that any future settlement agreement or court approved consent

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

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

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

23 **13. DISPUTE RESOLUTION**

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

6 **14. AUTHORIZATION**

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

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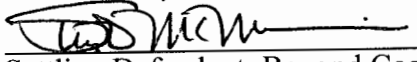
AGREED TO:

Date: 7/7/16

By: 
Shefa LMV, LLC

AGREED TO:

Date: 7/7/2016

By: 
Settling Defendant: Beyond Coastal,
LLC

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and Beyond Coastal, 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