

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 1502
(03-01)

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

REPORT OF ENTRY OF JUDGMENT

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

PARTIES TO THE ACTION	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN JUDGMENT				
CASE INFO	COURT DOCKET NUMBER		COURT NAME		
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER	
	DATE SUBMITTED TO COURT / /	IS JUDGMENT PURSUANT TO SETTLEMENT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL / /		For Internal Use Only
	COPY OF JUDGMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT				
	ORGANIZATION		TELEPHONE NUMBER ()		
	ADDRESS		FAX NUMBER ()		
	CITY	STATE	ZIP	E-MAIL ADDRESS	

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 judgment 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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2 Law Office of Daniel N. Greenbaum
3 14752 Otsego Street
4 Sherman Oaks, CA 91403
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6 Facsimile: (424) 243-7689
7 E-mail: danielgreenbaumesq@gmail.com

8 Attorneys for Plaintiff
9 SHEFA LMV, LLC

OCT - 2 2014
YOLANDA ESTRADA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 Coordination Proceeding Special Title
13 PROPOSITION 65 COCAMIDE DEA CASES

Special Council Coordination Proceeding
Case No. JCCP 4765

14 This Document Relates To:
15 IN THE SUPERIOR COURT FOR THE
16 COUNTY OF LOS ANGELES *Shefa v. Ross*
17 *Stores, et al.*, BC521400

**~~PROPOSED~~ CONSENT JUDGMENT AND
ORDER THEREON AS TO DEFENDANT
GRACE COLE LTD.**

1 **1. INTRODUCTION**

2 **1.1. Shefa LMV, LLC and Grace Cole Ltd.**

3 This Consent Judgment is entered into by and between plaintiff Shefa LMV, LLC (“Shefa
4 LMV”) and Grace Cole Ltd. (“Grace Cole”), with Shefa LMV and Grace Cole collectively referred
5 to as the “parties,” and individually as a “party.”

6 **1.2. Plaintiff**

7 Shefa LMV is an entity organized in the State of California, which has asserted that it seeks
8 to promote awareness of exposure to toxic chemicals and to improve human health by reducing or
9 eliminating hazardous substances contained in consumer and commercial products.

10 **1.3. Defendant**

11 Grace Cole employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6, et seq. (“Proposition 65”).

14 **1.4. General Allegations**

15 Shefa LMV alleges that Grace Cole has manufactured, imported, distributed and/or sold
16 soap and shampoo products that contain coconut oil diethanolamine condensate (“Cocamide
17 DEA”) for use in the State of California without the requisite Proposition 65 warnings. Cocamide
18 DEA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
19 birth defects and other reproductive harm.

20 **1.5. Notice of Violation**

21 On July 1, 2013, Shefa LMV served Grace Cole and various public enforcement agencies
22 with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided recipients with
23 notice alleging that Grace Cole was in violation of Proposition 65 for failing to warn consumers
24 and customers that hand soap Grace Cole sold or offered for sale exposed users in California to
25 Cocamide DEA. No public enforcer has diligently prosecuted the allegations set forth in the
26 Notice.

27 **1.6. Complaint**

28 On or about September 16, 2013, Shefa LMV filed the action entitled *Shefa LMV, LLC v.*

1 *Ross Stores, Inc., et al.*, Case No. BC521400, in the Superior Court for the County of Los Angeles,
2 naming Grace Cole as a defendant and alleging violations of Proposition 65, based on the alleged
3 exposures to Cocamide DEA contained in soap manufactured, distributed, sold and/or offered for
4 sale by Grace Cole in California (“Complaint”). On December 4, 2013, the Complaint was
5 coordinated with several other related Proposition 65 actions in the *Proposition 65 Cocamide DEA*
6 *Cases*, Case No. JCCP 4765, currently pending before this Court.

7 **1.7. No Admission**

8 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
9 were raised in the Complaint or that could have been raised in the Complaint as to Covered
10 Products, defined below, arising out of the facts or conduct alleged therein. By execution of this
11 Consent Judgment and agreeing to comply with its terms, Grace Cole does not admit any facts or
12 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
13 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
14 requirements relating to Cocamide DEA in Covered Products. This Consent Judgment is the
15 product of negotiation and compromise and is accepted by Grace Cole for purposes of settling,
16 compromising, and resolving issues disputed in this action. However, this section shall not
17 diminish or otherwise affect the obligations, responsibilities and duties of Grace Cole under this
18 Consent Judgment.

19 **1.8. Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, Grace Cole stipulates that this Court has
21 jurisdiction over Grace Cole as to the allegations contained in the Complaint, that venue is proper
22 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
23 provisions of this Consent Judgment.

24 **2. DEFINITIONS**

25 **2.1.** “Covered Products” means soap and shampoo products manufactured and/or
26 distributed by Grace Cole and sold or offered for sale in California.

27 **2.2.** “Effective Date” shall mean the date the Court enters Judgment pursuant to the
28 terms of this Consent Judgment.

1 **3. INJUNCTIVE RELIEF**

2 Commencing on the Effective Date, Grace Cole shall not manufacture, distribute, sell or
3 offer for sale in California any Covered Product that contains Cocamide DEA as an intentionally
4 added ingredient or as part of the product formulation.

5 **4. ENFORCEMENT**

6 Shefa may, by motion or application for an order to show cause before the Superior Court
7 of Alameda County, enforce the terms and conditions contained in this Consent Judgment. Prior to
8 bringing any motion or application to enforce the requirements of Section 3 above, Shefa shall
9 provide Grace Cole with a Notice of Violation and a copy of any test results which purportedly
10 support Shefa's Notice of Violation. The Parties shall then meet and confer regarding the basis for
11 Shefa's anticipated motion or application in an attempt to resolve it informally, including providing
12 Grace Cole a reasonable opportunity of at least thirty (30) days to cure any alleged violation.
13 Should such attempts at informal resolution fail, Shefa may file its enforcement motion or
14 application. The prevailing party on any motion to enforce this Consent Judgment shall be entitled
15 to its reasonable attorney's fees and costs incurred as a result of such motion or application. This
16 Consent Judgment may only be enforced by the Parties.

17 **5. MONETARY PAYMENTS**

18 **5.1. Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

19 Grace Cole shall pay a total civil penalty payment of \$2,000.00 within ten (10) days of the
20 Effective Date, as follows: the civil penalty shall be apportioned in accordance with California
21 Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of
22 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
23 25% of the penalty remitted to Shefa LMV, both pursuant to the procedures set forth in Section
24 5.3.

25 **5.2. Reimbursement of Shefa LMV's Fees and Costs**

26 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
28 this fee issue to be resolved after the material terms of the agreement had been settled. Grace Cole

1 expressed a desire to resolve the fee and cost issue after the other settlement terms had been
2 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to Shefa
3 LMV and its counsel under general contract principles and the private attorney general doctrine
4 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,
5 except fees that may be incurred on appeal. Under these legal principles, Grace Cole shall pay the
6 amount of \$13,000.00 as a reimbursement of Shefa's reasonable attorneys' fees and costs pursuant
7 to the procedures set forth in Section 5.3 for fees and costs incurred investigating, litigating and
8 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,
9 drafting, and obtaining the Court's approval of this Consent Judgment in the public interest.

10 **5.3. Payment Procedures**

11 All payments required by Sections 5.1 and 5.2 shall be within ten (10) days of the Effective
12 Date in three checks made payable as follows:

- 13 (a) one check to "OEHHA" in the amount of \$1,500.00;
- 14 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for Shefa LMV, LLC" in
15 the amount of \$500.00;
- 16 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$13,000.00.

17 **5.4. Issuance of 1099 Forms**

18 After the settlement funds have been transmitted to Shefa LMV's counsel, Grace Cole shall
19 issue separate 1099 forms, as follows:

- 20 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
21 68-0284486) in the amount of \$1,500.00;
- 22 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$500.00, whose
23 address and tax identification number shall be furnished upon request; and
- 24 (c) a third 1099 to "Law Office of Daniel N. Greenbaum" (EIN: 45-3084082) in the
25 amount of \$13,000.00.

26 **5.5. Issuance of Payments.**

27 **5.5.1.** All payments owed to Shefa LMV, pursuant to Section 5.2, shall be
28 delivered to the following payment address:

1 Daniel N. Greenbaum, Esq.
2 Law Office of Daniel N. Greenbaum
3 14752 Otsego Street
4 Sherman Oaks, CA 91403

5 **5.5.2.** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 5.1,
6 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

7 Mike Gyrics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 P.O. Box 4010
11 Sacramento, CA 95812-4010

12 With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum
13 at the address set forth above in 5.5.1, as proof of payment to OEHHA.

14 **6. CLAIMS COVERED AND RELEASED**

15 **6.1. Shefa LMV's Release of Grace Cole**

16 Plaintiff, acting on its own behalf and in the public interest, releases Grace Cole, its parents,
17 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
18 attorneys ("Releasees"), and each entity to whom Grace Cole directly or indirectly distributes or
19 sells Covered Products, including, but not limited to, downstream distributors, wholesalers,
20 customers, retailers, franchisees, cooperative members, licensors, and licensees ("Downstream
21 Releasees"), from all claims for violations of Proposition 65 up through the date on which this
22 Consent Judgment is signed by both parties based on exposure to Cocamide DEA from the
23 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment by
24 Releasees constitutes compliance with Proposition 65 with respect to exposures to Cocamide DEA
25 in Covered Products as set forth in the Notice.

26 Shefa LMV, also, in its individual capacity only and *not* in its representative capacity,
27 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
28 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
claims, liabilities and demands of Shefa LMV of any nature, character or kind, whether known or
unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the
Cocamide DEA in the Covered Products manufactured, distributed or sold by Releasees. Shefa
acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as

1 follows:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
3 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
4 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
5 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
6 OR HER SETTLEMENT WITH THE DEBTOR.

7 Shefa LMV expressly waives and relinquishes any and all rights and benefits which it may
8 have under, or which may be conferred on it by the provisions of Section 1542 of the California
9 Civil Code as well as under any other state or federal statute or common law principle of similar
10 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
11 released matters. In furtherance of such intention, the release hereby given shall be and remain in
12 effect as a full and complete release notwithstanding the discovery or existence of any such
13 additional or different claims or facts arising out of alleged or actual exposure now or in the future
14 to Cocamide DEA in the Covered Products manufactured, imported, distributed, sold and/or
15 offered for sale by Releasees that could otherwise be made against Releasees.

14 **6.2. Grace Cole's Release of Shefa LMV**

15 Grace Cole on behalf of itself, its past and current agents, representatives, attorneys,
16 successors, and/or assignees, hereby waives any and all claims against Shefa LMV, its attorneys
17 and other representatives, for any and all actions taken or statements made (or those that could
18 have been taken or made) by Shefa LMV and its attorneys and other representatives, whether in the
19 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
20 matter with respect to the Covered Products.

21 **7. COURT APPROVAL**

22 This Consent Judgment shall become effective upon entry by the Court. Shefa shall
23 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
24 support entry of this Consent Judgment. If this Consent Judgment is not entered by the Court, it
25 shall be of no force or effect and shall never be introduced into evidence or otherwise used in any
26 proceeding for any purpose.

27 **8. ENTIRE AGREEMENT**

28 This Consent Judgment contains the sole and entire agreement and understanding of the

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
3 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
4 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
5 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
6 other provisions hereof whether or not similar.

7 **9. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California
9 and the obligations of Grace Cole hereunder as to the Covered Products apply only within the State
10 of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered
11 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
12 rendered inapplicable or no longer required as a result of any such repeal or preemption or
13 rendered inapplicable by reason of law generally as to the Products, including, without limitation,
14 the removal of Cocamide DEA from OEHHA's list of Proposition 65 chemicals, then Grace Cole
15 may notify Shefa LMV and shall have no further obligations pursuant to this Consent Judgment
16 with respect to, and to the extent that, the Covered Products are so affected.

17 **10. NOTICES**

18 Unless specified herein, all correspondence and notices required to be provided pursuant to
19 this Consent Judgment shall be in writing and (i) personally delivered, (ii) sent by first-class,
20 (registered or certified mail) return receipt requested, or (iii) sent by overnight courier to one party
21 from the other party at the following addresses:

22
23 To Grace Cole:

24 Tracy Mort
25 Managing Director
26 Grace Cole Ltd.
27 Fremantle House
28 2 Oakwater Avenue,
Cheadle Royal Business Park,
Cheadle, SK8 3SR
United Kingdom

To Shefa LMV:

Daniel N. Greenbaum, Esq.
Law Office of Daniel N. Greenbaum
14752 Otsego Street
Sherman Oaks, CA 91403

With a copy to:

1 Jeffrey B. Margulies, Esq.
2 Fulbright & Jaworski LLP
3 555 South Flower Street
4 41st Floor
5 Los Angeles, California 90071
6 213-892-9286
7 213-892-9494 fax
8 jmargulies@fulbright.com

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

11 **11. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

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

16 Shefa LMV and its attorneys agree to comply with the reporting form requirements
17 referenced in California Health & Safety Code § 25249.7(f).

18 **13. MODIFICATION**

19 This Consent Judgment may be modified only: (1) by written agreement of the parties and
20 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
21 of any party and entry of a modified Consent Judgment by the Court.

22 **14. AUTHORIZATION**

23 The undersigned are authorized to execute this Consent Judgment and have read,
24 understood, and agree to all of the terms and conditions of this Consent Judgment.

25 AGREED TO:

26 AGREED TO:

27 Date: 4/10/14

28 Date: 09/04/14

By: 

By: 

Plaintiff, Shefa LMV, LLC

Grace Cole Ltd.

Print: Alisa Fried

Print: TEACY MOLT

Its: Managing Member

Its: Managing Director

[PROPOSED] CONSENT JUDGMENT AND ORDER THEREON AS TO DEFENDANT GRACE COLE LTD.

JCCP No. 4765

