

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 COOLA, LLC formerly C&K, 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 \$2,000	PAYMENT: ATTORNEYS FEES \$23,000	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 6 / 8 / 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 CA	ZIP 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.

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7 Attorney for Plaintiff SHEFA LMV, LLC

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13 Attorneys for Defendant C&K LLC aka COOLA

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,)
21) **[PROPOSED] CONSENT JUDGMENT**
vs.) **AS TO COOLA, LLC formerly C&K, LLC**
22)
CONCEPT II COSMETICS, LLC; and DOES 1)
23 through 50, inclusive,) Action Filed: Sept. 10, 2015
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 COOLA, LLC, formerly C&K, LLC (“**COOLA**”
5 or “**Settling Defendant**”), with Shefa and COOLA 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 COOLA employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
14 Code section 25249.6 *et seq.* (“**Proposition 65**”).

15 **1.4 Products Covered**

16 The products covered by this Consent Judgment are sunscreen products alleged to
17 contain benzophenone that are manufactured, imported, sold, or distributed for sale in California
18 by COOLA including, but not limited to, Coola Sport Unscented SPF 50; UPC: 853319002735,
19 (collectively, “**Covered Products**”).

20 **1.5 General Allegations**

21 Shefa alleges that COOLA manufactures, imports, sells, or distributes, for sale in the
22 state of California, sunscreen products that contain 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. COOLA denies these allegations.

26 **1.6 Notice of Violation**

27 On May 8, 2015, Shefa served COOLA, others, and the requisite public enforcement
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1 agencies with a 60-Day Notice of Violation (“**Notice**”) alleging that COOLA violated
2 Proposition 65 when it failed to warn its customers and consumers in California that the Covered
3 Products expose users to benzophenone. To the best of the Parties’ knowledge, no public
4 enforcer has commenced 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
7 County of Marin against Concept II Cosmetics, LLC and DOES 1-150, alleging violations of
8 California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in
9 certain products containing sunscreen sold in the State of California (the “**Complaint**”). On
10 April 26, 2016, Shefa filed a DOE Amendment under Code Civ. Proc. § 474, listing COOLA as
11 DOE 29.

12 **1.8 No Admission**

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

22 **1.9 Consent to Jurisdiction**

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

2 **1.10 Effective Date**

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

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

6 **2.1 Reformulation Standards**

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

2 **2.2 Reformulation**

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

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty Payments**

8 COOLA agrees to an assessment of \$2,000 as a civil penalty. Such penalty payment
9 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75%
10 of the penalty amount paid to the California Office of Environmental Health Hazard Assessment
11 (“OEHHA”) and the remaining 25% of the penalty paid to Shefa. The civil payment is allocated
12 as follows: (a) \$1,500 payable to OEHHA; and (b) \$500 payable to Shefa.

13 **3.2 Reimbursement of Attorney Fees and Costs**

14 The Parties reached an accord on the compensation due to Shefa and its counsel under
15 general contract principles and the private attorney general doctrine codified at Code of Civil
16 Procedure section 1021.5 for all work performed in this matter. Under these legal principles,
17 \$23,000 shall be payable by COOLA to the Law Office of Daniel N. Greenbaum for all fees and
18 costs through execution of this Consent Judgment, including fees and costs incurred
19 investigating, bringing this matter to the attention of COOLA’s management, and negotiation of
20 this settlement.

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Shefa’s Public Release of COOLA**

23 This Consent Judgment is a full, final, and binding resolution between Shefa and
24 COOLA of any violation of Proposition 65 that was or could have been asserted by Shefa, acting
25 on behalf of itself and in a representative capacity in the public interest under Cal. Health &
26 Safety Code § 25249.7, against COOLA, its parents, subsidiaries, affiliated entities under
27 common ownership, manufacturers, suppliers, licensors, managers, members, owners,

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

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

15 **4.2 Shefa’s Individual Release of Claims**

16 In further consideration of the promises and agreements herein contained, Shefa, on its
17 own behalf and on behalf of its past and current managers, members, agents, representatives,
18 attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in,
19 directly or indirectly, any form of legal action, and releases all claims that it may have against
20 COOLA and Releasees, including, without limitation, all actions and causes of action, suits,
21 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including,
22 without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition
23 65 for unwarned exposures to benzophenone from Covered Products manufactured, sold, or
24 distributed for sale in California by COOLA prior to the Effective Date. The releases in Section
25 4.2 are provided in Shefa’s individual capacity and are not releases on behalf of the public.

26 **4.3 COOLA’s Release of Shefa**

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

6 **5. COURT APPROVAL**

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

11 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

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

6 **8. NOTICE**

7 Unless specified herein, all correspondence and notices required to be provided pursuant
8 to 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
10 any Party by the other at the following addresses:

11 To COOLA:

12 John Conkle, Esq.
13 H. Kim Sim, Esq.
14 CONKLE, KREMER & ENGEL
3130 Wilshire Boulevard, Suite
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

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

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

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

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

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

24 **11. POST EXECUTION ACTIVITIES**

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

2 **12. MODIFICATION**

3 **12.1** In the event that any future settlement agreement or court approved consent
4 judgment entered into by Shefa involving another party, or any future court-approved consent
5 judgment entered into by any enforcer of Proposition 65 involving another party, sets out a
6 reformulation or compliance standard that is less stringent than that in Section 2.1 above for
7 benzophenone in substantially similar lip protectant products, then upon written notice to Shefa,
8 COOLA is entitled to a corresponding modification to the corresponding standard set forth in
9 section 2.1 of this Consent Judgment, with regard to the Covered Products.

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

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

26 **13. DISPUTE RESOLUTION**

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

10 **14. AUTHORIZATION**

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

14 AGREED TO:

15 Date: 6/6/2016

16 By: 
17 Shefa LMV, LLC

14 AGREED TO:

15 Date: 5/31/16

16 By: 
17 Settling Defendant: COOLA, LLC
18 formerly C&K, LLC

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between Shefa LMV, LLC and COOLA, LLC formerly C&K, 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

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