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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF LOS ANGELES

9 AFS ENTERPRISES, LLC, a California
limited liability company,

11 Plaintiff,

12 vs.

14 LAVA PROPANE, LLC, a California limited
15 liability company; and DOES 1 to 50,
16 Inclusive

17 Defendants.

Unlimited Jurisdiction

CASE NO.

COMPLAINT FOR CIVIL
PENALTY AND INJUNCTIVE
RELIEF

(Health and Safety Code § 25249.5
et seq. and Business and Professions
Code § 17200)

TOXIC TORT/ENVIRONMENTAL

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19 Plaintiff, AFS Enterprises, LLC, a limited liability company of the State of California, by and
20 through Daniel Greenbaum, its counsel of record, hereby alleges:

22 **I. PRELIMINARY STATEMENT**

23 1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure to
24 lead, which is a chemical known to the State of California to cause birth defects, or other reproductive
25 harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
26 section 25249.6, also known as “Proposition 65,” businesses must provide persons with a “clear and
27 reasonable warning” before exposing individuals to chemicals known to the state to cause cancer or
28 reproductive harm.

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II. PARTIES

2. Plaintiff is a limited liability company of the State of California, by and through her counsel of record, Daniel N. Greenbaum. Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition 65 may be brought by “any person in the public interest.” Business and Professions Code sections 17200 *et seq.* provide that actions to enforce that statute may be brought in a private “Attorney General” action.

3. Defendant LAVA PROPANE, LLC (“Lava”) is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, and/or sale of propane cylinders that contain propane, for sale within the State of California, without first giving clear and reasonable warning.

4. Defendant DOES 1 through 50 are currently unknown to Plaintiff at this time, but represent any individuals or commercial entities that may be engaged in the manufacture, distribution and/or sale of the aforementioned propane cylinders and are therefore engaged in active violation of Proposition 65.

III. JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to California Constitution Article VI, section 10, because this case is a cause not given by statute to other trial courts.

6. This Court has jurisdiction over Lava because it is a business entity that does sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market, through the sale, marketing, and use of its products in California, to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

7. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles County because Defendant’s products are sold and consumed in this county.

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1 **IV. STATUTORY BACKGROUND**

2 **A. Proposition 65**

3 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
4 passed as “Proposition 65” by a vote of the people in November of 1986.

5 9. The warning requirement of Proposition 65 is contained in Health and Safety Code
6 section 25249.6, which provides:

7 No person in the course of doing business shall knowingly and
8 intentionally expose any individual to a chemical known to the state to
9 cause cancer or reproductive toxicity without first giving clear and
10 reasonable warning to such individual, except as provided in Section
11 25249.10.

12 10. An exposure to a chemical in a consumer product is one “which results from a person’s
13 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or
14 any exposure that results from receiving a consumer service.” (Cal. Code Regs., tit. 22, § 12601, subd.
15 (b).)

16 11. Proposition 65 establishes a procedure by which the state is to develop a list of chemicals
17 “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, § 25249.8.) No
18 warning need be given concerning a listed chemical until one year after the chemical first appears on the
19 list. (*Id.*, § 25249.10, subd. (b).)

20 12. Any person “violating or threatening to violate” the statute may be enjoined in any court
21 of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To “threaten to violate” is defined to mean
22 “to create a condition in which there is a substantial probability that a violation will occur.” (*Id.*, §
23 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up to \$2,500 per day for each
24 violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)

25 13. Actions to enforce the law “may be brought by the Attorney General in the name of the
26 People of the State of California [or] by any district attorney [or] by any City Attorney of a City having
27 a population in excess of 750,000 . . .” (*Id.*, § 25249.7, subd. (c).) Private parties are given authority to
28 enforce Proposition 65 “in the public interest,” but only if the private party first provides written notice
of a violation to the alleged violator, the Attorney General, and every District Attorney in whose
jurisdiction the alleged violation occurs. If no public prosecutors commence enforcement within sixty

1 days, then the private party may sue. (Health & Saf. Code, § 25249.7(d).) No such governmental action
2 has been pursued against Defendant Lava.

3 **B. The Unfair Competition Act**

4 14. California Business and Professions Code section 17200 provides that “unfair
5 competition shall mean and include unlawful, unfair or fraudulent business practice.” Section 17203 of
6 the Business and Professions Code provides that “(a)ny person performing or proposing to perform an
7 act of unfair competition within this state may be enjoined in any court of competent jurisdiction.”

8 15. Unlawful acts under the statute include any act that is unlawful that is conducted as part
9 of business activity, and therefore include violations of Proposition 65.

10 16. Business and Professions Code section 17206, subdivision (a), provides that any person
11 violating section 17200 “shall be liable for a civil penalty not to exceed two thousand five hundred
12 dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the
13 name of the people of the State of California by the Attorney General or by any district attorney . . . [or]
14 by any city attorney of a city . . . having a population in excess of 750,000.” Under section 17205, these
15 penalties are “cumulative to each other and to the remedies or penalties available under all other laws of
16 this state.”

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18 **V. FACTS**

19 17. “Benzene” was placed in the Governor's list of chemicals known to the State of
20 California to cause cancer on February 27, 1987. (Cal. Code Regs., tit. 22, § 12000, et seq.).

21 18. “Benzene” was placed in the Governor's list of chemicals known to the State of
22 California to cause developmental issues with males on December 26, 1997. (Cal. Code Regs., tit. 22, §
23 12000, et seq.).

24 19. “Carbon monoxide” was placed in the Governor's list of chemicals known to the State of
25 California to cause “developmental” issues on July 1, 1989. (Cal. Code Regs., tit. 22, § 12000, et seq.).

26 20. “Carbon black” was placed in the Governor's list of chemicals known to the State of
27 California to cause cancer on February 21, 2003. (Cal. Code Regs., tit. 22, § 12000, et seq.).
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1 21. Lava is a manufacturer, distributor and marketer of propane cylinders for use by
2 individuals in the home.

3 22. Individuals who purchase and use Lava Propane cylinders are exposed to benzene,
4 carbon monoxide and carbon black (the “chemicals”) chiefly through the inhalation of these fumes when
5 the propane is ignited for use in cooking and other activities. Such individuals are thus exposed to the
6 chemicals that are present in Lava Propane cylinder in the course of the intended and reasonably
7 foreseeable use of those items.

8 23. At all times material to this complaint, Defendant LAVA has had knowledge that the
9 propane cylinders contain propane, and that when ignited the chemicals are released into the air.

10 24. At all times material to this complaint, Defendants LAVA had knowledge that
11 individuals within the State of California use Lava Propane cylinders in the intended manner and are
12 exposed to the byproduct chemicals.

13 25. At all times material to this complaint, Defendant LAVA knew that the LAVA Propane
14 products were sold throughout the State of California in large numbers, and Defendant profited from
15 such sales through, among other things, the sale and exchange of propane cylinders whose products
16 were sold in California.

17 26. Notwithstanding this knowledge, Defendant Lava intentionally authorized and
18 reauthorized the sale and exchange of Lava Propane products that contained propane (and when ignited,
19 produce the byproduct chemicals).

20 27. At all times material to this complaint, Defendant knowingly and intentionally exposed
21 individuals within the State of California to the chemicals. The exposure is knowing and intentional
22 because it is the result of the Defendant’s deliberate act of authorizing the sale of products known to
23 contain propane in a manner whereby these products were, and would inevitably be, sold to consumers
24 within the state of California, and with the knowledge that the intended use of these products will result
25 in exposures to the chemicals within the State of California.

26 28. Defendant has failed to provide clear and reasonable warnings that the use of the products
27 in question in California results in exposure to a chemical known to the State of California to cause
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1 cancer, birth defects and other reproductive harm, and no such warning was provided to those
2 individuals by any other person.

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4 **VI. FIRST CAUSE OF ACTION**

5 (Against Defendant LAVA for Violation of Proposition 65)

6 29. Paragraphs 1 through 28 are re-alleged as if fully set forth herein.

7 30. By committing the acts alleged above, Defendants have, in the course of doing business,
8 knowingly and intentionally exposed individuals in California to chemicals known to the State of
9 California to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
10 such individuals, within the meaning of Health and Safety Code section 25249.6.

11 31. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed
12 \$2,500 per day for each violation, as well as other remedies.

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14 **VII. SECOND CAUSE OF ACTION**

15 (Against Defendant for Unlawful Business Practices)

16 32. Paragraphs 1 through 31 are re-alleged as if fully set forth herein.

17 33. By committing the acts alleged above, Defendant has engaged in unlawful business
18 practices which constitute unfair competition within the meaning of Business and Professions Code
19 section 17200.

20 34. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed
21 \$2,500 per day for each violation.

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23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray that the Court:

25 1. Pursuant to the First and Second Causes of Action, grant civil penalties according
26 to proof;

27 2. Pursuant to Health and Safety Code section 25249.7 and Business and Professions
28 Code section 17203, enter such temporary restraining orders, preliminary injunctions, permanent

1 injunctions, or other orders prohibiting Defendant from exposing persons within the State of California
2 to Listed Chemicals caused by the use of their products without providing clear and reasonable
3 warnings, as Plaintiffs shall specify in further application to the court;

4 3. Enter such orders as “may be necessary to restore to any person in interest any
5 money or property, real or personal, which may have been acquired by means of” these unlawful acts, as
6 provided in Business and Professions Code section 17203 and other applicable laws;

7 4. Award Plaintiffs their costs of suit;

8 5. Grant such other and further relief as the court deems just and proper.

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Respectfully submitted,

DATED: September 12, 2013

By: _____
DANIEL N. GREENBAUM
Attorney for Plaintiff
AFS Enterprises, LLC