

1 LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
2 1467 South Holt Avenue #2
Los Angeles, CA 90035
3 Telephone: (310) 200-2631
Facsimile: (818) 788-3847
4 Email: danielgreenbaumesq@gmail.com
5 Attorney for Shefa LMV, LLC

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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 04 2013

John A. Clarke, Executive Officer/Clerk
By Amber Hayes, Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 SHEFA LMV, LLC, a California Limited
12 Liability Company,

14 Plaintiff,

15 vs.

17 PETCO ANIMAL SUPPLIES, INC., a
Delaware Corporation; INTERNATIONAL PET
18 SUPPLIES AND DISTRIBUTION, INC., a
California Corporation; JOHN PAUL
19 PRODUCTS, LLC, a Nevada Limited Liability
Company; UNITED PET GROUP, INC., a
20 Delaware Corporation; and DOES 1 - 25,
21 Inclusive,

22 Defendants.
23

) Unlimited Jurisdiction

) CASE NO.:

BC520413

) COMPLAINT FOR CIVIL
) PENALTY AND INJUNCTIVE
) RELIEF

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

) TOXIC TORT/ENVIRONMENTAL

Fax

24 Plaintiff, Shefa LMV, LLC, hereby alleges:

25 I. PRELIMINARY STATEMENT

26 1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure to
27 lead, which is a chemical known to the State of California to cause birth defects, or other reproductive
28 harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Cal. Health & Safety Code

1 and reasonable warning” before exposing individuals to chemicals known to the state to cause cancer or
2 reproductive harm.

3 **II. PARTIES**

4 3. Plaintiff, SHEFA LMV, LLC (“Plaintiff”) is made up of citizens of the State of California,
5 by and through its counsel of record, the Law Office of Daniel N. Greenbaum.

6 4. Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition 65
7 may be brought by “any person in the public interest.”

8 5. Defendant PETCO ANIMAL SUPPLIES, INC. (hereinafter “PETCO”) is a business entity
9 with ten or more employees that sells, or has, at times relevant to this complaint, authorized the
10 manufacture, distribution, or sale of shampoo products under the brand name “Petco” and/or other brand
11 names, that contain Coconut oil diethanolamine condensate (cocamide diethanolamine) or
12 Diethanolamine, for sale within the State of California, without first giving clear and reasonable warning.

13 6. Defendant INTERNATIONAL PET SUPPLIES AND DISTRIBUTION, INC. (hereinafter
14 “INTERNATIONAL PET”) is a business entity with ten or more employees that sells, or has, at times
15 relevant to this complaint, authorized the manufacture, distribution, or sale of shampoo products under
16 the brand name “Petco” and/or other brand names, that contain Coconut oil diethanolamine condensate
17 (cocamide diethanolamine) or Diethanolamine, for sale within the State of California, without first giving
18 clear and reasonable warning.

19 7. Defendant JOHN PAUL PRODUCTS, LLC (hereinafter “JOHN PAUL”) is a business
20 entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the
21 manufacture, distribution, or sale of shampoo products under the brand name “Paul Mitchell” and/or
22 other brand names, that contain Coconut oil diethanolamine condensate (cocamide diethanolamine) or
23 Diethanolamine, for sale within the State of California, without first giving clear and reasonable warning.

24 8. Defendant UNITED PET GROUP, INC. (hereinafter “UNITED PET”) is a business entity
25 with ten or more employees that sells, or has, at times relevant to this complaint, authorized the
26 manufacture, distribution, or sale of shampoo products under the brand name “Perfect Coat” and/or other
27 brand names, that contain Coconut oil diethanolamine condensate (cocamide diethanolamine) or
28 Diethanolamine, for sale within the State of California, without first giving clear and reasonable warning.

1 9. The identities of DOES 1 through 25 are unknown to Plaintiff at this time; however,
2 Plaintiff suspects that they are business entities with at least ten or more employees that have
3 manufactured, distributed, or sold shampoo products under the above brand name or other brand names,
4 that contain Coconut oil diethanolamine condensate (cocamide diethanolamine) or Diethanolamine, for
5 sale within the State of California, without first giving clear and reasonable warning.

6 III. JURISDICTION AND VENUE

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

9 11. This Court has jurisdiction over Defendants, because they are business entities that do
10 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
11 themselves of the California market, through the sale, marketing, and use of its products in California, to
12 render the exercise of jurisdiction over it by the California courts consistent with traditional notions of
13 fair play and substantial justice.

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

16 IV. STATUTORY BACKGROUND

17 A. Proposition 65

18 13. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
19 passed as "Proposition 65" by a vote of the people in November of 1986.

20 14. The warning requirement of Proposition 65 is contained in Health and Safety Code section
21 25249.6, which provides:

22 No person in the course of doing business shall knowingly and
23 intentionally expose any individual to a chemical known to the state to
24 cause cancer or reproductive toxicity without first giving clear and
25 reasonable warning to such individual, except as provided in Section
26 25249.10.

27 15. An exposure to a chemical in a consumer product is one "which results from a person's
28 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or

1 any exposure that results from receiving a consumer service.” (Cal. Code Regs., tit. 22, § 12601, subd.
2 (b).)

3 16. Proposition 65 establishes a procedure by which the state is to develop a list of chemicals
4 “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, § 25249.8.)

5 17. No warning need be given concerning a listed chemical until one year after the chemical
6 first appears on the list. (Id., § 25249.10, subd. (b).)

7 18. Any person “violating or threatening to violate” the statute may be enjoined in any court
8 of competent jurisdiction. (Health & Saf. Code, § 25249.7.)

9 19. To “threaten to violate” is defined to mean “to create a condition in which there is a
10 substantial probability that a violation will occur.” (Id., § 25249.11, subd. (e).)

11 20. In addition, violators are liable for civil penalties of up to \$2,500 per day for each
12 violation, recoverable in a civil action. (Id., § 25249.7, subd. (b).)

13 21. Actions to enforce the law “may be brought by the Attorney General in the name of the
14 People of the State of California [or] by any district attorney [or] by any City Attorney of a City having a
15 population in excess of 750,000 . . .” (Id., § 25249.7, subd. (c).)

16 22. Private parties are given authority to enforce Proposition 65 “in the public interest,” but
17 only if the private party first provides written notice of a violation to the alleged violator, the Attorney
18 General, and every District Attorney in whose jurisdiction the alleged violation occurs.

19 23. If no public prosecutors commence enforcement within sixty days, then the private party
20 may sue. (Health & Saf. Code, § 25249.7(d).)

21 24. No such governmental action has been pursued against Defendants.

22 **V. FACTS**

23 25. “Coconut oil diethanolamine condensate (cocamide diethanolamine)” and
24 “Diethanolamine” were placed in the Governor's list of chemicals known to the State of California to
25 cause cancer on June 22, 2012. (Cal. Code Regs., tit. 22, § 12000, subd. (b).)

26 26. Petco and International Pet are manufacturers, distributors, marketers, and/or retailers of
27 shampoo products for use by individuals in the home and in other occupational endeavors.

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1 27. John Paul is a manufacturer, distributor, marketer, and/or retailer of shampoo products for
2 use by individuals in the home and in other occupational endeavors.

3 28. United Pet is a manufacturer, distributor, marketer, and/or retailer of shampoo products for
4 use by individuals in the home and in other occupational endeavors.

5 29. These shampoos are sold through various retailers, including PETCO, located in
6 California for use by citizens of the State of California.

7 30. The shampoo products are sold to consumers under the trade names owned by the
8 Defendants for their various brands, including those mentioned above, and using the associated
9 trademarks and trade dress for those brands, including the distinctive retailer labels.

10 31. The process followed in manufacturing the products for sale to the consuming public must
11 be approved by Defendants.

12 32. Individuals who purchase or handle Defendants' products are exposed to Coconut oil
13 diethanolamine condensate (cocamide diethanolamine) or Diethanolamine ("DEA") chiefly through: (1)
14 contact between the shampoo and the skin, (2) transfer of DEA from the skin to the mouth, both by
15 transfer directly from the hand to mouth and by transfer of the DEA from the skin to objects that are put
16 in the mouth, such as food and (3) through absorption of DEA through the skin.

17 33. Such individuals are thus exposed to the DEA that is present on and in Defendants'
18 products in the course of the intended and reasonably foreseeable use of those products.

19 34. At all times material to this complaint, Defendants had knowledge that the soaps or
20 shampoos contain DEA and that skin may come into contact with DEA.

21 35. At all times material to this complaint, Defendants have had knowledge that individuals
22 within the State of California handle Defendants' products that contain Coconut oil diethanolamine
23 condensate (cocamide diethanolamine) or Diethanolamine.

24 36. At all times material to this complaint, Defendants knew that the Defendants' products
25 were sold throughout the State of California in large numbers, and Defendants profited from such sales
26 through, among other things, the sale of Defendants' products that were sold in California.

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1 37. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized the
2 sale of Defendants' products that contained Coconut oil diethanolamine condensate (cocamide
3 diethanolamine) or Diethanolamine.

4 38. At all times material to this complaint, Defendants have knowingly and intentionally
5 exposed individuals within the State of California to Coconut oil diethanolamine condensate (cocamide
6 diethanolamine) or Diethanolamine.

7 39. The exposure is knowing and intentional because it is the result of the Defendants'
8 deliberate act of authorizing the sale of products known to contain Coconut oil diethanolamine
9 condensate (cocamide diethanolamine) or Diethanolamine in a manner whereby these products were, and
10 would inevitably be, sold to consumers within the state of California, and with the knowledge that the
11 intended use of these products will result in exposures to Coconut oil diethanolamine condensate
12 (cocamide diethanolamine) or Diethanolamine within the State of California.

13 40. Defendant has failed to provide clear and reasonable warnings that the use of the products
14 in question in California results in exposure to a chemical known to the State of California to cause
15 cancer, and no such warning was provided to those individuals by any other person.

16 **VI. FIRST CAUSE OF ACTION**

17 **Violation of Proposition 65**

18 **(Against All Defendants)**

19 41. Paragraphs 1 through 40 are re-alleged as if fully set forth herein.

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

24 43. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed
25 \$2,500 per day for each violation, as well as other remedies, such as injunctive relief requiring
26 reformulation of the Products.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

1. Pursuant to the First Cause of Action, grant civil penalties according to proof;
2. Pursuant to Cal. Health & Safety Code section 25249.7 and Cal. Business & Professions Code section 17203 et seq., enter such temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from exposing persons within the State of California to Listed Chemicals caused by the use of their products without providing clear and reasonable warnings, as Plaintiff shall specify in further application to the court;
3. Award Plaintiff its costs of suit;
4. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: September 24, 2013


By: DANIEL N. GREENBAUM
Attorney for Plaintiff
Shefa LMV, LLC