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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTRAL DISTRICT

SHEFA LMV, LLC, a California limited liability company,) Unlimited Jurisdiction

Plaintiff,) CASE NO.

BC 528423

vs.)

CHATTEM, INC.; and DOES 1 THROUGH) COMPLAINT FOR CIVIL
25, Inclusive,) PENALTY AND INJUNCTIVE

Defendants.) RELIEF
(Health and Safety Code § 25249.5 et seq.)

) TOXIC TORT/ENVIRONMENTAL

Plaintiff SHEFA LMV, LLC, hereby alleges:

BY FAX

I. PRELIMINARY STATEMENT

1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure to Cocamide Diethanolamine, which is a chemical known to the State of California to cause cancer.

2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and reasonable warning" before exposing individuals to chemicals known to the state to cause cancer or reproductive harm.

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II. PARTIES

3. Plaintiff is a limited liability company formed pursuant to the laws of the State of California, made up of California citizens, represented by and through its counsel of record, the Law Office of Daniel N. Greenbaum.

4. 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.”

5. Defendant CHATTEM, INC. (hereinafter “CHATTEM”) is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of shampoo products, including but not limited to, the brand names, Selsun Blue Medicated Treatment Dandruff Shampoo, Selsun Blue Moisturizing Treatment Dandruff Shampoo, Selsun Blue 2-in-1 Treatment Dandruff Shampoo, and Selsun Blue Dandruff Shampoo Normal to Oily, and other brand names, that contain Coconut oil diethanolamine condensate (cocamide diethanolamine), for sale within the State of California, without first giving clear and reasonable warning.

6. The identities of DOES 1 through 25 are unknown to Plaintiff at this time; however, Plaintiff suspects that they are business entities with at least ten or more employees that have sold, authorized the distribution, or sale of soap and shampoo products (hereinafter “PRODUCTS”) under the brand name Walgreens and other brand names, that contain Coconut oil diethanolamine condensate (cocamide diethanolamine), for sale within the State of California, without first giving clear and reasonable warning.

III. JURISDICTION AND VENUE

7. 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.

8. This Court has jurisdiction over Defendants, because they are business entities that do 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.

1 9. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles
2 County because Defendants' PRODUCTS are sold and consumed in this county.

3 IV. STATUTORY BACKGROUND

4 A. Proposition 65

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

7 11. The warning requirement of Proposition 65 is contained in Health and Safety Code
8 section 25249.6, which provides:

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

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

17 13. Proposition 65 establishes a procedure by which the state is to develop a list of
18 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, §
19 25249.8.)

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

22 15. Any person "violating or threatening to violate" the statute may be enjoined in any
23 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)

24 16. To "threaten to violate" is defined to mean "to create a condition in which there is a
25 substantial probability that a violation will occur." (Id., § 25249.11, subd. (e).)

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

- 1 b. transfer of Cocamide DEA from the skin to the mouth, both by transfer directly
2 from the hand to mouth and by transfer of the Cocamide DEA from the skin to
3 objects that are put in the mouth, such as food, and;
4 c. through absorption of Cocamide DEA through the skin.

5 28. Such individuals are thus exposed to the Cocamide DEA that is present on and in
6 Defendants' PRODUCTS in the course of the intended and reasonably foreseeable use of those
7 PRODUCTS.

8 29. At all times material to this complaint, Defendants had knowledge that the soaps or
9 shampoos contain Cocamide DEA and that skin may come into contact with Cocamide DEA.

10 30. At all times material to this complaint, Defendants have had knowledge that
11 individuals within the State of California handle Defendants' PRODUCTS that contain Cocamide
12 DEA.

13 31. At all times material to this complaint, Defendants knew that Defendants'
14 PRODUCTS were sold throughout the State of California in large numbers, and Defendants profited
15 from such sales through, among other things, the sale of Defendants' PRODUCTS that were sold in
16 California.

17 32. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
18 the sale of Defendants' PRODUCTS that contained Cocamide DEA.

19 33. At all times material to this complaint, Defendants have knowingly and intentionally
20 exposed individuals within the State of California to Cocamide DEA.

21 34. The exposure is knowing and intentional because it is the result of the Defendants'
22 deliberate act of authorizing the sale of PRODUCTS known to contain Cocamide DEA in a manner
23 whereby these PRODUCTS were, and would inevitably be, sold to consumers within the state of
24 California, and with the knowledge that the intended use of these PRODUCTS will result in
25 exposures to Cocamide DEA within the State of California.

26 35. Defendants have failed to provide clear and reasonable warnings that the use of the
27 PRODUCTS in question in California results in exposure to a chemical known to the State of
28

1 California to cause cancer, and no such warning was provided to those individuals by any other
2 person.

3 **VI. FIRST CAUSE OF ACTION**

4 (Against All Defendants for Violation of Proposition 65)

5 36. Paragraphs 1 through 35 are re-alleged as if fully set forth herein.

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

10 38. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed
11 \$2,500 per day for each violation, as well as other remedies, such as injunctive relief requiring
12 reformulation of the products.

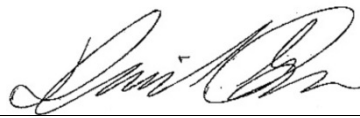
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray that the Court:

- 15 1. Pursuant to the First Cause of Action, grant civil penalties according to proof;
16 2. Pursuant to Health and Safety Code section 25249.7, enter such temporary restraining
17 orders, preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant
18 from exposing persons within the State of California to Listed Chemicals caused by the use of
19 their products without providing clear and reasonable warnings, as Plaintiffs shall specify in
20 further application to the court;
21 3. Award Plaintiffs their costs of suit;
22 4. Grant such other and further relief as the court deems just and proper.

23
24 Respectfully submitted,

25 DATED: November 21, 2013

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