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CENTER FOR ENVIRONMENTAL HEALTH

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 CENTER FOR ENVIRONMENTAL HEALTH, )  
15 a non-profit corporation, )

16 Plaintiff, )

17 v. )

18 FANTASIA INDUSTRIES CORPORATION; )  
AFAM CONCEPT, INC.; BLOOMING )  
19 BEAUTY; E.T. BROWNE DRUG CO., INC.; )  
GOLDEN SUN, INC. DBA NEWHALL )  
LABORATORIES, INC.; GRANDALL )  
20 DISTRIBUTING CO., INC.; HOUSE OF )  
CHEATHAM, INC.; INSPIRED BEAUTY )  
21 BRANDS, INC.; INTER AMERICAN )  
COSMETICS, INC.; JOHN PAUL MITCHELL )  
22 SYSTEMS, INC.; JOHNSON PRODUCTS CO., )  
INC.; LUSTER PRODUCTS, INC.; M&M )  
23 PRODUCTS COMPANY; RISE )  
INTERNATIONAL GROUP LLC; ROSS )  
24 STORES, INC.; SAFEWAY INC.; STRENGTH )  
OF NATURE GLOBAL, LLC; TARGET )  
25 CORPORATION; UNIVERSAL BEAUTY )  
PRODUCTS, INC.; and DOES 1 through 700, )  
26 inclusive, )

27 Defendants. )  
28

ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 24 2013

CLERK OF THE SUPERIOR COURT  
By \_\_\_\_\_ Deputy

Case No. **RG13696756**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on  
2 information and belief and investigation of counsel, except for information based on knowledge,  
3 hereby makes the following allegations:

#### 4 INTRODUCTION

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn  
6 individuals in California that they are being exposed to coconut oil diethanolamine condensate  
7 (cocamide diethanolamine) (hereinafter, "Cocamide DEA"), a chemical known to the State of  
8 California to cause cancer. Cocamide DEA is a toxic chemical that is used as a foam stabilizer,  
9 emulsifier and viscosity builder in cosmetic products. This Complaint addresses exposures that  
10 have occurred, and continue to occur, through the manufacture, distribution, sale, and/or use of  
11 shampoo and liquid soaps, such as hand soap, body wash and bubble bath (collectively,  
12 "Products"). Individuals in California, including pregnant women and children, are exposed to  
13 Cocamide DEA through ordinary use of the Products.

14 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*  
15 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California  
16 to chemicals known to the State to cause cancer without providing clear and reasonable warnings  
17 to individuals prior to their exposure. Defendants introduce Products contaminated with  
18 significant quantities of Cocamide DEA into the California marketplace, exposing consumers of  
19 their Products to Cocamide DEA.

20 3. Despite the fact that Defendants expose pregnant women, children, and  
21 other people to Cocamide DEA, Defendants provide no warnings whatsoever about the  
22 carcinogenic hazards associated with these Cocamide DEA exposures. Defendants' conduct thus  
23 violates the warning provision of Proposition 65. Health & Safety Code § 25249.6.

#### 24 PARTIES

25 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a  
26 non-profit corporation dedicated to protecting the public from environmental health hazards and  
27 toxic exposures. CEH is based in Oakland, California and is incorporated under the laws of the  
28 State of California. CEH is a "person" within the meaning of Health & Safety Code §

1 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety  
2 Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group  
3 that has prosecuted a large number of Proposition 65 cases in the public interest. These cases  
4 have resulted in significant public benefit, including the reformulation of thousands of products  
5 to remove toxic chemicals to make them safer. CEH also provides information to Californians  
6 about the health risks associated with exposure to hazardous substances, where manufacturers  
7 and other responsible parties fail to do so.

8           5. Defendant FANTASIA INDUSTRIES CORPORATION is a person in the  
9 course of doing business within the meaning of Health & Safety Code § 25249.11. FANTASIA  
10 INDUSTRIES CORPORATION manufactures, distributes, and/or sells Products for sale or use  
11 in California.

12           6. Defendant AFAM CONCEPT, INC. is a person in the course of doing  
13 business within the meaning of Health & Safety Code § 25249.11. AFAM CONCEPT, INC.  
14 manufactures, distributes, and/or sells Products for sale or use in California.

15           7. Defendant BLOOMING BEAUTY is a person in the course of doing  
16 business within the meaning of Health & Safety Code § 25249.11. BLOOMING BEAUTY  
17 manufactures, distributes, and/or sells Products for sale or use in California.

18           8. Defendant E.T. BROWNE DRUG CO., INC. is a person in the course of  
19 doing business within the meaning of Health & Safety Code § 25249.11. E.T. BROWNE DRUG  
20 CO., INC. manufactures, distributes, and/or sells Products for sale or use in California.

21           9. Defendant GOLDEN SUN, INC. DBA NEWHALL LABORATORIES,  
22 INC. is a person in the course of doing business within the meaning of Health & Safety Code §  
23 25249.11. GOLDEN SUN, INC. DBA NEWHALL LABORATORIES, INC. manufactures,  
24 distributes, and/or sells Products for sale or use in California.

25           10. Defendant GRANDALL DISTRIBUTING CO., INC. is a person in the  
26 course of doing business within the meaning of Health & Safety Code § 25249.11. GRANDALL  
27 DISTRIBUTING CO., INC. manufactures, distributes, and/or sells Products for sale or use in  
28 California.

1           11. Defendant HOUSE OF CHEATHAM, INC. is a person in the course of  
2 doing business within the meaning of Health & Safety Code § 25249.11. HOUSE OF  
3 CHEATHAM, INC. manufactures, distributes, and/or sells Products for sale or use in California.

4           12. Defendant INSPIRED BEAUTY BRANDS, INC. is a person in the course  
5 of doing business within the meaning of Health & Safety Code § 25249.11.INSPIRED BEAUTY  
6 BRANDS, INC. manufactures, distributes, and/or sells Products for sale or use in California.

7           13. Defendant INTER AMERICAN COSMETICS, INC. is a person in the  
8 course of doing business within the meaning of Health & Safety Code § 25249.11. INTER  
9 AMERICAN COSMETICS, INC. manufactures, distributes, and/or sells Products for sale or use  
10 in California.

11           14. Defendant JOHN PAUL MITCHELL SYSTEMS, INC. is a person in the  
12 course of doing business within the meaning of Health & Safety Code § 25249.11. JOHN PAUL  
13 MITCHELL SYSTEMS, INC. manufactures, distributes, and/or sells Products for sale or use in  
14 California.

15           15. Defendant JOHNSON PRODUCTS CO., INC. is a person in the course of  
16 doing business within the meaning of Health & Safety Code § 25249.11. JOHNSON  
17 PRODUCTS CO., INC. manufactures, distributes, and/or sells Products for sale or use in  
18 California.

19           16. Defendant LUSTER PRODUCTS, INC. is a person in the course of doing  
20 business within the meaning of Health & Safety Code § 25249.11. LUSTER PRODUCTS, INC.  
21 manufactures, distributes, and/or sells Products for sale or use in California.

22           17. Defendant M&M PRODUCTS COMPANY is a person in the course of  
23 doing business within the meaning of Health & Safety Code § 25249.11. M&M PRODUCTS  
24 COMPANY manufactures, distributes, and/or sells Products for sale or use in California.

25           18. Defendant RISE INTERNATIONAL GROUP LLC is a person in the  
26 course of doing business within the meaning of Health & Safety Code § 25249.11. RISE  
27 INTERNATIONAL GROUP LLC manufactures, distributes, and/or sells Products for sale or use  
28 in California.





1           33.     On June 22, 2013, one year after it was listed as a chemical known to  
2 cause cancer, Cocamide DEA became subject to the clear and reasonable warning requirement  
3 regarding carcinogens under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code §  
4 25249.10(b). The chief purpose of the one-year grace period between the listing date of a  
5 chemical under Proposition 65 and the effective date of the warning requirement is to give  
6 potentially liable parties sufficient time to come into complete compliance with this requirement,  
7 such that all illegal exposures can be averted.

8           34.     Cocamide DEA is used in Products as a foam stabilizer, emulsifier and  
9 viscosity builder in cosmetic products.

10          35.     Defendants' Products contain sufficient quantities of Cocamide DEA such  
11 that individuals, including infants and children, are exposed to Cocamide DEA through the  
12 average use of Products. The routes of exposure include dermal absorption and ingestion by  
13 individuals when, for example, they apply the Products to their hair, scalp or skin.

14          36.     Any person acting in the public interest has standing to enforce violations  
15 of Proposition 65 provided that such person has supplied the requisite public enforcers with a  
16 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
17 action within such time. Health & Safety Code § 25249.7(d).

18          37.     More than sixty days prior to naming each Defendant in this lawsuit, CEH  
19 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,  
20 the District Attorneys of every county in California, the City Attorneys of every California city  
21 with a population greater than 750,000, and to each of the named Defendants. In compliance  
22 with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
23 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
24 time period during which violations occurred; (4) specific descriptions of the violations,  
25 including (a) the routes of exposure to Cocamide DEA from Products, and (b) the specific type of  
26 Products sold and used in violation of Proposition 65; and (5) the name of the specific  
27 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

28          38.     More than sixty days prior to naming each Defendant in this lawsuit,

1 concurrent with sending the Notices described in the preceding paragraph, CEH also sent a  
2 Certificate of Merit for each Notice to the California Attorney General, the District Attorneys of  
3 every county in California, the City Attorneys of every California city with a population greater  
4 than 750,000, and to the named Defendants. In compliance with Health & Safety Code §  
5 25249.7(d) and 11 C.C.R. § 3101, each of the Certificates certified that CEH's counsel: (1) has  
6 consulted with one or more persons with relevant and appropriate experience or expertise who  
7 reviewed facts, studies, or other data regarding the exposures to Cocamide DEA alleged in each  
8 of the Notices; and (2) based on the information obtained through such consultations, believes  
9 that there is a reasonable and meritorious case for a citizen enforcement action based on the facts  
10 alleged in each of the Notices. In compliance with Health & Safety Code § 25249.7(d) and 11  
11 C.C.R. § 3102, each of the Certificates served on the Attorney General included factual  
12 information – provided on a confidential basis – sufficient to establish the basis for the  
13 Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts,  
14 studies, or other data reviewed by such persons.

15           39. None of the public prosecutors with the authority to prosecute violations  
16 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
17 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in the  
18 Notices.

19           40. Defendants both know and intend that consumers in California, including  
20 infants and children, will use, touch, and/or handle the Products, thus exposing them to  
21 Cocamide DEA.

22           41. Under Proposition 65, an exposure is “knowing” where the party  
23 responsible for such exposure has:

24                   knowledge of the fact that a[n] ... exposure to a chemical listed  
25                   pursuant to [Health and Safety Code § 25249.8(a)] is occurring.  
26                   No knowledge that the ... exposure is unlawful is required.

27           27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
28 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §



1 12201).

2 42. No clear and reasonable warning is provided with the Products regarding  
3 the carcinogenic hazards of Cocamide DEA.

4 43. Defendants have been informed of the Cocamide DEA in their Products by  
5 the 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

6 44. As companies that manufacture, import, distribute, and/or sell Products for  
7 use in the California marketplace, Defendants know or should know that Products contain  
8 Cocamide DEA and that individuals who use the Products will be exposed to Cocamide DEA.  
9 These Cocamide DEA exposures are a natural and foreseeable consequence of Defendants'  
10 placing the Products into the stream of commerce.

11 45. Nevertheless, Defendants continue to expose consumers in California,  
12 including infants and children, to Cocamide DEA without prior clear and reasonable warnings  
13 regarding the carcinogenic hazards of Cocamide DEA.

14 46. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
15 prior to filing this Complaint.

16 47. Any person "violating or threatening to violate" Proposition 65 may be  
17 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to  
18 violate" is defined to mean "to create a condition in which there is a substantial probability that a  
19 violation will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil  
20 penalties not to exceed \$2,500 per day for each violation of Proposition 65. Health & Safety  
21 Code § 25249.7(b).

22 **FIRST CAUSE OF ACTION**  
23 **(Violations of Health & Safety Code § 25249.6)**

24 48. CEH realleges and incorporates by reference as if specifically set forth  
25 herein Paragraphs 1 through 47, inclusive.

26 49. Cocamide DEA is a chemical listed by the State of California as known to  
27 cause cancer.

28 50. By placing their Products into the stream of commerce, Defendants are

1 each a person in the course of doing business within the meaning of Health & Safety Code §  
2 25249.11.

3 51. Defendants know that average use of their Products will expose users of  
4 the Products to Cocamide DEA. Defendants intend that their Products be used in a manner that  
5 results in users of their Products being exposed to Cocamide DEA contained therein.

6 52. Defendants have failed, and continue to fail, to provide prior clear and  
7 reasonable warnings regarding the carcinogenicity of Cocamide DEA to users of their Products.

8 53. By committing the acts alleged above, Defendants have at all times  
9 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing  
10 individuals to Cocamide DEA without first giving clear and reasonable warnings to such  
11 individuals regarding the carcinogenicity of Cocamide DEA.

12 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

13 **PRAYER FOR RELIEF**

14 Wherefore, CEH prays for judgment against Defendants as follows:

15 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess  
16 civil penalties against each Defendant in the amount of \$2,500 per day for each violation of  
17 Proposition 65 alleged herein according to proof;

18 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),  
19 preliminarily and permanently enjoin Defendants from offering Products for sale in California  
20 without providing prior clear and reasonable warnings, as CEH shall specify in further  
21 application to the Court;

22 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order  
23 Defendants to take action to stop ongoing unwarned exposures to Cocamide DEA resulting from  
24 use of Products sold by Defendants, as CEH shall specify in further application to the Court;

25 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other  
26 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and  
27  
28

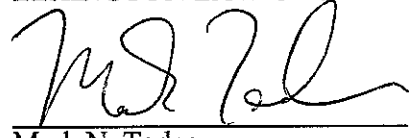
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5. That the Court grant such other and further relief as may be just and proper.

Dated: September 24, 2013

Respectfully submitted,

LEXINGTON LAW GROUP



Mark N. Todzo  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH