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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 04 2013

Sherri R. Carter, Executive Officer/Clerk
By: Shaunya Bolden, Deputy

4 Attorney for SHEFA LMV, LLC

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA

6 COUNTY OF LOS ANGELES

7 CENTRAL DISTRICT

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

10)
11 Plaintiff,) CASE NO.

12 vs.)

13) COMPLAINT FOR CIVIL PENALTY AND
EVERGREEN CONSUMER BRANDS, ULC;) INJUNCTIVE RELIEF

14 and DOES 1 THROUGH 25, Inclusive,)
15) (Health and Safety Code § 25249.5 et seq.)

16 Defendants.)

17) TOXIC TORT/ENVIRONMENTAL
18)

BC529481
BY FAX

19 Plaintiff SHEFA LMV, LLC, hereby alleges:

20
21 **I. PRELIMINARY STATEMENT**

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

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

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1 **II. PARTIES**

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

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

7 5. Defendant EVERGREEN CONSUMER BRANDS, ULC (hereinafter
8 “EVERGREEN”) is a business entity with ten or more employees that sells, or has, at times relevant
9 to this complaint, authorized the manufacture, distribution, or sale of shampoo products, including
10 but not limited to, the brand names Silkience Hair Care 2-1 Shampoo and Conditioner and Silkience
11 Moisturizing Shampoo, and other brand names, that contain Coconut oil diethanolamine condensate
12 (cocamide diethanolamine), for sale within the State of California, without first giving clear and
13 reasonable warning.

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

19 **III. JURISDICTION AND VENUE**

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

22 8. This Court has jurisdiction over Defendants, because they are business entities that do
23 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
24 themselves of the California market, through the sale, marketing, and use of its PRODUCTS in
25 California, to render the exercise of jurisdiction over it by the California courts consistent with
26 traditional notions of fair play and substantial justice.

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

1 **IV. STATUTORY BACKGROUND**

2 **A. Proposition 65**

3 10. 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 11. 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 intentionally
8 expose any individual to a chemical known to the state to cause cancer or
9 reproductive toxicity without first giving clear and reasonable warning to such
10 individual, except as provided in Section 25249.10.

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

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

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

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

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

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

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

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

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

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

7
8 **V. FACTS**

9 22. “Coconut oil diethanolamine condensate (cocamide diethanolamine)” was placed in
10 the Governor's list of chemicals known to the State of California to cause cancer on June 22, 2012.
11 (Cal. Code Regs., tit. 22, § 12000, subd. (b).)

12 23. EVERGREEN (“Defendant”) manufactures, distributes and markets shampoo
13 PRODUCTS for use by individuals in the home and in other occupational endeavors.

14 24. These PRODUCTS are sold through various retailers located in California for use by
15 citizens of the State of California.

16 25. The PRODUCTS are sold to consumers under the trade names owned by Defendants
17 for their various brands, including those mentioned above, and using the associated trademarks and
18 trade dress for those brands, including the distinctive retailer labels.

19 26. The process followed in manufacturing its PRODUCTS for sale to the consuming
20 public must be approved by EVERGREEN, including the PRODUCT used by individuals for
21 personal use.

22 27. Individuals who purchase and use Defendants’ PRODUCTS are exposed to Coconut
23 oil diethanolamine condensate (cocamide diethanolamine “DEA”) chiefly through:

- 24 a. contact between the shampoo and the skin;
25 b. transfer of Cocamide DEA from the skin to the mouth, both by transfer directly
26 from the hand to mouth and by transfer of the Cocamide DEA from the skin to
27 objects that are put in the mouth, such as food, and;
28 c. through absorption of Cocamide DEA through the skin.

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

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

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

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

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

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

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

22 35. Defendants have failed to provide clear and reasonable warnings that the use of the
23 PRODUCTS in question in California results in exposure to a chemical known to the State of
24 California to cause cancer, and no such warning was provided to those individuals by any other
25 person.

26 **VI. FIRST CAUSE OF ACTION**

27 (Against All Defendants for Violation of Proposition 65)

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

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

5 38. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed
6 \$2,500 per day for each violation, as well as other remedies, such as injunctive relief requiring
7 reformulation of the products.


8 PRAYER FOR RELIEF

9 WHEREFORE, Plaintiffs pray that the Court:

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

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19 Respectfully submitted,

20 DATED: December 3, 2013

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