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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,)

v.

17 COMMONWEALTH SOAP & TOILETRIES,)
INC.; DERMSTORE LLC; GRISI)
18 HERMANOS, S.A. DE C.V.; LABORATOIRES)
DELON, INC.; LUSH HANDMADE)
19 COSMETICS LTD.; PHARMACA)
INTEGRATIVE PHARMACY, INC.; T.J.)
20 MAXX OF CA, LLC; THE TJX COMPANIES,)
INC.; TOYS 'R' US-DELAWARE, INC.;)
21 UPPER CANADA SOAP & CANDLE)
MAKERS CORPORATION; and DOES 1)
22 through 700, inclusive,)

23 Defendants.)
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Case No.

RG 13698427

**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 COMMONWEALTH SOAP & TOILETRIES, INC. is a person
9 in the course of doing business within the meaning of Health & Safety Code § 25249.11.
10 COMMONWEALTH SOAP & TOILETRIES, INC. manufactures, distributes, and/or sells
11 Products for sale or use in California.

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

15 7. Defendant GRISI HERMANOS, S.A. DE C.V. is a person in the course of
16 doing business within the meaning of Health & Safety Code § 25249.11. GRISI HERMANOS,
17 S.A. DE C.V. manufactures, distributes, and/or sells Products for sale or use in California.

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

21 9. Defendant LUSH HANDMADE COSMETICS LTD. is a person in the
22 course of doing business within the meaning of Health & Safety Code § 25249.11. LUSH
23 HANDMADE COSMETICS LTD. manufactures, distributes, and/or sells Products for sale or
24 use in California.

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

1 in California and/or by having such other contacts with California so as to render the exercise of
2 jurisdiction over it by the California courts consistent with traditional notions of fair play and
3 substantial justice.

4 20. Venue is proper in the Alameda Superior Court because one or more of the
5 violations arise in the County of Alameda.

6 **BACKGROUND FACTS**

7 21. The People of the State of California have declared by initiative under
8 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
9 defects, or other reproductive harm.” Proposition 65, § 1(b).

10 22. To effectuate this goal, Proposition 65 prohibits exposing people to
11 chemicals listed by the State of California as known to cause cancer, birth defects, or other
12 reproductive harm without a “clear and reasonable warning” unless the business responsible for
13 the exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6
14 states, in pertinent part:

15 No person in the course of doing business shall knowingly and
16 intentionally expose any individual to a chemical known to the
17 state to cause cancer or reproductive toxicity without first giving
18 clear and reasonable warning to such individual ...

19 23. On October 21, 2010, the California Environmental Protection Agency’s
20 Office of Environmental Health Hazard Assessment (“OEHHA”) requested information as to
21 whether Cocamide DEA meets the criteria for listing under Proposition 65 by the authoritative
22 bodies mechanism. On January 20, 2012, OEHHA published a notice of intent to list Cocamide
23 DEA in the California Regulatory Notice Register. The publication of the notice initiated a
24 public comment period that closed on April 6, 2012. On June 22, 2012, the State of California
25 officially listed Cocamide DEA as a chemical known to cause cancer. 27 C.C.R. § 27001(b).

26 24. On June 22, 2013, one year after it was listed as a chemical known to
27 cause cancer, Cocamide DEA became subject to the clear and reasonable warning requirement
28 regarding carcinogens under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code §
25249.10(b). The chief purpose of the one-year grace period between the listing date of a

1 chemical under Proposition 65 and the effective date of the warning requirement is to give
2 potentially liable parties sufficient time to come into complete compliance with this requirement,
3 such that all illegal exposures can be averted.

4 25. Cocamide DEA is used in Products as a foam stabilizer, emulsifier and
5 viscosity builder in cosmetic products.

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

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

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

24 29. More than sixty days prior to naming each Defendant in this lawsuit,
25 concurrent with sending the Notices described in the preceding paragraph, CEH also sent a
26 Certificate of Merit for each Notice to the California Attorney General, the District Attorneys of
27 every county in California, the City Attorneys of every California city with a population greater
28 than 750,000, and to the named Defendants. In compliance with Health & Safety Code §

1 25249.7(d) and 11 C.C.R. § 3101, each of the Certificates certified that CEH's counsel: (1) has
2 consulted with one or more persons with relevant and appropriate experience or expertise who
3 reviewed facts, studies, or other data regarding the exposures to Cocamide DEA alleged in each
4 of the Notices; and (2) based on the information obtained through such consultations, believes
5 that there is a reasonable and meritorious case for a citizen enforcement action based on the facts
6 alleged in each of the Notices. In compliance with Health & Safety Code § 25249.7(d) and 11
7 C.C.R. § 3102, each of the Certificates served on the Attorney General included factual
8 information – provided on a confidential basis – sufficient to establish the basis for the
9 Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts,
10 studies, or other data reviewed by such persons.

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

15 31. Defendants both know and intend that consumers in California, including
16 infants and children, will use, touch, and/or handle the Products, thus exposing them to
17 Cocamide DEA.

18 32. Under Proposition 65, an exposure is “knowing” where the party
19 responsible for such exposure has:

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

23 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
24 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §
25 12201).

26 33. No clear and reasonable warning is provided with the Products regarding
27 the carcinogenic hazards of Cocamide DEA.

28 34. Defendants have been informed of the Cocamide DEA in their Products by

1 the 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

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

7 36. Nevertheless, Defendants continue to expose consumers in California,
8 including infants and children, to Cocamide DEA without prior clear and reasonable warnings
9 regarding the carcinogenic hazards of Cocamide DEA.

10 37. CEH has engaged in good-faith efforts to resolve the claims alleged herein
11 prior to filing this Complaint.

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

18 **FIRST CAUSE OF ACTION**
19 **(Violations of Health & Safety Code § 25249.6)**

20 39. CEH realleges and incorporates by reference as if specifically set forth
21 herein Paragraphs 1 through 38, inclusive.

22 40. Cocamide DEA is a chemical listed by the State of California as known to
23 cause cancer.

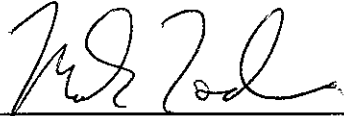
24 41. By placing their Products into the stream of commerce, Defendants are
25 each a person in the course of doing business within the meaning of Health & Safety Code §
26 25249.11.

27 42. Defendants know that average use of their Products will expose users of
28 the Products to Cocamide DEA. Defendants intend that their Products be used in a manner that

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

Dated: October 8, 2013

Respectfully submitted,
LEXINGTON LAW GROUP

Mark N. Todzo
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH