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Superior Court of California
County of Los Angeles

NOV 04 2013

John A. Clarke, Executive Officer/Clerk

By **LA TRESE JOHNSON**, Deputy

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE

11 LATONIA ENGE, Individually, In the Public
12 Interest, and On Behalf of All Others Similarly
Situated,
13 Plaintiff,
14 v.
15 LUSH COSMETICS LLC AND DOES 1-10,
16 Defendants.

Case No. **BC 526 662**
[CLASS ACTION]
COMPLAINT FOR CIVIL PENALTIES,
RESTITUTION, AND DAMAGES FOR
VIOLATION OF THE CONSUMER LEGAL
REMEDIES ACT, THE UNFAIR
COMPETITION LAW, AND THE SAFE
DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986;
DECLARATION OF LATONIA ENGE

18 LATONIA ENGE (hereinafter, "Plaintiff"), individually, in the public interest (first cause of
19 action), and on behalf of all others similarly situated (second and third causes of action), makes the
20 following allegations and claims against LUSH COSMETICS LLC and DOES 1-10 (hereinafter,
"Defendants"), upon personal knowledge, investigation of counsel, and information and belief:

21 PARTIES

- 22 1. Plaintiff is a resident of the state of California and county of Los Angeles.
- 23 2. LUSH COSMETICS LLC is a Delaware limited liability company with its principal place of
24 business and corporate headquarters in Vancouver, British Columbia, Canada.
- 25 3. Does 1-10 are sued pursuant to Code of Civil Procedure section 474.

FRIST CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR VIOLATION OF
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986

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4. Each of the foregoing paragraphs is incorporated herein by reference.
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5. It is unlawful for Defendants to expose people to chemicals known to the state of California to cause cancer, birth defects, or other reproductive harm without a “clear and reasonable warning,” unless they can prove that the exposure fits within a statutory exemption. (Health & Saf. Code, § 25249.6.)
6. On June 22, 2012, the state of California officially listed coconut oil diethanolamine condensate (cocamide diethanolamine) also known as Cocamide DEA (hereinafter, the “Chemical”) as a chemical known to cause cancer. (Cal. Code Regs., title 27, § 27001, subd. (b).)
7. On June 22, 2013, one year after it was listed as a chemical known to cause cancer, the Chemical became subject to the clear and reasonable warning requirement. (Cal. Code Regs., title 27, § 27001, subd. (b); Health & Saf. Code, § 25249.10, subd. (b).)
8. Plaintiff has complied with Health and Safety Code section 25249.7, subdivision (d)(1); California Code of Regulations, title 27, section 25903; and California Code of Regulations, title 11, sections 3101- 3102.
9. Neither the Attorney General, any district attorney, any city attorney, nor any prosecutor has commenced or is diligently prosecuting an action against the violation set forth in this cause of action.
10. Since June 22, 2013, Defendants have been selling to consumers certain shampoos, bubble baths, and soaps containing Cocamide DEA, without first warning those consumers that the products contain a chemical known to the state of California to cause cancer. The consumers have been exposed to the Chemical through the foreseeable and intended use of the products, *i.e.*, their application to the skin, hair, and scalp.
11. Since June 22, 2013, Defendants have been exposing their employees who have been producing, making, creating, and manufacturing the products without first warning those employees that they would be exposed to a chemical known to the state of California to cause cancer. The employees have been exposed to the Chemical while making, creating, producing, and manufacturing the products during the course of their employment.
12. The products containing the chemical are named “Karma Komba,” “I Love Juicy,” “Rehab,” “Gentle Lentil,” “Ice Blue,” “Temple of Truth,” “Blue Skies & Fluffy White Clouds,” “Fair

1 Trade Honey,” “Pop In The Bath,” “Marzibain,” “Sunny Side,” “Daddy-O,” “Hot Milk,” “Big
2 Shampoo,” “Trichomania,” “Karma,” “Happy Bubble,” “Ice Hotel,” “The Wuss,” “It’s A Date,”
3 “A French Kiss,” “Ma Bar,” “Two Timing Tart,” “Amandopondo,” “The Comforter,”
4 “Reincarnate,” “Sugar Scrub,” “Seanik,” “Happy Hippy,” “Twilight,” “Fizzbanger,” “Yuzu and
Cocoa,” “Rose Jam,” “Dragon’s Egg,” “Green,” “Smaragadine,” and “Godiva.”

5 13. The locations at which the Products have been sold to consumers and at which employees have
6 been exposed to the chemical are 6600 Topanga Canyon Blvd., Canoga Park, CA 91303; 7007
7 Friars Rd., San Diego, CA 92108; 414 K St., Sacramento, CA 95814; 1416 Stoneridge Mall Rd.,
8 Pleasanton, CA 94588; 1404 Third St. Promenade, Santa Monica, CA 90401; 249 Newport
9 Center Dr., Newport Beach, CA 92660; 2148 Glendale Galleria, Glendale, CA 91210; 200 E.
10 Via Rancho Pkwy., Escondido, CA 92025; 2116 Union St., San Francisco, CA 94120; 412 W.
11 Hillcrest Dr., Thousand Oaks, CA 91360; 24 E. Colorado Blvd., Pasadena, CA 91105; 14006
12 Riverside Dr., Sherman Oaks, CA 91423; Pine Inn Complex, N.W. Corner of Lincoln & Ocean,
13 Carmel, CA 93921; 613 Paseo Nuevo St., Santa Barbara, CA 93101; #144-321 W. Katella Ave.,
14 Anaheim Garden Walk, CA 92803; 5665 Bay St., Emeryville, CA 94608; #1045-1151 Galleria
Blvd., Roseville, CA 95678; 240 Powell St., San Francisco, CA 94102; #147-2855 Stevens
Creek Blvd., Santa Clara, CA 95050; 24201 W. Valencia Blvd., Valencia, CA 91355; 400 S.
Baldwin Ave., Arcadia, CA 91007; and #143-1000 Universal Center Dr., Universal City, CA
91608. The Products have also been sold at www.lushusa.com.

15 14. The route of exposure to the Chemical in the products is dermal contact.

16 15. The exposures have been knowing and intentional because, at all times mentioned herein,
17 Defendants have known that the products have contained the Chemical.

18 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR VIOLATION OF
19 THE UNFAIR COMPETITION LAW

20 16. Each of the foregoing paragraphs is incorporated herein by reference.

21 17. As set forth hereinabove, since June 22, 2013, Defendants have been under an affirmative legal
22 duty to warn purchasers of the above-listed products that they are being exposed to a chemical
23 known to the state of California to cause cancer.

24 18. Despite this affirmative duty, Defendants have failed to provide such a warning to the purchasers
25 of those products.

- 1 19. In July, 2013, Plaintiff purchased from Defendant one "Karma Komba" for \$11.95 plus tax.
2 Although the product contained the Chemical, Defendants failed to warn Plaintiff before she
3 purchased it that her use thereof would expose her to a chemical known to the state of California
4 to cause cancer.
5 20. Had Plaintiff known that using the product would expose her to such a chemical, she would not
6 have purchased it.
7 21. Defendants' failure to warn was material because it implicated Plaintiff's health and safety.
8 22. "Karma Komba" is substantially similar to the other products sold by Defendants that contained
9 the Chemical, *i.e.*, "I Love Juicy," "Rehab," "Gentle Lentil," "Ice Blue," "Temple of Truth,"
10 "Blue Skies & Fluffy White Clouds," "Fair Trade Honey," "Pop In The Bath," "Marzibain,"
11 "Sunny Side," "Daddy-O," "Hot Milk," "Big Shampoo," "Trichomania," "Karma," "Happy
12 Bubble," "Ice Hotel," "The Wuss," "It's A Date," "A French Kiss," "Ma Bar," "Two Timing
13 Tart," "Amandopondo," "The Comforter," "Reincarnate," "Sugar Scrub," "Seanik," "Happy
14 Hippy," "Twilight," "Fizzbanger," "Yuzu and Cocoa," "Rose Jam," "Dragon's Egg," "Green,"
15 "Smaragadine," and "Godiva." These products are all shampoos, bubble baths, and soaps that
16 contained the Chemical. Defendants have acted in identical fashion with regard to these products
17 by failing to warn their purchasers that they contained chemicals known to the state of California
18 to cause cancer. The products have all been sold at the same locations identified hereinabove.

15 THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR VIOLATION OF
16 THE CONSUMER LEGAL REMEDIES ACT

- 16 23. Each of the foregoing paragraphs is incorporated herein by reference.
17 24. The above-referenced conduct violates Civil Code section 1770, subdivision (a)(5), (7), and (9).
18 25. Plaintiff has complied with Civil Code section 1782, subdivision (a).
19 26. No appropriate correction, repair, replacement, or other remedy has been given, or agreed to be
20 given within a reasonable time, to the class of consumers on whose behalf this action is being
21 brought within 30 days after Defendants' receipt of the notice required by Civil Code section
22 1782, subdivision (a).

21 CLASS ACTION ALLEGATIONS
22 (SECOND AND THIRD CAUSES OF ACTION)

- 23 27. Each of the foregoing paragraphs is incorporated herein by reference.
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- 1 28. Plaintiff brings the second and third causes of action in this class action against Defendants
2 pursuant to Code of Civil Procedure section 382 on behalf of all similarly-situated individuals.
- 3 29. The class is defined as all California residents who have purchased “Karma Komba,” “I Love
4 Juicy,” “Rehab,” “Gentle Lentil,” “Ice Blue,” “Temple of Truth,” “Blue Skies & Fluffy White
5 Clouds,” “Fair Trade Honey,” “Pop In The Bath,” “Marzibain,” “Sunny Side,” “Daddy-O,” “Hot
6 Milk,” “Big Shampoo,” “Trichomania,” “Karma,” “Happy Bubble,” “Ice Hotel,” “The Wuss,”
7 “It’s A Date,” “A French Kiss,” “Ma Bar,” “Two Timing Tart,” “Amandopondo,” “The
8 Comforter,” “Reincarnate,” “Sugar Scrub,” “Seanik,” “Happy Hippy,” “Twilight,” “Fizzbanger,”
9 “Yuzu and Cocoa,” “Rose Jam,” “Dragon’s Egg,” “Green,” “Smaragadine,” and “Godiva” since
10 June 22, 2013 while they contained the Chemical without being warned that those products
11 contained a chemical known to the state of California to cause cancer.
- 12 30. The members of the class are so numerous that joinder of all members is impracticable.
- 13 31. While the exact number of class members is unknown, such information can be ascertained
14 through discovery into Defendants’ records.
- 15 32. Class members exceed 500.
- 16 33. A class action is superior to other available methods for the fair and efficient adjudication of this
17 controversy because joinder of all members is impracticable, the likelihood of individual class
18 members prosecuting separate claims is remote and individual class members do not have a
19 significant interest in individually controlling the prosecution of separate actions.
- 20 34. Relief concerning Plaintiff’s rights and with respect to the class as a whole would be appropriate.
- 21 35. No difficulty in the management of this action would preclude its maintenance as a class action.
- 22 36. There is a well-defined community of interest among the members of the class because common
23 questions of law and fact predominate.
- 24 37. Common questions of law and fact exist as to all members of the class and predominate over any
25 questions affecting solely individual members of the class.
38. These common questions include, but are not limited to, whether Defendants have sold “Karma
Komba,” “I Love Juicy,” “Rehab,” “Gentle Lentil,” “Ice Blue,” “Temple of Truth,” “Blue Skies
& Fluffy White Clouds,” “Fair Trade Honey,” “Pop In The Bath,” “Marzibain,” “Sunny Side,”
“Daddy-O,” “Hot Milk,” “Big Shampoo,” “Trichomania,” “Karma,” “Happy Bubble,” “Ice
Hotel,” “The Wuss,” “It’s A Date,” “A French Kiss,” “Ma Bar,” “Two Timing Tart,”
“Amandopondo,” “The Comforter,” “Reincarnate,” “Sugar Scrub,” “Seanik,” “Happy Hippy,”

1 "Twilight," "Fizzbanger," "Yuzu and Cocoa," "Rose Jam," "Dragon's Egg," "Green,"
2 "Smaragadine," and "Godiva" to California consumers since June 22, 2013 while they contained
3 the Chemical without warnings that that those products contained a chemical known to the state
4 of California to cause cancer; whether consumers who purchased such products are entitled to
5 restitution; whether consumers who purchased such products are entitled to statutory minimum
6 damages consisting of \$1,000 for each such product they purchased; and whether Defendants'
7 conduct constitutes violation of the Unfair Competition Law and the Consumer Legal Remedies
8 Act.

9 39. Plaintiff's claims are typical of those of other class members because Plaintiff, like every other
10 class member, was exposed to virtually identical conduct and is entitled to the same remedies
11 pursuant to the same laws.

12 40. Plaintiff can fairly and adequately represent the interests of the class.

13 41. Plaintiff has no conflicts of interest with other class members.

14 42. Plaintiff has retained competent counsel experienced in civil litigation and class actions.

15 PRAYER

16 Wherefore, Plaintiff prays for judgment against Defendants as follows:

17 On the First Cause of Action

18 A. For civil penalties against each Defendant in the amount of \$2,500 per day for each "Karma
19 Komba," "I Love Juicy," "Rehab," "Gentle Lentil," "Ice Blue," "Temple of Truth," "Blue Skies
20 & Fluffy White Clouds," "Fair Trade Honey," "Pop In The Bath," "Marzibain," "Sunny Side,"
21 "Daddy-O," "Hot Milk," "Big Shampoo," "Trichomania," "Karma," "Happy Bubble," "Ice
22 Hotel," "The Wuss," "It's A Date," "A French Kiss," "Ma Bar," "Two Timing Tart,"
23 "Amandopondo," "The Comforter," "Reincarnate," "Sugar Scrub," "Seanik," "Happy Hippy,"
24 "Twilight," "Fizzbanger," "Yuzu and Cocoa," "Rose Jam," "Dragon's Egg," "Green,"
25 "Smaragadine," and "Godiva" sold in California from June 22, 2013 until such time that
Defendants gave purchasers thereof warning that using said products would expose them to a
chemical known to the state of California to cause cancer or until such time that the products
ceased to contain the Chemical.

B. For civil penalties against each Defendant in the amount of \$2,500 per day for each California
employee exposed to the Chemical while producing, making, creating, and manufacturing
"Karma Komba," "I Love Juicy," "Rehab," "Gentle Lentil," "Ice Blue," "Temple of Truth,"

1 “Blue Skies & Fluffy White Clouds,” “Fair Trade Honey,” “Pop In The Bath,” “Marzibain,”
2 “Sunny Side,” “Daddy-O,” “Hot Milk,” “Big Shampoo,” “Trichomania,” “Karma,” “Happy
3 Bubble,” “Ice Hotel,” “The Wuss,” “It’s A Date,” “A French Kiss,” “Ma Bar,” “Two Timing
4 Tart,” “Amandopondo,” “The Comforter,” “Reincarnate,” “Sugar Scrub,” “Seanik,” “Happy
5 Hippy,” “Twilight,” “Fizzbanger,” “Yuzu and Cocoa,” “Rose Jam,” “Dragon’s Egg,” “Green,”
6 “Smaragadine,” and “Godiva” from June 22, 2013 until such time that Defendants gave such
employees warning that they are being exposed to a chemical known to the state of California to
cause cancer or until such time that the products ceased to contain the Chemical.

7 On the Second Cause of Action

8 For restitution of all sums paid to Defendants by California consumers for their purchases of
9 “Karma Komba,” “I Love Juicy,” “Rehab,” “Gentle Lentil,” “Ice Blue,” “Temple of Truth,” “Blue Skies
10 & Fluffy White Clouds,” “Fair Trade Honey,” “Pop In The Bath,” “Marzibain,” “Sunny Side,” “Daddy-
11 O,” “Hot Milk,” “Big Shampoo,” “Trichomania,” “Karma,” “Happy Bubble,” “Ice Hotel,” “The Wuss,”
12 “It’s A Date,” “A French Kiss,” “Ma Bar,” “Two Timing Tart,” “Amandopondo,” “The Comforter,”
13 “Reincarnate,” “Sugar Scrub,” “Seanik,” “Happy Hippy,” “Twilight,” “Fizzbanger,” “Yuzu and Cocoa,”
14 “Rose Jam,” “Dragon’s Egg,” “Green,” “Smaragadine,” and “Godiva” from June 22, 2013 until such
time that Defendants gave purchasers thereof warning that using said products would expose them to a
chemical known to the state of California to cause cancer or until such time that the products ceased to
contain the Chemical.

15 On the Third Cause of Action

16 A. For restitution consisting of all sums paid to Defendants by California consumers for their
17 purchases of “Karma Komba,” “I Love Juicy,” “Rehab,” “Gentle Lentil,” “Ice Blue,” “Temple of
18 Truth,” “Blue Skies & Fluffy White Clouds,” “Fair Trade Honey,” “Pop In The Bath,”
19 “Marzibain,” “Sunny Side,” “Daddy-O,” “Hot Milk,” “Big Shampoo,” “Trichomania,” “Karma,”
20 “Happy Bubble,” “Ice Hotel,” “The Wuss,” “It’s A Date,” “A French Kiss,” “Ma Bar,” “Two
21 Timing Tart,” “Amandopondo,” “The Comforter,” “Reincarnate,” “Sugar Scrub,” “Seanik,”
22 “Happy Hippy,” “Twilight,” “Fizzbanger,” “Yuzu and Cocoa,” “Rose Jam,” “Dragon’s Egg,”
23 “Green,” “Smaragadine,” and “Godiva” from June 22, 2013 until such time that Defendants gave
purchasers thereof warning that using said products would expose them to a chemical known to
the state of California to cause cancer or until such time that the products ceased to contain the
24 Chemical.

1 B. Minimum statutory damages in the amount of \$1,000 for each "Karma Komba," "I Love Juicy,"
2 "Rehab," "Gentle Lentil," "Ice Blue," "Temple of Truth," "Blue Skies & Fluffy White Clouds,"
3 "Fair Trade Honey," "Pop In The Bath," "Marzibain," "Sunny Side," "Daddy-O," "Hot Milk,"
4 "Big Shampoo," "Trichomania," "Karma," "Happy Bubble," "Ice Hotel," "The Wuss," "It's A
5 Date," "A French Kiss," "Ma Bar," "Two Timing Tart," "Amandopondo," "The Comforter,"
6 "Reincarnate," "Sugar Scrub," "Seanik," "Happy Hippy," "Twilight," "Fizzbanger," "Yuzu and
7 Cocoa," "Rose Jam," "Dragon's Egg," "Green," "Smaragadine," and "Godiva" sold in California
8 from June 22, 2013 until such time that Defendants gave purchasers thereof warning that using
said products would expose them to a chemical known to the state of California to cause cancer
or until such time that the products ceased to contain the Chemical.

9 On All Causes of Action

10 For an order certifying this case as a class action, reasonable attorney's fees, costs, prejudgment
interest, and such relief as the Court may deem just and proper.

11 Dated: 10/25/2013

LAW OFFICES OF MORSE MEHRBAN, A.P.C.

12 By: 

13 Morse Mehrban
14 Attorney for Plaintiff,
15 Latonia Enge
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DECLARATION OF LATONIA ENGE

I, the undersigned, declare:

1. I have personal knowledge of the following and could and would competently and accurately testify thereto, if so required. I am Plaintiff in the above-entitled action and submit this declaration pursuant to Civil Code section 1780(d) in support of my complaint.
2. This action has been commenced in Los Angeles county as a proper place for the trial of the action because it is the county where the transaction that is the basis for my Consumer Legal Remedies Act claim occurred.
3. More specifically, I purchased one of Defendants' products that are the subject of this action in the county of Los Angeles, California.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated: 10/25/2013



Latonia Enge