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Mark Lewis

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ORIGINAL FILED  
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

12 MARK LEWIS, Individually, In the Public  
Interest, and On Behalf of All Others Similarly  
Situated,

13 Plaintiff,

14 v.

15 AWESOME PRODUCTS, INC. AND DOES 1-  
16 10,

17 Defendants.

Case No.

BC 526 666

[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 MARK LEWIS

18 MARK LEWIS (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 AWESOME PRODUCTS, INC. 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. AWESOME PRODUCTS, INC. is a California corporation with its principal place of business  
and corporate headquarters in Buena Park, California.
- 24 3. Does 1-10 are sued pursuant to Code of Civil Procedure section 474.

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

- 3 4. Each of the foregoing paragraphs is incorporated herein by reference.
- 4 5. It is unlawful for Defendants to expose people to chemicals known to the state of California to  
5 cause cancer, birth defects, or other reproductive harm without a “clear and reasonable warning,”  
6 unless they can prove that the exposure fits within a statutory exemption. (Health & Saf. Code, §  
7 25249.6.)
- 8 6. On June 22, 2012, the state of California officially listed coconut oil diethanolamine condensate  
9 (cocamide diethanolamine) also known as Cocamide DEA (hereinafter, the “Chemical”) as a  
10 chemical known to cause cancer. (Cal. Code Regs., title 27, § 27001, subd. (b).)
- 11 7. On June 22, 2013, one year after it was listed as a chemical known to cause cancer, the Chemical  
12 became subject to the clear and reasonable warning requirement. (Cal. Code Regs., title 27, §  
13 27001, subd. (b); Health & Saf. Code, § 25249.10, subd. (b).)
- 14 8. Plaintiff has complied with provisions of Health and Safety Code section 25249.7, subdivision  
15 (d)(1); California Code of Regulations, title 27, section 25903; and California Code of  
16 Regulations, title 11, sections 3101- 3102.
- 17 9. Neither the Attorney General, any district attorney, any city attorney, nor any prosecutor has  
18 commenced and is diligently prosecuting an action against the violation set forth in this cause of  
19 action.
- 20 10. Since June 22, 2013, Defendants have been selling to consumers certain shampoos and soaps  
21 containing Cocamide DEA, including but not limited to “Citrus Hand Soap” (hereinafter, the  
22 “Products”) without first warning those consumers that the Products contain a chemical known  
23 to the state of California to cause cancer. The consumers have been exposed to the Chemical  
24 through the foreseeable and intended use of the Products, *i.e.*, their application to the skin, hair,  
25 and scalp.
11. The route of exposure to the Chemical in the Products is dermal contact.
12. The exposures have been knowing and intentional because Defendants have known that the  
Products have contained the Chemical.

22                    SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR VIOLATION OF  
23                    THE UNFAIR COMPETITION LAW

- 24 13. Each of the foregoing paragraphs is incorporated herein by reference.

- 1 14. As set forth hereinabove, since June 22, 2013, Defendants have been under an affirmative legal  
2 duty to warn purchasers of the Products that they are being exposed to a chemical known to the  
3 state of California to cause cancer.  
4 15. Despite this affirmative duty, Defendants have failed to provide such a warning to the Products'  
5 purchasers.  
6 16. In July, 2013, Plaintiff purchased for \$0.99 plus tax one "Citrus Hand Soap." Although the  
7 product contained the Chemical, Defendants failed to warn Plaintiff before he purchased said  
8 product that its use would expose him to a chemical known to the state of California to cause  
9 cancer.  
10 17. Had Plaintiff known that using said product would expose him to such a chemical, he would not  
11 have purchased it.  
12 18. Defendants' failure to warn was material because it implicated health and safety.

13 THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR VIOLATION OF  
14 THE CONSUMER LEGAL REMEDIES ACT

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

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

- 24 23. Each of the foregoing paragraphs is incorporated herein by reference.  
25 24. Plaintiff brings the second and third causes of action in this class action against Defendants  
pursuant to Code of Civil Procedure section 382 on behalf of all similarly-situated individuals.  
The class is defined as all California residents who have purchased the Products since June 22,  
2013 while they contained the Chemical without being warned that the Products contained a  
chemical known to the state of California to cause cancer.

- 1 25. The members of the class are so numerous that joinder of all members is impracticable. While  
2 the exact number of class members is unknown, such information can be ascertained through  
3 discovery into Defendants' records. The number is estimated to exceed 500.
- 4 26. A class action is superior to other available methods for the fair and efficient adjudication of this  
5 controversy because joinder of all members is impracticable, the likelihood of individual class  
6 members prosecuting separate claims is remote and individual class members do not have a  
7 significant interest in individually controlling the prosecution of separate actions. Relief  
8 concerning Plaintiff's rights and with respect to the class as a whole would be appropriate.  
9 Plaintiff knows of no difficulty to be encountered in the management of this action that would  
10 preclude its maintenance as a class action.
- 11 27. There is a well-defined community of interest among the members of the class because common  
12 questions of law and fact predominate. Common questions of law and fact exist as to all  
13 members of the class and predominate over any questions affecting solely individual members of  
14 the class. These common questions include, but are not limited to, whether Defendants have sold  
15 the Products to California consumers since June 22, 2013 while they contained the Chemical  
16 without warnings that that the Products contained a chemical known to the state of California to  
17 cause cancer; whether consumers who purchased the Products are entitled to restitution; whether  
18 consumers who purchased the Products are entitled to statutory minimum damages consisting of  
19 \$1,000 for each of the Products they purchased; and whether Defendants' conduct constitutes  
20 violation of the Unfair Competition Law and the Consumer Legal Remedies Act.
- 21 28. Plaintiff's claims are typical of those of other class members because Plaintiff, like every other  
22 class member, was exposed to virtually identical conduct and is entitled to the same remedies  
23 pursuant to the same laws.
- 24 29. Plaintiff can fairly and adequately represent the interests of the class. Plaintiff has no conflicts of  
25 interest with other class members. Plaintiff has retained competent counsel experienced in civil  
litigation and class actions.

PRAYER

Wherefore, Plaintiff prays for judgment against Defendants as follows:

On the First Cause of Action

For civil penalties against each Defendant in the amount of \$2,500 per day for each of the Products sold in California from June 22, 2013 until such time that Defendants gave purchasers thereof

1 warning that the Products' use would expose them to a chemical known to the state of California to  
2 cause cancer or until such time that the Products ceased to contain the Chemical.

3 On the Second Cause of Action

4 For restitution consisting of all sums earned by Defendants from the Products' sales to California  
5 consumers from June 22, 2013 until such time that Defendants gave purchasers thereof warning that the  
6 Products' use would expose them to a chemical known to the state of California to cause cancer or until  
7 such time that the Products ceased to contain the Chemical.

8 On the Third Cause of Action

9 A. For restitution consisting of all sums earned by Defendants from the Products' sales to California  
10 consumers from June 22, 2013 until such time that Defendants gave purchasers thereof warning  
11 that the Products' use would expose them to a chemical known to the state of California to cause  
12 cancer or until such time that the Products ceased to contain the Chemical.

13 B. Minimum statutory damages in the amount of \$1,000 for each of the Products sold in California  
14 from June 22, 2013 until such time that Defendants gave purchasers thereof warning that the  
15 Products' use would expose them to a chemical known to the state of California to cause cancer  
16 or until such time that the Products ceased to contain the Chemical.


17 On All Causes of Action

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

20 Dated: 10/25/2013

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

21 By:

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23 \_\_\_\_\_  
24 Morse Mehrban  
25 Attorney for Plaintiff,  
Mark Lewis

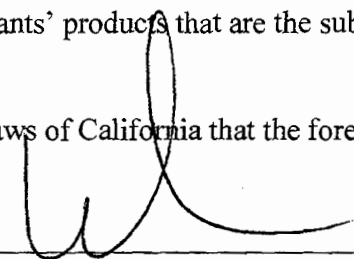
DECLARATION OF MARK LEWIS

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

  
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Mark Lewis

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