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ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 18 2013

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CLERK OF THE SUPERIOR COURT  
By Angela Yamsuan Deputy

10 Attorneys for Plaintiff  
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 SKINFOOD USA, INC.; CONVATEC INC.; )  
19 GELSON'S MARKETS; )  
20 GERITREX CORP.; IMPERIAL DAX )  
21 COMPANY, INC.; MCKESSON )  
22 CORPORATION; MOLTON BROWN USA )  
INC.; MOROCCANOIL, INC.; OLYMPIC )  
23 MOUNTAIN AND MARINE PRODUCTS, )  
INC.; RAANI CORPORATION; REGIS )  
24 CORPORATION; SUPERVALU INC.; THE )  
25 NEIMAN-MARCUS GROUP, INC.; and DOES )  
26 1 through 700, inclusive, )  
27 ) Defendants. )  
28

Case No. RG13 707307

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

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

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

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

20           9. Defendant IMPERIAL DAX COMPANY, INC. is a person in the course  
21 of doing business within the meaning of Health & Safety Code § 25249.11. IMPERIAL DAX  
22 COMPANY, INC. manufactures, distributes, and/or sells Products for sale or use in California.

23           10. Defendant MCKESSON CORPORATION is a person in the course of  
24 doing business within the meaning of Health & Safety Code § 25249.11. MCKESSON  
25 CORPORATION manufactures, distributes, and/or sells Products for sale or use in California.

26           11. Defendant MOLTON BROWN USA INC. is a person in the course of  
27 doing business within the meaning of Health & Safety Code § 25249.11. MOLTON BROWN  
28 USA INC. manufactures, distributes, and/or sells Products for sale or use in California.

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

4           13. Defendant OLYMPIC MOUNTAIN AND MARINE PRODUCTS, INC. is  
5 a person in the course of doing business within the meaning of Health & Safety Code §  
6 25249.11. OLYMPIC MOUNTAIN AND MARINE PRODUCTS, INC. manufactures,  
7 distributes, and/or sells Products for sale or use in California.

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

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

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

17           17. Defendant THE NEIMAN-MARCUS GROUP, INC. is a person in the  
18 course of doing business within the meaning of Health & Safety Code § 25249.11. THE  
19 NEIMAN-MARCUS GROUP, INC. manufactures, distributes, and/or sells Products for sale or  
20 use in California.

21           18. DOES 1 through 700 are each a person in the course of doing business  
22 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 700 manufacture,  
23 distribute, and/or sell Products for sale or use in California.

24           19. The true names of DOES 1 through 700 are unknown to CEH at this time.  
25 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

26           20. The defendants identified in paragraphs 5 through 17 and DOES 1 through  
27 700 are collectively referred to herein as "Defendants."

28

1 **JURISDICTION AND VENUE**

2 21. The Court has jurisdiction over this action pursuant to Health & Safety  
3 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant  
4 to California Constitution Article VI, Section 10, because this case is a cause not given by statute  
5 to other trial courts.

6 22. This Court has jurisdiction over Defendants because each is a business  
7 entity that does sufficient business, has sufficient minimum contacts in California or otherwise  
8 intentionally avails itself of the California market through the sale, marketing, or use of Products  
9 in California and/or by having such other contacts with California so as to render the exercise of  
10 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
11 substantial justice.

12 23. Venue is proper in the Alameda Superior Court because one or more of the  
13 violations arise in the County of Alameda.

14 **BACKGROUND FACTS**

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

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

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

26 26. On October 21, 2010, the California Environmental Protection Agency’s  
27 Office of Environmental Health Hazard Assessment (“OEHHA”) requested information as to  
28 whether Cocamide DEA meets the criteria for listing under Proposition 65 by the authoritative

1 bodies mechanism. On January 20, 2012, OEHHA published a notice of intent to list Cocamide  
2 DEA in the California Regulatory Notice Register. The publication of the notice initiated a  
3 public comment period that closed on April 6, 2012. On June 22, 2012, the State of California  
4 officially listed Cocamide DEA as a chemical known to cause cancer. 27 C.C.R. § 27001(b).

5           27. On June 22, 2013, one year after it was listed as a chemical known to  
6 cause cancer, Cocamide DEA became subject to the clear and reasonable warning requirement  
7 regarding carcinogens under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code §  
8 25249.10(b). The chief purpose of the one-year grace period between the listing date of a  
9 chemical under Proposition 65 and the effective date of the warning requirement is to give  
10 potentially liable parties sufficient time to come into complete compliance with this requirement,  
11 such that all illegal exposures can be averted.

12           28. Cocamide DEA is used in Products as a foam stabilizer, emulsifier and  
13 viscosity builder in cosmetic products.

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

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

22           31. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
23 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,  
24 the District Attorneys of every county in California, the City Attorneys of every California city  
25 with a population greater than 750,000, and to each of the named Defendants. In compliance  
26 with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
27 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
28 time period during which violations occurred; (4) specific descriptions of the violations,

1 including (a) the routes of exposure to Cocamide DEA from Products, and (b) the specific type of  
2 Products sold and used in violation of Proposition 65; and (5) the name of the specific  
3 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

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

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

23           34. Defendants both know and intend that consumers in California, including  
24 infants and children, will use, touch, and/or handle the Products, thus exposing them to  
25 Cocamide DEA.

26           35. Under Proposition 65, an exposure is “knowing” where the party  
27 responsible for such exposure has:

28           knowledge of the fact that a[n] ... exposure to a chemical listed







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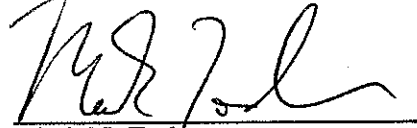
4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

Dated: December 18, 2013

Respectfully submitted,

LEXINGTON LAW GROUP



Mark N. Todzo  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH