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Superfor Court Of California
County Of Les Angeles

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4	LAW OFFICE OF DANIEL N. GREENBAUM	DEC 00 2010
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6	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
0	COUNTY OF LOS ANGELES	
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8	CENTRAL DISTRICT	
	SHEFA LMV, LLC, a California limited	Unlimited Jurisdiction
9	liability company,	
10	)	_
	Plaintiff,	CASE NO. BC 5 2 9 3 6 5
11	, ,	
12	vs.	
	)	COMPLAINT FOR CIVIL PENALTY AND
13	SWISS NATURALS, INC dba BIOFORCE )	INJUNCTIVE RELIEF
14	USA; and DOES 1 THROUGH 25, Inclusive,	
•	)	(Health and Safety Code § 25249.5 et seq.)
15	Defendants.	
16	)	TOXIC TORT/ENVIRONMENTAL
	)	
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		* * 1 0 1 2
19	Plaintiff SHEFA LMV, LLC, hereby alleges:	
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21	I. PRELIMINARY STATEMENT	
22	1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure	
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	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	
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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
	COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF	
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## II. PARTIES

- 3. Plaintiff is a limited liability company formed pursuant to the laws of the State of California, made up of California citizens, represented by and through its counsel of record, the Law Office of Daniel N. Greenbaum.
- 4. Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition 65 may be brought by "any person in the public interest."
- 5. Defendant SWISS NATURALS, INC. dba BIOFORCE USA (hereinafter "BIOFORCE") is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of shampoo products, including but not limited to, the brand names Herbavita Line Normalizing Shampoo, Herbavita Line Luminous Shampoo, and Herbavita Line Super Shampoo, and other brand names, that contain Coconut oil diethanolamine condensate (cocamide diethanolamine), for sale within the State of California, without first giving clear and reasonable warning.
- 6. The identities of DOES 1 through 25 are unknown to Plaintiff at this time; however, Plaintiff suspects that they are business entities with at least ten or more employees that have sold, authorized the distribution, or sale of soap and shampoo products (hereinafter "PRODUCTS") that contain Coconut oil diethanolamine condensate (cocamide diethanolamine), for sale within the State of California, without first giving clear and reasonable warning.

## III. JURISDICTION AND VENUE

- 7. This Court has jurisdiction pursuant to California Constitution Article VI, section 10, because this case is a cause not given by statute to other trial courts.
- 8. This Court has jurisdiction over Defendants, because they are business entities that do sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market, through the sale, marketing, and use of its PRODUCTS in California, to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.
- 9. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles County because Defendants' PRODUCTS are sold and consumed in this county.

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A. **Proposition 65** 10. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute

passed as "Proposition 65" by a vote of the people in November of 1986.

11. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

> No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

- 12. An exposure to a chemical in a consumer product is one "which results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." (Cal. Code Regs... tit. 22, § 12601, subd. (b).)
- 13. Proposition 65 establishes a procedure by which the state is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, § 25249.8.)
- 14. No warning need be given concerning a listed chemical until one year after the chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)
- 15. Any person "violating or threatening to violate" the statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)
- 16. To "threaten to violate" is defined to mean "to create a condition in which there is a substantial probability that a violation will occur." (*Id.*, § 25249.11, subd. (e).)
- 17. In addition, violators are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)
- 18. Actions to enforce the law "may be brought by the Attorney General in the name of the People of the State of California [or] by any district attorney [or] by any City Attorney of a City having a population in excess of 750,000 . . . " (*Id.*, § 25249.7, subd. (c).)

- 19. Private parties are given authority to enforce Proposition 65 "in the public interest," but only if the private party first provides written notice of a violation to the alleged violator, the Attorney General, and every District Attorney in whose jurisdiction the alleged violation occurs.
- 20. If no public prosecutors commence enforcement within sixty days, then the private party may sue. (Health & Saf. Code, § 25249.7(d).)
  - 21. No such governmental action has been pursued against Defendants.

## V. FACTS

- 22. "Coconut oil diethanolamine condensate (cocamide diethanolamine)" was placed in the Governor's list of chemicals known to the State of California to cause cancer on June 22, 2012. (Cal. Code Regs., tit. 22, § 12000, subd. (b).)
- 23. BIOFORCE ("Defendant") manufactures, distributes and markets shampoo PRODUCTS for use by individuals in the home and in other occupational endeavors.
- 24. These PRODUCTS are sold through various retailers located in California for use by citizens of the State of California.
- 25. The PRODUCTS are sold to consumers under the trade names owned by Defendants for their various brands, including those mentioned above, and using the associated trademarks and trade dress for those brands, including the distinctive retailer labels.
- 26. The process followed in manufacturing its PRODUCTS for sale to the consuming public must be approved by BIOFORCE, including the PRODUCT used by individuals for personal use.
- 27. Individuals who purchase and use Defendants' PRODUCTS are exposed to Coconut oil diethanolamine condensate (cocamide diethanolamine "DEA") chiefly through:
  - a. contact between the shampoo and the skin;
  - b. transfer of Cocamide DEA from the skin to the mouth, both by transfer directly from the hand to mouth and by transfer of the Cocamide DEA from the skin to objects that are put in the mouth, such as food, and;
  - c. through absorption of Cocamide DEA through the skin.

- 28. Such individuals are thus exposed to the Cocamide DEA that is present on and in Defendants' PRODUCTS in the course of the intended and reasonably foreseeable use of those PRODUCTS.
- 29. At all times material to this complaint, Defendants had knowledge that the soaps or shampoos contain Cocamide DEA and that skin may come into contact with Cocamide DEA.
- 30. At all times material to this complaint, Defendants have had knowledge that individuals within the State of California handle Defendants' PRODUCTS that contain Cocamide DEA.
- 31. At all times material to this complaint, Defendants knew that Defendants' PRODUCTS were sold throughout the State of California in large numbers, and Defendants profited from such sales through, among other things, the sale of Defendants' PRODUCTS that were sold in California.
- 32. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized the sale of Defendants' PRODUCTS that contained Cocamide DEA.
- 33. At all times material to this complaint, Defendants have knowingly and intentionally exposed individuals within the State of California to Cocamide DEA.
- 34. The exposure is knowing and intentional because it is the result of the Defendants' deliberate act of authorizing the sale of PRODUCTS known to contain Cocamide DEA in a manner whereby these PRODUCTS were, and would inevitably be, sold to consumers within the state of California, and with the knowledge that the intended use of these PRODUCTS will result in exposures to Cocamide DEA within the State of California.
- 35. Defendants have failed to provide clear and reasonable warnings that the use of the PRODUCTS in question in California results in exposure to a chemical known to the State of California to cause cancer, and no such warning was provided to those individuals by any other person.

## VI. FIRST CAUSE OF ACTION

(Against All Defendants for Violation of Proposition 65)

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