

DEC 03 2013

Sherri R. Carter, Executive Officer/Clerk
By: Kristina Vargas, Deputy

1 LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
1467 South Holt Avenue #2
2 Los Angeles, CA 90035
Telephone: (310) 200-2631
3 Facsimile: (818) 788-3847
Email: danielgreenbaumesq@gmail.com

4 Attorney for SHEFA LMV, LLC

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA

6 COUNTY OF LOS ANGELES

7 CENTRAL DISTRICT

8 SHEFA LMV, LLC, a California limited
9 liability company,

10 Plaintiff,

11 vs.

12 SWISS NATURALS, INC dba BIOFORCE)
13 USA; and DOES 1 THROUGH 25, Inclusive,)

14 Defendants.)

) Unlimited Jurisdiction

) CASE NO. **BC529365**

) COMPLAINT FOR CIVIL PENALTY AND
INJUNCTIVE RELIEF

) (Health and Safety Code § 25249.5 et seq.)

) TOXIC TORT/ENVIRONMENTAL

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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
23 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
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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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.

1 **IV. STATUTORY BACKGROUND**

2 **A. Proposition 65**

3 10. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
4 passed as “Proposition 65” by a vote of the people in November of 1986.

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

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

11 12. An exposure to a chemical in a consumer product is one “which results from a
12 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
13 consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code Regs.,
14 tit. 22, § 12601, subd. (b).)

15 13. Proposition 65 establishes a procedure by which the state is to develop a list of
16 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, §
17 25249.8.)

18 14. No warning need be given concerning a listed chemical until one year after the
19 chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

20 15. Any person “violating or threatening to violate” the statute may be enjoined in any
21 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)

22 16. To “threaten to violate” is defined to mean “to create a condition in which there is a
23 substantial probability that a violation will occur.” (*Id.*, § 25249.11, subd. (e).)

24 17. In addition, violators are liable for civil penalties of up to \$2,500 per day for each
25 violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)

26 18. Actions to enforce the law “may be brought by the Attorney General in the name of
27 the People of the State of California [or] by any district attorney [or] by any City Attorney of a City
28 having a population in excess of 750,000 . . .” (*Id.*, § 25249.7, subd. (c).)

