



**FILED**  
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT  
*[Signature]*

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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 v. ) Plaintiff,  
17 MUDLARK PAPERS INC.; BIG LOTS, INC.; )  
18 BIG LOTS STORES, INC.; BLUE CROSS )  
LABORATORIES, INC.; BOOTS RETAIL )  
19 USA INC.; CROWN LABORATORIES, INC.; )  
DOLLAR TREE DISTRIBUTION, INC.; )  
20 DOLLAR TREE STORES, INC.; EVERGREEN )  
CONSUMER BRANDS; HATCHBEAUTY )  
21 PRODUCTS, LLC; INTELADERM LLC; )  
PETER THOMAS ROTH LABS LLC; )  
22 SUMMUM BEAUTE INTERNATIONAL INC.; )  
TOPIX PHARMACEUTICALS INC.; U.S. )  
23 SOAPS MFG COMPANY; and DOES 1 through )  
700, inclusive, )  
24 Defendants. )

Case No. **RG13707833**

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

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

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

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

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

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

28           11. Defendant DOLLAR TREE DISTRIBUTION, INC. is a person in the

1 course of doing business within the meaning of Health & Safety Code § 25249.11. DOLLAR  
2 TREE DISTRIBUTION, INC. manufactures, distributes, and/or sells Products for sale or use in  
3 California.

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

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

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

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

17 16. Defendant PETER THOMAS ROTH LABS LLC is a person in the course  
18 of doing business within the meaning of Health & Safety Code § 25249.11. PETER THOMAS  
19 ROTH LABS LLC manufactures, distributes, and/or sells Products for sale or use in California.

20 17. Defendant SUMMUM BEAUTE INTERNATIONAL INC. is a person in  
21 the course of doing business within the meaning of Health & Safety Code § 25249.11.  
22 SUMMUM BEAUTE INTERNATIONAL INC. manufactures, distributes, and/or sells Products  
23 for sale or use in California.

24 18. Defendant TOPIX PHARMACEUTICALS INC. is a person in the course  
25 of doing business within the meaning of Health & Safety Code § 25249.11. TOPIX  
26 PHARMACEUTICALS INC. manufactures, distributes, and/or sells Products for sale or use in  
27 California.

28 19. Defendant U.S. SOAPS MFG COMPANY is a person in the course of



1 reproductive harm without a “clear and reasonable warning” unless the business responsible for  
2 the exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6  
3 states, in pertinent part:

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

8           28.     On October 21, 2010, the California Environmental Protection Agency’s  
9           Office of Environmental Health Hazard Assessment (“OEHHA”) requested information as to  
10           whether Cocamide DEA meets the criteria for listing under Proposition 65 by the authoritative  
11           bodies mechanism. On January 20, 2012, OEHHA published a notice of intent to list Cocamide  
12           DEA in the California Regulatory Notice Register. The publication of the notice initiated a  
13           public comment period that closed on April 6, 2012. On June 22, 2012, the State of California  
14           officially listed Cocamide DEA as a chemical known to cause cancer. 27 C.C.R. § 27001(b).

15           29.     On June 22, 2013, one year after it was listed as a chemical known to  
16           cause cancer, Cocamide DEA became subject to the clear and reasonable warning requirement  
17           regarding carcinogens under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code §  
18           25249.10(b). The chief purpose of the one-year grace period between the listing date of a  
19           chemical under Proposition 65 and the effective date of the warning requirement is to give  
20           potentially liable parties sufficient time to come into complete compliance with this requirement,  
21           such that all illegal exposures can be averted.

22           30.     Cocamide DEA is used in Products as a foam stabilizer, emulsifier and  
23           viscosity builder in cosmetic products.

24           31.     Defendants’ Products contain sufficient quantities of Cocamide DEA such  
25           that individuals, including infants and children, are exposed to Cocamide DEA through the  
26           average use of Products. The routes of exposure include dermal absorption and ingestion by  
27           individuals when, for example, they apply the Products to their hair, scalp or skin.

28           32.     Any person acting in the public interest has standing to enforce violations  
of Proposition 65 provided that such person has supplied the requisite public enforcers with a

1 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
2 action within such time. Health & Safety Code § 25249.7(d).

3           33. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
4 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,  
5 the District Attorneys of every county in California, the City Attorneys of every California city  
6 with a population greater than 750,000, and to each of the named Defendants. In compliance  
7 with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
8 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
9 time period during which violations occurred; (4) specific descriptions of the violations,  
10 including (a) the routes of exposure to Cocamide DEA from Products, and (b) the specific type of  
11 Products sold and used in violation of Proposition 65; and (5) the name of the specific  
12 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

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

28           35. None of the public prosecutors with the authority to prosecute violations

1 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
2 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in the  
3 Notices.

4           36. Defendants both know and intend that consumers in California, including  
5 infants and children, will use, touch, and/or handle the Products, thus exposing them to  
6 Cocamide DEA.

7           37. Under Proposition 65, an exposure is “knowing” where the party  
8 responsible for such exposure has:

9                   knowledge of the fact that a[n] ... exposure to a chemical listed  
10                   pursuant to [Health and Safety Code § 25249.8(a)] is occurring.  
11                   No knowledge that the ... exposure is unlawful is required.

12 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
13 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §  
14 12201).

15           38. No clear and reasonable warning is provided with the Products regarding  
16 the carcinogenic hazards of Cocamide DEA.

17           39. Defendants have been informed of the Cocamide DEA in their Products by  
18 the 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

19           40. As companies that manufacture, import, distribute, and/or sell Products for  
20 use in the California marketplace, Defendants know or should know that Products contain  
21 Cocamide DEA and that individuals who use the Products will be exposed to Cocamide DEA.  
22 These Cocamide DEA exposures are a natural and foreseeable consequence of Defendants’  
23 placing the Products into the stream of commerce.

24           41. Nevertheless, Defendants continue to expose consumers in California,  
25 including infants and children, to Cocamide DEA without prior clear and reasonable warnings  
26 regarding the carcinogenic hazards of Cocamide DEA.

27           42. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
28 prior to filing this Complaint.



1 civil penalties against each Defendant in the amount of \$2,500 per day for each violation of  
2 Proposition 65 alleged herein according to proof;

3           2.       That the Court, pursuant to Health & Safety Code § 25249.7(a),  
4 preliminarily and permanently enjoin Defendants from offering Products for sale in California  
5 without providing prior clear and reasonable warnings, as CEH shall specify in further  
6 application to the Court;

7           3.       That the Court, pursuant to Health & Safety Code § 25249.7(a), order  
8 Defendants to take action to stop ongoing unwarned exposures to Cocamide DEA resulting from  
9 use of Products sold by Defendants, as CEH shall specify in further application to the Court;

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

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

14  
15 Dated: December 23, 2013

Respectfully submitted,

LEXINGTON LAW GROUP



Mark N. Todzo

Attorneys for Plaintiff

CENTER FOR ENVIRONMENTAL HEALTH

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