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9 Mark Bates

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 10 2014
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Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

10 SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT, UNLIMITED JURISDICTION

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

13 Plaintiff,

14 v.

15 MOMENTUM BRANDS, INC. AND DOES 1-
16 10,

17 Defendants.

Case No.

BC 53 64 65

[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 BATES

18 MARK BATES (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 MOMENTUM BRANDS, 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. MOMENTUM BRANDS, INC. is a California corporation with its principal place of business
and corporate headquarters in Commerce, 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 and 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, body washes
21 and soaps containing the Chemical, including but not limited to “Halsa for Men Body Wash”
22 (hereinafter, the “Products”) without first warning those consumers that the Products contain a
23 chemical known to the state of California to cause cancer. The consumers have been exposed to
24 the Chemical through the foreseeable and intended use of the Products, *i.e.*, their application to
25 the skin.
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
state of California to cause cancer.

3 15. Despite this affirmative duty, Defendants have failed to provide such a warning to the Products'
4 purchasers.

5 16. In August, 2013, Plaintiff purchased "Halsa for Men Body Wash." Although the product
6 contained the Chemical, Defendants failed to warn Plaintiff before purchasing it that its use
would expose its user to a chemical known to the state of California to cause cancer.

7 17. Had Plaintiff known that use of said product would expose its user to such a chemical, Plaintiff
8 would not have purchased it.

9 18. Defendants' failure to warn was material because it implicated health and safety.

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

11 19. Each of the foregoing paragraphs is incorporated herein by reference.

12 20. The above-referenced conduct violates Civil Code section 1770, subdivision (a)(5), (7), and (9).

13 21. Plaintiff has complied with Civil Code section 1782, subdivision (a).

14 22. No appropriate correction, repair, replacement, or other remedy has been given, or agreed to be
15 given within a reasonable time, to the class of consumers on whose behalf this action is being
brought within 30 days after Defendants' receipt of the notice required by Civil Code section
1782, subdivision (a).

16 CLASS ACTION ALLEGATIONS
17 (SECOND AND THIRD CAUSES OF ACTION)

18 23. Each of the foregoing paragraphs is incorporated herein by reference.

19 24. Plaintiff brings the second and third causes of action in this class action against Defendants
20 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,
21 2013 while they contained the Chemical without being warned that the Products contained a
chemical known to the state of California to cause cancer.

22 25. The members of the class are so numerous that joinder of all members is impracticable. While
23 the exact number of class members is unknown, such information can be ascertained through
24 discovery into Defendants' records. The number is estimated to exceed 500.

1 26. A class action is superior to other available methods for the fair and efficient adjudication of this
2 controversy because joinder of all members is impracticable, the likelihood of individual class
3 members prosecuting separate claims is remote and individual class members do not have a
4 significant interest in individually controlling the prosecution of separate actions. Relief
5 concerning Plaintiff's rights and with respect to the class as a whole would be appropriate.
6 Plaintiff knows of no difficulty to be encountered in the management of this action that would
7 preclude its maintenance as a class action.

8 27. There is a well-defined community of interest among the members of the class because common
9 questions of law and fact predominate. Common questions of law and fact exist as to all
10 members of the class and predominate over any questions affecting solely individual members of
11 the class. These common questions include, but are not limited to, whether Defendants have sold
12 the Products to California consumers since June 22, 2013 while they contained the Chemical
13 without warnings that that the Products contained a chemical known to the state of California to
14 cause cancer; whether consumers who purchased the Products are entitled to restitution; whether
15 consumers who purchased the Products are entitled to statutory minimum damages consisting of
16 \$1,000 for each of the Products they purchased; and whether Defendants' conduct constitutes
17 violation of the Unfair Competition Law and the Consumer Legal Remedies Act.

18 28. Plaintiff's claims are typical of those of other class members because Plaintiff, like every other
19 class member, was exposed to virtually identical conduct and is entitled to the same remedies
20 pursuant to the same laws.

21 29. Plaintiff can fairly and adequately represent the interests of the class. Plaintiff has no conflicts of
22 interest with other class members. Plaintiff has retained competent counsel experienced in civil
23 litigation and class actions.

24 PRAYER

25 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
warning that using the Products would expose them to a chemical known to the state of California to
cause cancer or until such time that the Products ceased to contain the Chemical.

1 On the Second Cause of Action

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

5 On the Third Cause of Action

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

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

12 On All Causes of Action

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

14 Dated: 1/10/2014

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

15 By: 

16 Morse Mehrban
17 Attorney for Plaintiff,
18 Mark Bates

18 Dated: 1/10/2014

MEHRBAN LAW CORPORATION, A.P.C.

19 By: 

20 Julie Mehrban
21 Attorney for Plaintiff,
22 Mark Bates

DECLARATION OF MARK BATES

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, subdivision (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 the 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: 1/10/2014



Mark Bates

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT – CLASS ACTION CASES
Case Number _____**

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.3(c)).

ASSIGNED JUDGE	DEPT	ROOM
Judge Elihu M. Berle	323	1707
Judge Lee Smalley Edmon	322	1702
Judge John Shepard Wiley, Jr.	311	1408
Judge Kenneth Freeman	310	1412
Judge Jane Johnson	308	1415
Judge William F. Highberger	307	1402
OTHER		

BC 536465

Instructions for handling Class Action Civil Cases

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

APPLICATION

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____ SHERRI R. CANNON, Executive Officer/Clerk

By _____, Deputy Clerk

FEB 13 2014

SHARUNYA BOLDEN