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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 10 2014

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10 SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

BC 532691

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

Case No.

13 Plaintiff,

[CLASS ACTION]

14 v.

15 ZEP INC. AND DOES 1-10,

16 Defendants.

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 CRYSTAL GERARD

17
18 CRYSTAL GERARD (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 ZEP 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. ZEP INC. is a Delaware corporation with its principal place of business and corporate
headquarters in Atlanta, Georgia.
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 hand cleaners and soaps
21 containing the Chemical, including but not limited to “Orange Heavy-Duty Hand Cleaner”
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
3 state of California to cause cancer.
4 15. Despite this affirmative duty, Defendants have failed to provide such a warning to the Products'
5 purchasers.
6 16. In August, 2013, Plaintiff purchased "Orange Heavy-Duty Hand Cleaner." Although the product
7 contained the Chemical, Defendants failed to warn Plaintiff before purchasing it that its use
8 would expose its user to a chemical known to the state of California to cause cancer.
9 17. Had Plaintiff known that use of said product would expose its user to such a chemical, Plaintiff
10 would not have purchased it.
11 18. Defendants' failure to warn was material because it implicated health and safety.

9 THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR VIOLATION OF
10 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
16 brought within 30 days after Defendants' receipt of the notice required by Civil Code section
17 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.
21 The class is defined as all California residents who have purchased the Products since June 22,
22 2013 while they contained the Chemical without being warned that the Products contained a
23 chemical known to the state of California to cause cancer.
24 25. The members of the class are so numerous that joinder of all members is impracticable. While
25 the exact number of class members is unknown, such information can be ascertained through
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: 12/27/2013

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

15 By: 

16 Morse Mehrban
17 Attorney for Plaintiff,
18 Crystal Gerard

18 Dated: 12/27/2013

MEHRBAN LAW CORPORATION, A.P.C.

19 By: 

20 Julie Mehrban
21 Attorney for Plaintiff,
22 Crystal Gerard

DECLARATION OF CRYSTAL GERARD

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: 12/27/2013


Crystal Gerard