

ENDORSED
FILED
ALAMEDA COUNTY

MAR 12 2014

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

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10 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA

14 CENTER FOR ENVIRONMENTAL HEALTH,)
15 a non-profit corporation,)
16 v.)
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Plaintiff,

Case No. RG 147 17137

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

ABACO PARTNERS LLC; AMERIFOODS)
TRADING COMPANY LLC; ARCHIPELAGO,)
INC.; BARBERA STUDIO, INC.; CSI)
PRODUCTS, INC.; DAVION, INC.; DELTA)
BRANDS INC. DBA DELTA TRADE USA;)
DIKSON USA; DOLGEN CALIFORNIA, LLC;)
DOLLAR GENERAL CORPORATION;)
HARWOOD ENTERPRISES LLC; IDELLE)
LABS, LTD.; J BEVERLY HILLS, INC.;)
MCCAULOU'S, INC.; NUTRACEUTICAL)
INTERNATIONAL CORPORATION; SMART)
& FINAL LLC; SMART & FINAL STORES)
LLC; TIGI LINEA CORP.; UNITE)
EUROTHERAPY, INC.; VALEANT)
PHARMACEUTICALS NORTH AMERICA)
LLC; WINCO FOODS, LLC; and DOES 1)
through 700, inclusive,)

Defendants.

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

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

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

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

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

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

27 11. Defendant DELTA BRANDS INC. DBA DELTA TRADE USA is a
28 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

1 DELTA BRANDS INC. DBA DELTA TRADE USA manufactures, distributes, and/or sells
2 Products for sale or use in California.

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

6 13. Defendant DOLGEN CALIFORNIA, LLC is a person in the course of
7 doing business within the meaning of Health & Safety Code § 25249.11. DOLGEN
8 CALIFORNIA, LLC manufactures, distributes, and/or sells Products for sale or use in California.

9 14. Defendant DOLLAR GENERAL CORPORATION is a person in the
10 course of doing business within the meaning of Health & Safety Code § 25249.11. DOLLAR
11 GENERAL CORPORATION manufactures, distributes, and/or sells Products for sale or use in
12 California.

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

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

19 17. Defendant J BEVERLY HILLS, INC. is a person in the course of doing
20 business within the meaning of Health & Safety Code § 25249.11. J BEVERLY HILLS, INC.
21 manufactures, distributes, and/or sells Products for sale or use in California.

22 18. Defendant MCCAULOU'S, INC. is a person in the course of doing
23 business within the meaning of Health & Safety Code § 25249.11. MCCAULOU'S, INC.
24 manufactures, distributes, and/or sells Products for sale or use in California.

25 19. Defendant NUTRACEUTICAL INTERNATIONAL CORPORATION is a
26 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.
27 NUTRACEUTICAL INTERNATIONAL CORPORATION manufactures, distributes, and/or
28 sells Products for sale or use in California.

1 20. Defendant SMART & FINAL LLC is a person in the course of doing
2 business within the meaning of Health & Safety Code § 25249.11. SMART & FINAL LLC
3 manufactures, distributes, and/or sells Products for sale or use in California.

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

7 22. Defendant TIGI LINEA CORP is a person in the course of doing business
8 within the meaning of Health & Safety Code § 25249.11. TIGI LINEA CORP manufactures,
9 distributes, and/or sells Products for sale or use in California.

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

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

18 25. Defendant WINCO FOODS, LLC is a person in the course of doing
19 business within the meaning of Health & Safety Code § 25249.11. WINCO FOODS, LLC
20 manufactures, distributes, and/or sells Products for sale or use in California.

21 26. DOES 1 through 700 are each a person in the course of doing business
22 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 700 manufacture,
23 distribute, and/or sell Products for sale or use in California.

24 27. The true names of DOES 1 through 700 are unknown to CEH at this time.
25 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

26 28. The defendants identified in paragraphs 5 through 25 and DOES 1 through
27 700 are collectively referred to herein as "Defendants."

28

1 **JURISDICTION AND VENUE**

2 29. The Court has jurisdiction over this action pursuant to Health & Safety
3 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
4 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
5 to other trial courts.

6 30. This Court has jurisdiction over Defendants because each is a business
7 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
8 intentionally avails itself of the California market through the sale, marketing, or use of Products
9 in California and/or by having such other contacts with California so as to render the exercise of
10 jurisdiction over it by the California courts consistent with traditional notions of fair play and
11 substantial justice.

12 31. Venue is proper in the Alameda Superior Court because one or more of the
13 violations arise in the County of Alameda.

14 **BACKGROUND FACTS**

15 32. The People of the State of California have declared by initiative under
16 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
17 defects, or other reproductive harm.” Proposition 65, § 1(b).

18 33. To effectuate this goal, Proposition 65 prohibits exposing people to
19 chemicals listed by the State of California as known to cause cancer, birth defects, or other
20 reproductive harm without a “clear and reasonable warning” unless the business responsible for
21 the exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6
22 states, in pertinent part:

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

26 34. On October 21, 2010, the California Environmental Protection Agency’s
27 Office of Environmental Health Hazard Assessment (“OEHHA”) requested information as to
28 whether Cocamide DEA meets the criteria for listing under Proposition 65 by the authoritative

1 bodies mechanism. On January 20, 2012, OEHHA published a notice of intent to list Cocamide
2 DEA in the California Regulatory Notice Register. The publication of the notice initiated a
3 public comment period that closed on April 6, 2012. On June 22, 2012, the State of California
4 officially listed Cocamide DEA as a chemical known to cause cancer. 27 C.C.R. § 27001(b).

5 35. On June 22, 2013, one year after it was listed as a chemical known to
6 cause cancer, Cocamide DEA became subject to the clear and reasonable warning requirement
7 regarding carcinogens under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code §
8 25249.10(b). The chief purpose of the one-year grace period between the listing date of a
9 chemical under Proposition 65 and the effective date of the warning requirement is to give
10 potentially liable parties sufficient time to come into complete compliance with this requirement,
11 such that all illegal exposures can be averted.

12 36. Cocamide DEA is used in Products as a foam stabilizer, emulsifier and
13 viscosity builder in cosmetic products.

14 37. Defendants' Products contain sufficient quantities of Cocamide DEA such
15 that individuals, including infants and children, are exposed to Cocamide DEA through the
16 average use of Products. The routes of exposure include dermal absorption and ingestion by
17 individuals when, for example, they apply the Products to their hair, scalp or skin.

18 38. Any person acting in the public interest has standing to enforce violations
19 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
20 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
21 action within such time. Health & Safety Code § 25249.7(d).

22 39. More than sixty days prior to naming each Defendant in this lawsuit, CEH
23 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
24 the District Attorneys of every county in California, the City Attorneys of every California city
25 with a population greater than 750,000, and to each of the named Defendants. In compliance
26 with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
27 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
28 time period during which violations occurred; (4) specific descriptions of the violations,

1 including (a) the routes of exposure to Cocamide DEA from Products, and (b) the specific type of
2 Products sold and used in violation of Proposition 65; and (5) the name of the specific
3 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

4 40. More than sixty days prior to naming each Defendant in this lawsuit,
5 concurrent with sending the Notices described in the preceding paragraph, CEH also sent a
6 Certificate of Merit for each Notice to the California Attorney General, the District Attorneys of
7 every county in California, the City Attorneys of every California city with a population greater
8 than 750,000, and to the named Defendants. In compliance with Health & Safety Code §
9 25249.7(d) and 11 C.C.R. § 3101, each of the Certificates certified that CEH's counsel: (1) has
10 consulted with one or more persons with relevant and appropriate experience or expertise who
11 reviewed facts, studies, or other data regarding the exposures to Cocamide DEA alleged in each
12 of the Notices; and (2) based on the information obtained through such consultations, believes
13 that there is a reasonable and meritorious case for a citizen enforcement action based on the facts
14 alleged in each of the Notices. In compliance with Health & Safety Code § 25249.7(d) and 11
15 C.C.R. § 3102, each of the Certificates served on the Attorney General included factual
16 information – provided on a confidential basis – sufficient to establish the basis for the
17 Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts,
18 studies, or other data reviewed by such persons.

19 41. None of the public prosecutors with the authority to prosecute violations
20 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
21 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in the
22 Notices.

23 42. Defendants both know and intend that consumers in California, including
24 infants and children, will use, touch, and/or handle the Products, thus exposing them to
25 Cocamide DEA.

26 43. Under Proposition 65, an exposure is “knowing” where the party
27 responsible for such exposure has:
28

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

4 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
5 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §
6 12201).

7 44. No clear and reasonable warning is provided with the Products regarding
8 the carcinogenic hazards of Cocamide DEA.

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

11 46. As companies that manufacture, import, distribute, and/or sell Products for
12 use in the California marketplace, Defendants know or should know that Products contain
13 Cocamide DEA and that individuals who use the Products will be exposed to Cocamide DEA.
14 These Cocamide DEA exposures are a natural and foreseeable consequence of Defendants'
15 placing the Products into the stream of commerce.

16 47. Nevertheless, Defendants continue to expose consumers in California,
17 including infants and children, to Cocamide DEA without prior clear and reasonable warnings
18 regarding the carcinogenic hazards of Cocamide DEA.

19 48. CEH has engaged in good-faith efforts to resolve the claims alleged herein
20 prior to filing this Complaint.

21 49. Any person "violating or threatening to violate" Proposition 65 may be
22 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to
23 violate" is defined to mean "to create a condition in which there is a substantial probability that a
24 violation will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil
25 penalties not to exceed \$2,500 per day for each violation of Proposition 65. Health & Safety
26 Code § 25249.7(b).

1 **FIRST CAUSE OF ACTION**
2 **(Violations of Health & Safety Code § 25249.6)**

3 50. CEH realleges and incorporates by reference as if specifically set forth
4 herein Paragraphs 1 through 49, inclusive.

5 51. Cocamide DEA is a chemical listed by the State of California as known to
6 cause cancer.

7 52. By placing their Products into the stream of commerce, Defendants are
8 each a person in the course of doing business within the meaning of Health & Safety Code §
9 25249.11.

10 53. Defendants know that average use of their Products will expose users of
11 the Products to Cocamide DEA. Defendants intend that their Products be used in a manner that
12 results in users of their Products being exposed to Cocamide DEA contained therein.

13 54. Defendants have failed, and continue to fail, to provide prior clear and
14 reasonable warnings regarding the carcinogenicity of Cocamide DEA to users of their Products.

15 55. By committing the acts alleged above, Defendants have at all times
16 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
17 individuals to Cocamide DEA without first giving clear and reasonable warnings to such
18 individuals regarding the carcinogenicity of Cocamide DEA.

19 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

20 **PRAYER FOR RELIEF**

21 Wherefore, CEH prays for judgment against Defendants as follows:

22 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess
23 civil penalties against each Defendant in the amount of \$2,500 per day for each violation of
24 Proposition 65 alleged herein according to proof;

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

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

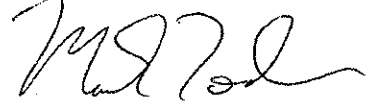
4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

Dated: March 12, 2014

Respectfully submitted,

LEXINGTON LAW GROUP



Mark N. Todzo
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH