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10 SHEFA LMV, LLC

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES
13 CENTRAL DISTRICT

14 SHEFA LMV, LLC., a California limited liability company,
15 Plaintiff,
16 vs.
17 AMAZON.COM, INC.; LAYLA COSMETICS SRL; and DOES 1 through 20,
18 inclusive, Defendants.
19) Unlimited Jurisdiction
20)
21) CASE NO. **BC563331**
22) **D31**
23) FIRST AMENDED COMPLAINT FOR
24) CIVIL PENALTY AND INJUNCTIVE
25) RELIEF
26)
27) 1. Violation of Health and Safety Code §
28) 25249.6
29)
30)

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 24 2015

Sherri R. Carter, Executive Officer/Clerk
By Raul Sanchez, Deputy

BY FAX

31 Plaintiff SHEFA LMV, LLC, hereby alleges:

32 I. INTRODUCTION

33 1. This complaint seeks to remedy Defendants' continued failure to warn individuals in
34 California about exposures to Benzophenone, a chemical recently adopted and known to the State of
35 California, "State" to cause cancer.

36 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
37 Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with
38 a "clear and reasonable warning" before exposing individuals to chemicals known to the State to
39 cause cancer and/or reproductive harm.

1 **II. PARTIES**

2 3. Plaintiff is a California Limited Liability Company authorized by the Secretary of
3 state to do business in the state of California and is acting in a representative capacity for citizens of
4 the State, managed by residents residing in California, and through its counsel of record, the Law
5 Office of Daniel N. Greenbaum.

6 4. Health and Safety Code section 25249.7(d) provides that actions to enforce
7 Proposition 65 may be brought by “any person in the public interest.”

8 5. Defendant AMAZON.COM, INC. (hereinafter “Amazon”) is a business entity with
9 ten or more employees that sells, or has, at times relevant to this complaint, authorized the
10 manufacture, distribution, or sale of Brilliant Due Nail Polish Protector that contains Benzophenone,
11 for sale within the State of California, without first giving clear and reasonable warning.

12 6. Defendant LAYLA COSMETICS SRL (hereinafter “Layla”) is a business entity with
13 ten or more employees that sells, or has, at times relevant to this complaint, authorized the
14 manufacture, distribution, or sale of Brilliant Due Nail Polish Protector that contains Benzophenone,
15 for sale within the State of California, without first giving clear and reasonable warning.

16 7. The identities of DOES 1 through 20 are unknown to Plaintiff at this time; however,
17 Plaintiff suspects that they are business entities with at least ten or more employees that have sold,
18 authorized the distribution, or sale of Brilliant Due Nail Polish Protector that contains Benzophenone,
19 for sale within the State of California, without first giving clear and reasonable warning.

20 **III. JURISDICTION AND VENUE**

21 8. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
22 because this case is a cause not given by statute to other trial courts.

23 9. This Court has jurisdiction over Defendants, because they are business entities that do
24 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
25 themselves of the California market, through the sale, marketing, and use of its Brilliant Due Nail
26 Polish Protector product in California, to render the exercise of jurisdiction over it by the California
27 courts consistent with traditional notions of fair play and substantial justice.

28 10. Venue is proper in this Court because the cause of action, or part thereof, arises in Los
Angeles County because Defendant’s products are sold and consumed in this county.

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IV. STATUTORY BACKGROUND

A. Proposition 65

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

12. The warning requirement of Proposition 65 is contained at Health and Safety Code § 25249.6, which provides:

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

13. An exposure to a chemical in a consumer product is one “which results from a person’s acquisition, purchase, storage, consumption, (and application) or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code Regs., tit. 27, § 25601, subd. (b).)

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

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

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

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

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

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

1 c. through direct absorption of Benzophenone through the skin further constituting a
2 dermal exposure.

3 29. Such individuals are thus exposed to the Benzophenone that is present on and in
4 Defendants' Brilliant Due Nail Polish Protector products in the course of the intended and reasonably
5 foreseeable use of those products.

6 30. At all times material to this complaint, Defendants had knowledge that the Brilliant
7 Due Nail Polish Protector products contain Benzophenone, as the label advised of this ingredient, and
8 that skin may come into contact with Benzophenone and a resulting dermal exposure would occur.

9 31. At all times material to this complaint, Defendants have had knowledge that
10 individuals within the State would handle Defendants' products that contain Benzophenone thus
11 causing the exposures absent warnings as complained of herein.

12 32. At all times material to this complaint, Defendants knew that the Defendants' products
13 were sold throughout the State in substantial volumes, and that Defendants profited from such sales
14 through, among other things, the sale of California sale and distribution of Defendants' products.

15 33. Notwithstanding this knowledge, Defendants intentionally and knowingly caused the
16 sale of Defendants' products and subsequent exposure to Benzophenone.

17 34. At all times material to this complaint, Defendants have knowingly and intentionally
18 exposed individuals within the State to Benzophenone, absent the statutory warnings.

19 35. Plaintiff believes this alleged exposure is knowing and intentional because it is the
20 result of the Defendants' deliberate act of authorizing the sale and the distribution of the Brilliant Due
21 Nail Polish Protector products known to contain Benzophenone in a manner whereby these products
22 were, and would inevitably be, sold to consumers within the state, and with the knowledge that the
23 intended use of these products will result in exposures to Benzophenone within the State, absent the
24 statutory warnings.

25 36. Defendant has failed to provide clear and reasonable warnings that the use of the
26 Brilliant Due Nail Polish Protector products in California results in exposures to a chemical known to
27 the State of California to cause cancer.

28 37. Plaintiff alleges no such warning was provided to those individuals by any Defendant
or other person for Defendants' benefit.

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VI. FIRST CAUSE OF ACTION

(Against All Defendants for Violation of Proposition 65)

38. Paragraphs 1 through 37 are re-alleged as if fully set forth herein.

39. By committing the acts alleged above, Defendants have, in the course of doing business, knowingly and intentionally exposed individuals in California to chemicals known to the State to cause cancer without first giving clear and reasonable warning to such individuals, within the meaning of Health and Safety Code § 25249.6.

40. Said violations render Defendant liable to Plaintiff for civil penalties not to exceed \$2,500 per day for each violation, as well as other remedies, such as injunctive relief or other remedy requiring reformulation of their products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

- 1. Pursuant to the First Cause of Action, grant civil penalties according to proof;
- 2. Award Plaintiff their investigative fees and costs;
- 3. Award attorney fees as provided for CCP 1021.5
- 4. Pursuant to the Second Cause of Action, grant restitution according to proof to all similarly situated.
- 5. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: February 24, 2015

LAW OFFICE OF DANIEL N. GREENBAUM



By: DANIEL N. GREENBAUM
Attorney for Plaintiff
Shefa LMV, LLC

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PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My electronic address is: nford@greenbaumlawfirm.com

On February 24, 2015. I served the foregoing document described as: **FIRST AMENDED COMPLAINT** on the interested parties in this action addressed as follows:

Jeffrey B. Margulies, Esq.
Matthew M. Gurvitz, Esq.
FULBRIGHT & JAWORSKI LLP
555 S. Flower Street, 41st Floor
Los Angeles CA 90071

Email: jeff.margulies@nortonrosefulbright.com
Email: matthew.gurvitz@nortonrosefulbright.com

By E-MAIL as follows: I am "readily familiar" with the Law Office of Daniel N. Greenbaum's practice of collection and processing correspondence for e-mailing. Under that practice it would be sent electronically on that same day in the ordinary course of business. I am aware that on motion of party served, service shall be presumed invalid if sent date is more than one (1) day after date for e-mailing in affidavit.

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on February 24, 2015, at Santa Monica, California.



Nathan Ford