

1 LEXINGTON LAW GROUP  
Mark N. Todzo, State Bar No. 168389  
2 Howard J. Hirsch, State Bar No. 213209  
503 Divisadero Street  
3 San Francisco, CA 94117  
Telephone: (415) 913-7800  
4 Facsimile: (415) 759-4112  
mtodzo@lexlawgroup.com  
5 hhirsch@lexlawgroup.com

6 Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

11 Coordination Proceeding Special Title: )  
12 PROPOSITION 65 COCAMIDE DEA CASES )  
13 \_\_\_\_\_ )  
14 This Document Relates To Case No. 14- )  
15 739157: )  
16 CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
17 Plaintiff, )  
18 v. )  
19 NOEVIR U.S.A., INC.; DR. MIRACLE'S, )  
INC.; FRAGRANCENET.COM, INC.; LABO. )  
20 DERMA; MARIO BADESCU SKIN CARE, )  
INC.; TAYLOR OF OLD BOND STREET )  
21 LIMITED; BURWELL INDUSTRIES, INC. )  
22 DBA BLOOM BATH & BODY AND DBA )  
MARGOT ELENA COLLECTIONS AND )  
23 COMPANIES; COCOCARE PRODUCTS, )  
INC.; DERMATOLOGIC COSMETIC )  
24 LABORATORIES LTD.; PHILIP SCOTT, )  
INC.; REJUVI LABORATORY, INC.; SUNNY )  
25 MARKETING SYSTEMS, INC. DBA EARTH )  
THERAPEUTICS LTD.; TEXAS BEAUTY )  
26 SUPPLY; ZOTOS INTERNATIONAL, INC.; )  
and DOES 1 through 1,500, inclusive, )  
27 Defendants. )  
28 \_\_\_\_\_ )

Judicial Council Coordinated Proceeding  
Case No. 4765  
**FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**  
Health & Safety Code § 25249.6, *et seq.*  
(Other)

ENDORSED  
FILED  
ALAMEDA COUNTY  
DEC 16 2014  
CLERK OF THE SUPERIOR COURT  
By YUJONG EDWID Deputy

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 four types of cosmetic products: (i) shampoo and liquid soaps and powdered soaps such as hand  
12 soaps, face soaps, soap sheets, body washes, pet soaps, shower gels, foot baths, and bubble baths  
13 ("Shampoo and Liquid Soaps"); (ii) skin creams such as facial masks and shaving creams ("Skin  
14 Creams"); (iii) hairspray and hair treatments such as hairspray, mousse, and hair masks ("Hair  
15 Treatments"); and (iv) nail protection products ("Nail Products"). Shampoo and Liquid Soaps,  
16 Skin Creams, Hair Treatments, and Nail Products are collectively referred to herein as  
17 "Products." Individuals in California are exposed to Cocamide DEA through ordinary use of the  
18 Products.

19 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*  
20 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California  
21 to chemicals known to the State to cause cancer without providing clear and reasonable warnings  
22 to individuals prior to their exposure. Defendants introduce Products contaminated with  
23 significant quantities of Cocamide DEA into the California marketplace, exposing consumers of  
24 their Products to Cocamide DEA.

25 3. Despite the fact that Defendants expose children and other individuals in  
26 California to Cocamide DEA, Defendants provide no warnings whatsoever about the  
27 carcinogenic hazards associated with these Cocamide DEA exposures. Defendants' conduct thus  
28

1 violates the warning provision of Proposition 65. Health & Safety Code § 25249.6.

2 **PARTIES**

3 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH (“CEH”) is a  
4 non-profit corporation dedicated to protecting the public from environmental health hazards and  
5 toxic exposures. CEH is based in Oakland, California and is incorporated under the laws of the  
6 State of California. CEH is a “person” within the meaning of Health & Safety Code §  
7 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety  
8 Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group  
9 that has prosecuted a large number of Proposition 65 cases in the public interest. These cases  
10 have resulted in significant public benefit, including the reformulation of thousands of products  
11 to remove toxic chemicals to make them safer. CEH also provides information to Californians  
12 about the health risks associated with exposure to hazardous substances, where manufacturers  
13 and other responsible parties fail to do so.

14 5. Defendant NOEVIR U.S.A., INC. is a person in the course of doing  
15 business within the meaning of Health & Safety Code § 25249.11. NOEVIR U.S.A., INC.  
16 manufactures, distributes, and/or sells Shampoo and Liquid Soaps for sale or use in California.

17 6. Defendant DR. MIRACLE’S, INC. is a person in the course of doing  
18 business within the meaning of Health & Safety Code § 25249.11. DR. MIRACLE’S, INC.  
19 manufactures, distributes, and/or sells Shampoo and Liquid Soaps for sale or use in California.

20 7. Defendant FRAGRANCENET.COM, INC. is a person in the course of  
21 doing business within the meaning of Health & Safety Code § 25249.11.  
22 FRAGRANCENET.COM, INC. manufactures, distributes, and/or sells Shampoo and Liquid  
23 Soaps and Hair Treatments for sale or use in California.

24 8. Defendant LABO. DERMA is a person in the course of doing business  
25 within the meaning of Health & Safety Code § 25249.11. LABO. DERMA manufactures,  
26 distributes, and/or sells Shampoo and Liquid Soaps for sale or use in California.

27 9. Defendant MARIO BADESCU SKIN CARE, INC. is a person in the  
28 course of doing business within the meaning of Health & Safety Code § 25249.11. MARIO

1 BADESCU SKIN CREAM, INC. manufactures, distributes, and/or sells Shampoo and Liquid  
2 Soaps for sale or use in California.

3 10. Defendant TAYLOR OF OLD BOND STREET LIMITED is a person in  
4 the course of doing business within the meaning of Health & Safety Code § 25249.11. TAYLOR  
5 OF OLD BOND STREET LIMITED manufactures, distributes, and/or sells Shampoo and Liquid  
6 Soaps for sale or use in California.

7 11. BURWELL INDUSTRIES, INC. DBA BLOOM BATH & BODY AND  
8 DBA MARGOT ELENA COLLECTIONS AND COMPANIES is a person in the course of  
9 doing business within the meaning of Health & Safety Code § 25249.11. BURWELL  
10 INDUSTRIES, INC. DBA BLOOM BATH & BODY AND DBA MARGOT ELENA  
11 COLLECTIONS AND COMPANIES manufactures, distributes, and/or sells Shampoo and  
12 Liquid Soaps and Skin Creams for sale or use in California.

13 12. COCOCARE PRODUCTS, INC. is a person in the course of doing  
14 business within the meaning of Health & Safety Code § 25249.11. COCOCARE PRODUCTS,  
15 INC. manufactures, distributes, and/or sells Shampoo and Liquid Soaps for sale or use in  
16 California.

17 13. DERMATOLOGIC COSMETIC LABORATORIES LTD. is a person in  
18 the course of doing business within the meaning of Health & Safety Code § 25249.11.  
19 DERMATOLOGIC COSMETIC LABORATORIES LTD. manufactures, distributes, and/or sells  
20 Shampoo and Liquid Soaps for sale or use in California.

21 14. PHILIP SCOTT, INC. is a person in the course of doing business  
22 within the meaning of Health & Safety Code § 25249.11. PHILIP SCOTT, INC. manufactures,  
23 distributes, and/or sells Shampoo and Liquid Soaps for sale or use in California.

24 15. REJUVI LABORATORY, INC. is a person in the course of doing  
25 business within the meaning of Health & Safety Code § 25249.11. REJUVI LABORATORY,  
26 INC. manufactures, distributes, and/or sells Shampoo and Liquid Soaps for sale or use in  
27 California.

28 16. SUNNY MARKETING SYSTEMS, INC. DBA EARTH

1 THERAPEUTICS LTD. is a person in the course of doing business within the meaning of Health  
2 & Safety Code § 25249.11. SUNNY MARKETING SYSTEMS, INC. DBA EARTH  
3 THERAPEUTICS LTD. manufactures, distributes, and/or sells Skin Creams and Hair Treatments  
4 for sale or use in California.

5 17. TEXAS BEAUTY SUPPLY is a person in the course of doing business  
6 within the meaning of Health & Safety Code § 25249.11. TEXAS BEAUTY SUPPLY  
7 manufactures, distributes, and/or sells Shampoo and Liquid Soaps for sale or use in California.

8 18. ZOTOS INTERNATIONAL, INC. is a person in the course of doing  
9 business within the meaning of Health & Safety Code § 25249.11. ZOTOS INTERNATIONAL,  
10 INC. manufactures, distributes, and/or sells Shampoo and Liquid Soaps for sale or use in  
11 California.

12 19. DOES 1 through 100 are each a person in the course of doing business  
13 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 100 manufacture,  
14 distribute and/or sell Shampoo and Liquid Soaps for sale or use in California.

15 20. DOES 101 through 200 are each a person in the course of doing business  
16 within the meaning of Health & Safety Code § 25249.11. DOES 101 through 200 manufacture,  
17 distribute and/or sell Skin Creams for sale or use in California.

18 21. DOES 201 through 300 are each a person in the course of doing business  
19 within the meaning of Health & Safety Code § 25249.11. DOES 201 through 300 manufacture,  
20 distribute and/or sell Hair Treatments for sale or use in California.

21 22. DOES 301 through 400 are each a person in the course of doing business  
22 within the meaning of Health & Safety Code § 25249.11. DOES 301 through 400 manufacture,  
23 distribute and/or sell Nail Products for sale or use in California.

24 23. DOES 401 through 500 are each a person in the course of doing business  
25 within the meaning of Health & Safety Code § 25249.11. DOES 401 through 500 manufacture,  
26 distribute and/or sell Shampoo and Liquid Soaps and Skin Creams for sale or use in California.

27 24. DOES 501 through 600 are each a person in the course of doing business  
28 within the meaning of Health & Safety Code § 25249.11. DOES 501 through 600 manufacture,

1 distribute and/or sell Shampoo and Liquid Soaps and Hair Treatments for sale or use in  
2 California.

3           25.   DOES 601 through 700 are each a person in the course of doing business  
4 within the meaning of Health & Safety Code § 25249.11. DOES 601 through 700 manufacture,  
5 distribute and/or sell Skin Creams and Hair Treatments for sale or use in California.

6           26.   DOES 701 through 800 are each a person in the course of doing business  
7 within the meaning of Health & Safety Code § 25249.11. DOES 701 through 800 manufacture,  
8 distribute and/or sell Shampoo and Liquid Soaps, Skin Creams, and Hair Treatments for sale or  
9 use in California.

10           27.   DOES 801 through 900 are each a person in the course of doing business  
11 within the meaning of Health & Safety Code § 25249.11. DOES 801 through 900 manufacture,  
12 distribute and/or sell Nail Products and Shampoo and Liquid Soaps for sale or use in California.

13           28.   DOES 901 through 1,000 are each a person in the course of doing business  
14 within the meaning of Health & Safety Code § 25249.11. DOES 901 through 1,000  
15 manufacture, distribute and/or sell Nail Products and Skin Creams for sale or use in California.

16           29.   DOES 1,001 through 1,100 are each a person in the course of doing  
17 business within the meaning of Health & Safety Code § 25249.11. DOES 1,001 through 1,100  
18 manufacture, distribute and/or sell Nail Products and Hair Treatments for sale or use in  
19 California.

20           30.   DOES 1,101 through 1,200 are each a person in the course of doing  
21 business within the meaning of Health & Safety Code § 25249.11. DOES 1,101 through 1,200  
22 manufacture, distribute and/or sell Nail Products, Shampoo and Liquid Soaps, and Skin Creams  
23 for sale or use in California.

24           31.   DOES 1,201 through 1,300 are each a person in the course of doing  
25 business within the meaning of Health & Safety Code § 25249.11. DOES 1,201 through 1,300  
26 manufacture, distribute and/or sell Nail Products, Shampoo and Liquid Soaps, and Hair  
27 Treatments for sale or use in California.

28           32.   DOES 1,301 through 1,400 are each a person in the course of doing

1 business within the meaning of Health & Safety Code § 25249.11. DOES 1,301 through 1,400  
2 manufacture, distribute and/or sell Nail Products, Skin Creams, and Hair Treatments for sale or  
3 use in California.

4 33. DOES 1,401 through 1,500 are each a person in the course of doing  
5 business within the meaning of Health & Safety Code § 25249.11. DOES 1,401 through 1,500  
6 manufacture, distribute and/or sell Shampoo and Liquid Soaps, Skin Creams, Hair Treatments,  
7 and Nail Products for sale or use in California.

8 34. The true names of DOES 1 through 1,500 are unknown to CEH at this  
9 time. When their identities are ascertained, the Complaint shall be amended to reflect their true  
10 names.

11 35. The defendants identified in paragraphs 5 through 18 and DOES 1 through  
12 1,500 are collectively referred to herein as “Defendants.”

### 13 JURISDICTION AND VENUE

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

18 37. This Court has jurisdiction over Defendants because each is a business  
19 entity that does sufficient business, has sufficient minimum contacts in California or otherwise  
20 intentionally avails itself of the California market through the sale, marketing, or use of Products  
21 in California and/or by having such other contacts with California so as to render the exercise of  
22 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
23 substantial justice.

24 38. Venue is proper in the Alameda Superior Court because one or more of the  
25 violations arise in the County of Alameda.

### 26 BACKGROUND FACTS

27 39. The People of the State of California have declared by initiative under  
28 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth

1 defects, or other reproductive harm.” Proposition 65 § 1(b).

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

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

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

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

24           43. Cocamide DEA is used in Products as a foam stabilizer, emulsifier, and  
25 viscosity builder in cosmetic products.

26           44. Defendants’ Products contain sufficient quantities of Cocamide DEA such  
27 that individuals, including infants and children, are exposed to Cocamide DEA through the  
28 average use of Products. The routes of exposure include dermal absorption and ingestion by



1 individuals when, for example, they apply the Products to their hair, scalp, or skin.

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

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

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

1 Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts,  
2 studies, or other data reviewed by such persons.

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

7 49. Defendants both know and intend that consumers in California, including  
8 infants and children, will use, touch, and/or handle the Products, thus exposing them to  
9 Cocamide DEA.

10 50. Under Proposition 65, an exposure is "knowing" where the party  
11 responsible for such exposure has:

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

15 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
16 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2 §  
17 12201).

18 51. No clear and reasonable warning is provided with the Products regarding  
19 the carcinogenic hazards of Cocamide DEA.

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

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

27 54. Nevertheless, Defendants continue to expose consumers in California,  
28 including infants and children, to Cocamide DEA without prior clear and reasonable warnings



1 used in a manner that results in users of their Shampoo and Liquid Soaps being exposed to  
2 Cocamide DEA contained therein.

3 61. Shampoo and Liquid Soaps Defendants have failed, and continue to fail, to  
4 provide prior clear and reasonable warnings regarding the carcinogenicity of Cocamide DEA to  
5 users of their Shampoo and Liquid Soaps.

6 62. By committing the acts alleged above, Shampoo and Liquid Soaps  
7 Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and  
8 intentionally exposing individuals to Cocamide DEA without first giving clear and reasonable  
9 warnings to such individuals regarding the carcinogenicity of Cocamide DEA.

10 Wherefore, CEH prays for judgment against Shampoo and Liquid Soaps  
11 Defendants, as set forth hereafter.

12 **SECOND CAUSE OF ACTION**  
13 **(Violations of Health & Safety Code § 25249.6)**  
14 **(Against Skin Creams Defendants Only)**

15 63. CEH realleges and incorporates by reference as if specifically set forth  
16 herein Paragraphs 1 through 62, inclusive.

17 64. Cocamide DEA is a chemical listed by the State of California as known to  
18 cause cancer.

19 65. By placing their Skin Creams into the stream of commerce, Defendants  
20 Burwell Industries, Inc. dba Bloom Bath & Body and dba Margot Elena Collections and  
21 Companies, Sunny Marketing Systems dba Earth Therapeutics Ltd., and DOES 101 through 200,  
22 401 through 500, 601 through 800, 901 through 1,000, 1,101 through 1,200, and 1,301 through  
23 1,500 (collectively, the "Skin Creams Defendants") are each a person in the course of doing  
24 business within the meaning of Health & Safety Code § 25249.11.

25 66. Skin Creams Defendants know that average use of their Skin Creams will  
26 expose users of the Skin Creams to Cocamide DEA. Skin Creams Defendants intend that their  
27 Skin Creams be used in a manner that results in users of their Skin Creams being exposed to  
28 Cocamide DEA contained therein.





1 forth hereafter.

2 **PRAYER FOR RELIEF**

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

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

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

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

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

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

18  
19 Dated: December 16, 2014

Respectfully submitted,

20 LEXINGTON LAW GROUP

21 

22 Mark N. Todzo

23 Attorneys for Plaintiff

24 CENTER FOR ENVIRONMENTAL HEALTH