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

15 SHEFA LMV, LLC., a California limited
16 liability company,

17 Plaintiff,

18 vs.

19 NEW WORLD IMPORTS, INC.; and
20 DOES 1 through 20, inclusive,

21 Defendants.

) Unlimited Jurisdiction

) CASE NO.

) COMPLAINT FOR CIVIL PENALTY AND
) INJUNCTIVE RELIEF

) 1. Violation of Health and Safety Code §
) 25249.6

) NO TRIAL DATE SET

22 Plaintiff SHEFA LMV, LLC, hereby alleges:

23 I. INTRODUCTION

24 1. This complaint seeks to remedy Defendants' sale of defective or worthless products
25 and that the sale of these products was negligent as Defendants failed to warn persons of exposures to
26 coconut oil diethanolamine condensate, also known as cocamide diethanolamine, (hereinafter
27 "Cocamide DEA") a chemical recently adopted and known to the State of California, "State" to cause
28 cancer.

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Superior Court of California
County of Los Angeles

OCT 17 2014

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

BC 561 056

BY FAX

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15 SHEFA LMV, LLC., a California limited) Unlimited Jurisdiction
16 liability company,)
17) CASE NO.
18 Plaintiff,)
19) COMPLAINT FOR CIVIL PENALTY AND
20 vs.) INJUNCTIVE RELIEF
21)
22 NEW WORLD IMPORTS, INC.; and) 1. Violation of Health and Safety Code §
23 DOES 1 through 20, inclusive,) 25249.6
24)
25 Defendants.) NO TRIAL DATE SET
26)
27)
28)

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37 cancer.
38

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

II. PARTIES

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

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

5. Defendant NEW WORLD IMPORTS, INC. (hereinafter “NWI”) is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of soap and shampoo products under its brand name or other brand names, that contain Coconut oil diethanolamine condensate (cocamide diethanolamine), for sale within the State of California, without first giving clear and reasonable warning.

6. The identities of DOES 1 through 20 are unknown to Plaintiff at this time; however, Plaintiff suspects that they are business entities with at least ten or more employees that have sold, authorized the distribution, or sale of soap and shampoo products under their brand names or other brand names, that contain Coconut oil diethanolamine condensate (cocamide diethanolamine), for sale within the State of California, without first giving clear and reasonable warning.

III. JURISDICTION AND VENUE

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

8. This Court has jurisdiction over Defendants, because they are business entities that do sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market, through the sale, marketing, and use of its products in

1 California, to render the exercise of jurisdiction over it by the California courts consistent with
2 traditional notions of fair play and substantial justice.

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

5 **IV. STATUTORY BACKGROUND**

6 **A. Proposition 65**

7 10. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
8 passed as "Proposition 65" by a vote of the people in November of 1986.

9 11. The warning requirement of Proposition 65 is contained at Health and Safety Code §
10 25249.6, which provides:

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

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

19 13. Proposition 65 establishes a procedure by which the state is to develop a list of
20 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Safety Code, §
21 25249.8.)

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

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

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

17. 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).)

18. 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).)

19. Private entities or a person is given authority to enforce Proposition 65 “in the public interest,” but only if the private entity or person first provides written notice of an alleged violation to the violator, the Attorney General, and every District Attorney in whose jurisdiction the alleged violation occurs.

20. If no public prosecutors commence an enforcement action within sixty days, then the private entity or person may sue. (Health & Safety Code, § 25249.7(d).)

21. No such governmental action has been pursued against Defendants.

V. FACTS

22. Coconut oil diethanolamine condensate (“cocamide diethanolamine”) was placed in the Governor's list of chemicals known to the State of California to cause cancer on June 22, 2012. (Cal. Code Regs., tit. 27, § 14001, subd. (b).)

23. Defendants manufacture, distribute and market soap, shampoo and other personal use products for use by individuals in the home and in other occupational endeavors.

24. These soaps, shampoos and personal use products are sold through various retailers, including but not limited to Defendants, located in California for use by citizens of the State.

25. The products are sold to consumers under the trade names owned by the Defendants for their various brands, including those mentioned above, and using the associated trademarks and trade identities for those brands, including the distinctive retailer labels.

26. The process followed in manufacturing the products for sale to the consuming public must be approved by Defendants and is used in this form by individuals and others for personal use.

27. Individuals who purchase and use Defendants' products are exposed to Cocamide DEA chiefly through: (1) contact between the soap, shampoo or personal use products and the skin constituting a dermal exposure, (2) transfer of Cocamide DEA from the skin to the mouth

1 constituting an ingestion exposure, both by transfer directly from the hand to mouth and by transfer
2 of the Cocamide DEA from the skin to objects that are put in the mouth constituting an ingestion
3 exposure, such as food and (3) through direct absorption of Cocamide DEA through the skin further
4 constituting a dermal exposure.

5 28. Such individuals are thus exposed to the Cocamide DEA that is present on and in
6 Defendants' products in the course of the intended and reasonably foreseeable use of those products.

7 29. At all times material to this complaint, Defendants had knowledge that the soaps,
8 shampoos or personal use products contain Cocamide DEA, as the label advised of this ingredient,
9 and that skin may come into contact with Cocamide DEA and a resulting dermal exposure would
10 occur.

11 30. At all times material to this complaint, Defendants have had knowledge that
12 individuals within the State would handle Defendants' products that contain Cocamide DEA thus
13 causing the exposures absent warnings as complained of herein.

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

17 32. Notwithstanding this knowledge, Defendants intentionally and knowingly caused the
18 sale of Defendants' products and subsequent exposure to Cocamide DEA.

19 33. At all times material to this complaint, Defendants have knowingly and intentionally
20 exposed individuals within the State to Cocamide DEA, absent the statutory warnings.

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

26 35. Defendant has failed to provide clear and reasonable warnings that the use of these
27 aforementioned products in California results in exposures to a chemical known to the State of
28

1 California to cause cancer. Plaintiff alleges no such warning was provided to those individuals by any
2 Defendant or other person for Defendants' benefit.

3
4 **VI. FIRST CAUSE OF ACTION**

5 (Against All Defendants for Violation of Proposition 65)

6 36. Paragraphs 1 through 35 are re-alleged as if fully set forth herein.

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

11 38. Said violations render Defendant liable to Plaintiff for civil penalties not to exceed
12 \$2,500 per day for each violation, as well as other remedies, such as injunctive relief or other remedy
13 requiring reformulation of their products.


14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays that the Court:

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

22
23 Respectfully submitted,

24 DATED: October 16, 2014

25
26 
27 By: DANIEL N. GREENBAUM
28 Attorney for Plaintiff
Shefa LMV, LLC