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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 03 2014

CLERK OF THE SUPERIOR COURT

By Ciceli Johnson  
Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

12 CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )

13 Plaintiff, )

14 v. )

15 NOEVIR U.S.A., INC.; DR. MIRACLE'S, INC.; )  
FRAGRANCENET.COM, INC.; LABO. )  
16 DERMA; MARIO BADESCU SKIN CARE, )  
INC.; TAYLOR OF OLD BOND STREET )  
LIMITED; and DOES 1 through 700, inclusive, )

17 Defendants. )  
18

Case No. RG 14739157

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

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

(Other)

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 are exposed to Cocamide DEA through ordinary use of the  
13 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 children and other individuals in  
21 California 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 NOEVIR U.S.A., INC. is a person in the course of doing  
9 business within the meaning of Health & Safety Code § 25249.11. NOEVIR U.S.A., INC.  
10 manufactures, distributes, and/or sells Products for sale or use in California.

11           6. Defendant DR. MIRACLE'S, INC. is a person in the course of doing  
12 business within the meaning of Health & Safety Code § 25249.11. DR. MIRACLE'S, INC.  
13 manufactures, distributes, and/or sells Products for sale or use in California.

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

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

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

25           10. Defendant TAYLOR OF OLD BOND STREET LIMITED is a person in  
26 the course of doing business within the meaning of Health & Safety Code § 25249.11. TAYLOR  
27 OF OLD BOND STREET LIMITED manufactures, distributes, and/or sells Products for sale or  
28 use in California.



1 states, in pertinent part:

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

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

12 20. On June 22, 2013, one year after it was listed as a chemical known to  
13 cause cancer, Cocamide DEA became subject to the clear and reasonable warning requirement  
14 regarding carcinogens under Proposition 65. 27 C.C.R. § 27001(b); Health & Safety Code §  
15 25249.10(b). The chief purpose of the one-year grace period between the listing date of a  
16 chemical under Proposition 65 and the effective date of the warning requirement is to give  
17 potentially liable parties sufficient time to come into complete compliance with this requirement,  
18 such that all illegal exposures can be averted.

19 21. Cocamide DEA is used in Products as a foam stabilizer, emulsifier, and  
20 viscosity builder in cosmetic products.

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

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

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

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

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

1 Notices.

2           27. Defendants both know and intend that consumers in California, including  
3 infants and children, will use, touch, and/or handle the Products, thus exposing them to  
4 Cocamide DEA.

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

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

10           27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
11 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2 §  
12 12201).

13           29. No clear and reasonable warning is provided with the Products regarding  
14 the carcinogenic hazards of Cocamide DEA.

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

17           31. As companies that manufacture, import, distribute, and/or sell Products for  
18 use in the California marketplace, Defendants know or should know that Products contain  
19 Cocamide DEA and that individuals who use the Products will be exposed to Cocamide DEA.  
20 These Cocamide DEA exposures are a natural and foreseeable consequence of Defendants’  
21 placing the Products into the stream of commerce.

22           32. Nevertheless, Defendants continue to expose consumers in California,  
23 including infants and children, to Cocamide DEA without prior clear and reasonable warnings  
24 regarding the carcinogenic hazards of Cocamide DEA.

25           33. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
26 prior to filing this Complaint.

27           34. Any person “violating or threatening to violate” Proposition 65 may be  
28 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to

1 violate” is defined to mean “to create a condition in which there is a substantial probability that a  
2 violation will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil  
3 penalties not to exceed \$2,500 per day for each violation of Proposition 65. Health & Safety  
4 Code § 25249.7(b).

5  
6 **FIRST CAUSE OF ACTION**  
**(Violations of Health & Safety Code § 25249.6)**

7 35. CEH realleges and incorporates by reference as if specifically set forth  
8 herein Paragraphs 1 through 34, inclusive.

9 36. Cocamide DEA is a chemical listed by the State of California as known to  
10 cause cancer.

11 37. By placing their Products into the stream of commerce, Defendants are  
12 each a person in the course of doing business within the meaning of Health & Safety Code §  
13 25249.11.

14 38. Defendants know that average use of their Products will expose users of  
15 the Products to Cocamide DEA. Defendants intend that their Products be used in a manner that  
16 results in users of their Products being exposed to Cocamide DEA contained therein.

17 39. Defendants have failed, and continue to fail, to provide prior clear and  
18 reasonable warnings regarding the carcinogenicity of Cocamide DEA to users of their Products.

19 40. By committing the acts alleged above, Defendants have at all times  
20 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing  
21 individuals to Cocamide DEA without first giving clear and reasonable warnings to such  
22 individuals regarding the carcinogenicity of Cocamide DEA.

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

24 **PRAYER FOR RELIEF**

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

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



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

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

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

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

12  
13 Dated: September 3, 2014

Respectfully submitted,

14 LEXINGTON LAW GROUP

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16 \_\_\_\_\_  
17 Mark N. Todzo  
18 Attorneys for Plaintiff  
19 CENTER FOR ENVIRONMENTAL HEALTH  
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