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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 CENTRAL DISTRICT

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

16 Plaintiff,

17 vs.

18 HOUSE OF BEAUTY, INC.; and DOES 1
19 through 20, inclusive,

20 Defendants.

) Unlimited Jurisdiction

) CASE NO.

) COMPLAINT FOR CIVIL PENALTY AND
21 INJUNCTIVE RELIEF

22) 1. Violation of Health and Safety Code §
23) 25249.6

24) NO TRIAL DATE SET

BC 561 055

25 BY FAX

26 Plaintiff SHEFA LMV, LLC, hereby alleges:

27 I. INTRODUCTION

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

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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).)

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

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

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

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

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

13 V. FACTS

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

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

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

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

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

26 27. Individuals who purchase and use Defendants’ products are exposed to Cocamide
27 DEA chiefly through: (1) contact between the soap, shampoo or personal use products and the skin
28 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
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays that the Court:

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

23
24 Respectfully submitted,

25 DATED: October 16, 2014

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