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4	Telephone: (818) 809-2199 Facsimile: (424) 243-7689	JAMES M. KIM, Court Executive Officer			
5	Email: dgreenbaum@greenbaumlawfirm.com	MARIN COUNTY SUPERIOR COURT Ey: E. Chais, Deputy			
6	Attorney for SHEFA LMV, LLC	)			
7	SUPERIOR COURT OF T	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
8	COUNTY OF MARIN				
9	SHEFA LMV, LLC., a California limited	Unlimited Jurisdiction			
10	liability company,	1504055			
11	Plaintiff,	CASE NO.			
12		COMPLAINT FOR CIVIL PENALTY AND			
13	vs.	INJUNCTIVE RELIEF			
14	GALDERMA LABORATORIES, L.P.; and DOES 1 through 50, inclusive,	1. Violation of Health and Safety Code § 25249.6			
15					
16	Defendants.				
17		BY FAX			
18					
19					
20	Plaintiff SHEFA LMV, LLC, hereby alleg	ges:			
21					
22	I. INTRODUCTION				
23	1. This complaint seeks to remedy Defendants' continued failure to warn individuals in				
24	California about exposures to Benzophenone, a chemical recently adopted and known to the State of				
25	California to cause cancer.				
26	2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health an				
27	Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons wit				
28	y				
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	COMPLAINT FOR CIVIL I	PENALTY AND DAMAGES			

1 2 3 4 5 6	Daniel N. Greenbaum, Esq. (SBN 268104) LAW OFFICE OF DANIEL N. GREENBAUM The Hathaway Building 7120 Hayvenhurst Avenue, Suite 320 Van Nuys, CA 91406 Telephone: (818) 809-2199 Facsimile: (424) 243-7689 Email: dgreenbaum@greenbaumlawfirm.com Attorney for SHEFA LMV, LLC				
7	SUPERIOR COURT OF THE STATE OF CALIFORNIA				
8		Y OF MARIN			
9 10 11 12 13 14 15 16 17 18	SHEFA LMV, LLC., a California limited liability company,  Plaintiff,  vs.  GALDERMA LABORATORIES, L.P.; and DOES 1 through 50, inclusive,  Defendants.	<ul> <li>Unlimited Jurisdiction</li> <li>CASE NO.</li> <li>COMPLAINT FOR CIVIL PENALTY AND</li> <li>INJUNCTIVE RELIEF</li> <li>1. Violation of Health and Safety Code §</li> <li>25249.6</li> <li>)</li> <li>)</li> <li>)</li> <li>)</li> <li>)</li> <li>)</li> <li>)</li> </ul>			
19 20 21	Plaintiff SHEFA LMV, LLC, hereby alleges:				
22	I. INTRODUCTION				
23	1. This complaint seeks to remedy	Defendants' continued failure to warn individuals in			
24	California about exposures to Benzophenone, a chemical recently adopted and known to the State of				
25	California to cause cancer.				
26		r and Toxic Enforcement Act of 1986, Health and			
27	Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with				
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	COMPLAINT FOR CIVIL	PENALTY AND DAMAGES			

a "clear and reasonable warning" before exposing individuals to chemicals known to the State to cause cancer.

#### 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, 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. Health and Safety Code section 25249.11(a) defines a "person" as an individual, trust, firm, joint stock company, corporation, company, partnership, limited liability company, and association.
- 6. Defendant GALDERMA LABORATORIES, L.P. (hereinafter "Galderma") 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(s), sunscreen(s), lip balm(s), body cream(s) or other product(s) designed to be applied onto the body by hand (hereinafter "Products"), under its brand name or other brand names, including Cetaphil w/ SPF 15 (UPC 302993928041) that contain Benzophenone, for sale within the State of California, without first giving clear and reasonable warning.
- 7. The identities of DOES 1 through 50 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 Products under their brand names or other brand names, that contain Benzophenone, for sale within the State of California, without first giving clear and reasonable warning.

# III. JURISDICTION AND VENUE

8. 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.

- 9. Also, pursuant to California Code of Civil Procedure §§ 393, 395 and 395.5, 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 Products in California, to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.
- 10. Venue is proper in this Court because numerous related cases involving similar allegations, Defendants, Product(s) and other factual disputes have previously been filed in Marin County.

### 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." (27 Cal. Code Regs. § 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.)

- 26. The Products are sold by 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.
- 27. The process followed in manufacturing the Products were approved by Defendants and is used in this form by individuals and others for personal use.
- 28. Individuals are exposed thusly to the Benzophenone that is present in Defendants' Products in the course of the intended and reasonably foreseeable use of those Products, as such exposures are defined by 27 Cal. Code of Regs. § 25602(b).
- 29. At all times material to this complaint, Defendants had knowledge that the Products contain Benzophenone and that skin may come into contact with Benzophenone and a resulting exposure would occur.
- 30. At all times material to this complaint, Defendants have had knowledge that individuals within the State would handle Defendants' Products that contain Benzophenone thus causing the exposures absent warnings as complained of herein.
- 31. At all times material to this complaint, Defendants knew that the Defendants' Products were sold throughout the State in substantial volumes, and that Defendants profited from such sales through, among other things, the sale of California sale and distribution of Defendants' Products.
- 32. Notwithstanding this knowledge, Defendants intentionally and knowingly caused the sale of Defendants' Products and subsequent exposure to Benzophenone.
- 33. At all times material to this complaint, Defendants have knowingly and intentionally exposed individuals within the State to Benzophenone, absent the statutory warnings.
- 34. Plaintiff believes this alleged exposure is knowing and intentional because it is the result of the Defendants' deliberate act of authorizing the sale and the distribution of the Products known to contain Benzophenone in a manner whereby these Products were, and would inevitably be, sold to consumers within the state, and with the knowledge that the intended use of these Products will result in exposures to Benzophenone within the State, absent the statutory warnings.

- 35. Defendant has failed to provide clear and reasonable warnings that the use of these aforementioned Products in California results in exposures to a chemical known to the State of California to cause cancer.
- 36. Plaintiff alleges no such warning was provided to consumers of the Products by any Defendant or other person for Defendants' benefit.

#### VI. FIRST CAUSE OF ACTION

(Against All Defendants for Violation of Proposition 65)

- 37. Paragraphs 1 through 36 are re-alleged as if fully set forth herein.
- 38. 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.
- 39. 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 Health and Safety Code § 25249.7(b), assess civil penalties against Defendants in the amount of \$2,500 per day each violation;
- 2. Pursuant to Health and Safety Code § 25249.7(a) enjoin Defendants from manufacturing, distributing or offering Products for sale in California without first providing a "clear and reasonable warning" as defined by 27 Cal. Code of Regs. § 25601 *et seq.* for harms associated with exposure to Benzophenone;
- 3. Award reasonable attorney fees and costs of suit as provided for Cal. Code Civ. Proc. § 1021.5; and
- 4. Grant such other and further relief as the court deems just and proper.

1			Respectfully submitted,
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3	DATED: November 6, 2015		LAW OFFICE OF DANIEL N. GREENBAUM
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5		D	DANIEL N. CREENBAUM
6		By:	DANIEL N. GREENBAUM Attorney for Plaintiff
7			Shefa LMV, LLC
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