

1 Daniel N. Greenbaum, Esq. (SBN 268104)
2 LAW OFFICE OF DANIEL N. GREENBAUM
3 The Hathaway Building
4 7120 Hayvenhurst Avenue, Suite 320
5 Van Nuys, CA 91406
6 Telephone: (818) 809-2199
7 Facsimile: (424) 243-7689
8 Email: dgreenbaum@greenbaumlawfirm.com

9 Attorney for
10 SHEFA LMV, LLC

FILED

SEP 10 2015

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

BY FAX

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

15 Plaintiff,

16 vs.

17 CONCEPT II COSMETICS, LLC; and DOES
18 1 through 50, inclusive,

19 Defendants.

) Unlimited Jurisdiction

) CASE NO. CIV 15 03341

) COMPLAINT FOR CIVIL PENALTY AND
20 INJUNCTIVE RELIEF

) 1. Violation of Health and Safety Code §
21 25249.6

22
23 Plaintiff SHEFA LMV, LLC, hereby alleges:

24 **I. INTRODUCTION**

25 1. This complaint seeks to remedy Defendants' continued failure to warn individuals in
26 California about exposures to Benzophenone, a chemical recently adopted and known to the State of
27 California to cause cancer.

28 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

1 Daniel N. Greenbaum, Esq. (SBN 268104)
2 LAW OFFICE OF DANIEL N. GREENBAUM
3 The Hathaway Building
4 7120 Hayvenhurst Avenue, Suite 320
5 Van Nuys, CA 91406
6 Telephone: (818) 809-2199
7 Facsimile: (424) 243-7689
8 Email: dgreenbaum@greenbaumlawfirm.com

9 Attorney for
10 SHEFA LMV, LLC

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF MARIN

13 SHEFA LMV, LLC., a California limited liability company,
14 Plaintiff,
15 vs.
16 CONCEPT II COSMETICS, LLC; and DOES 1 through 50, inclusive,
17 Defendants.
18) Unlimited Jurisdiction
19)
20) CASE NO.
21)
22) COMPLAINT FOR CIVIL PENALTY AND
23) INJUNCTIVE RELIEF
24)
25) 1. Violation of Health and Safety Code §
26) 25249.6
27)
28)

19 Plaintiff SHEFA LMV, LLC, hereby alleges:

20
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 and
27 Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with
28

1 a “clear and reasonable warning” before exposing individuals to chemicals known to the State to
2 cause cancer and/or reproductive harm.

3 **II. PARTIES**

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

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

9 5. Health and Safety Code section 25249.11(a) defines a “person” as an individual, trust,
10 firm, joint stock company, corporation, company, partnership, limited liability company, and
11 association.

12 6. Defendant CONCEPT II COSMETICS, LLC (hereinafter “Concept”) is a business
13 entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the
14 manufacture, distribution, or sale of soap(s), sunscreen(s), lip balm(s), body cream(s) or other
15 product(s) designed to be applied onto the body by hand (hereinafter “Products”), under its brand
16 name or other brand names, including SolScents Broad Spectrum Flower Blast SPF 50 that contain
17 Benzophenone, for sale within the State of California, without first giving clear and reasonable
18 warning.

19 7. The identities of DOES 1 through 50 are unknown to Plaintiff at this time; however,
20 Plaintiff suspects that they are business entities with at least ten or more employees that have sold,
21 authorized the distribution, or sale of Products under their brand names or other brand names, that
22 contain Benzophenone, for sale within the State of California, without first giving clear and
23 reasonable warning.

24 **III. JURISDICTION AND VENUE**

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

27 9. Also, pursuant to California Code of Civil Procedure §§ 393, 395 and 395.5, this
28 Court has jurisdiction over Defendants, because they are business entities that do sufficient business,

1 have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the
2 California market, through the sale, marketing, and use of Products in California, to render the
3 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play
4 and substantial justice.

5 10. Venue is proper in this Court because numerous related cases involving similar
6 allegations, Defendants, Product(s) and other factual disputes have previously been filed in Marin
7 County.

8 IV. STATUTORY BACKGROUND

9 A. Proposition 65

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

12 12. The warning requirement of Proposition 65 is contained at Health and Safety Code §
13 25249.6, which provides:

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

18 13. An exposure to a chemical in a consumer product is one “which results from a
19 person’s acquisition, purchase, storage, consumption, (and application) or other reasonably
20 foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.”
21 (Cal. Code Regs., tit. 27, § 25601, subd. (b).)

22 14. Proposition 65 establishes a procedure by which the state is to develop a list of
23 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code, §
24 25249.8.)

25 15. No warning need be given concerning a listed chemical until one (1) year after the
26 chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

27 16. Any person “violating or threatening to violate” the statute may be enjoined in any
28 court of competent jurisdiction. (Health & Safety Code, § 25249.7.)

1 17. To “threaten to violate” is defined to mean “to create a condition in which there is a
2 substantial probability that a violation will occur.” (*Id.*, § 25249.11, subd. (e).)

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

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

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

12 21. If no public prosecutors commence an enforcement action within sixty (60) days, then
13 the private entity or person may sue. (Health & Safety Code, § 25249.7(d).)

14 22. No such governmental action has been pursued against Defendants.

15 **V. FACTS**

16 23. Benzophenone was placed in the Governor's list of chemicals known to the State of
17 California to cause cancer on June 22, 2012. (Cal. Code Regs., tit. 27, § 14001, subd. (b).)

18 24. Defendants manufacture, distribute and sell Products for use by individuals in the
19 home and in other occupational endeavors.

20 25. These Products are sold through various retailers, including but not limited to
21 Defendants, located in California for use by citizens of the State.

22 26. The Products are sold by Defendants for their various brands, including those
23 mentioned above, and using the associated trademarks and trade identities for those brands, including
24 the distinctive retailer labels.

25 27. The process followed in manufacturing the Products were approved by Defendants
26 and is used in this form by individuals and others for personal use.

27

28

1 28. Individuals are exposed thusly to the Benzophenone that is present in Defendants’
2 Products in the course of the intended and reasonably foreseeable use of those Products, as such
3 exposures are defined by California Code of Regulations title 27, § 25602(b).

4 29. At all times material to this complaint, Defendants had knowledge that the Products
5 contain Benzophenone and that skin may come into contact with Benzophenone and a resulting
6 exposure would occur.

7 30. At all times material to this complaint, Defendants have had knowledge that
8 individuals within the State would handle Defendants’ Products that contain Benzophenone thus
9 causing the exposures absent warnings as complained of herein.

10 31. At all times material to this complaint, Defendants knew that the Defendants’ Products
11 were sold throughout the State in substantial volumes, and that Defendants profited from such sales
12 through, among other things, the sale of California sale and distribution of Defendants’ Products.

13 32. Notwithstanding this knowledge, Defendants intentionally and knowingly caused the
14 sale of Defendants’ Products and subsequent exposure to Benzophenone.

15 33. At all times material to this complaint, Defendants have knowingly and intentionally
16 exposed individuals within the State to Benzophenone, absent the statutory warnings.

17 34. Plaintiff believes this alleged exposure is knowing and intentional because it is the
18 result of the Defendants’ deliberate act of authorizing the sale and the distribution of the Products
19 known to contain Benzophenone in a manner whereby these Products were, and would inevitably be,
20 sold to consumers within the state, and with the knowledge that the intended use of these Products
21 will result in exposures to Benzophenone within the State, absent the statutory warnings.

22 35. Defendant has failed to provide clear and reasonable warnings that the use of these
23 aforementioned Products in California results in exposures to a chemical known to the State of
24 California to cause cancer.

25 36. Plaintiff alleges no such warning was provided to consumers of the Products by any
26 Defendant or other person for Defendants’ benefit.

27 **VI. FIRST CAUSE OF ACTION**

28 (Against All Defendants for Violation of Proposition 65)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

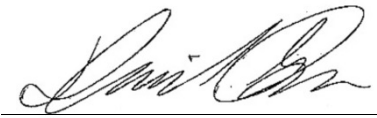
WHEREFORE, Plaintiff prays that the Court:

- 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 California Code of Regulations Title 27 § 25601 *et seq.* for harms associated with exposure to Benzophenone;
- 3. Award reasonable attorney fees and costs of suit as provided for CCP 1021.5; and
- 4. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: September 10, 2015

LAW OFFICE OF DANIEL N. GREENBAUM



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