

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Monica Bachner

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 SHEFA LMV, INC.

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 8 COUNTY OF LOS ANGELES

10 SHEFA LMV, INC, ) Unlimited Jurisdiction  
 11 )  
 12 Plaintiff, ) CASE NO.  
 13 )  
 14 vs. )  
 15 ) COMPLAINT FOR CIVIL PENALTY AND  
 16 HENKEL CORPORATION; MEXILINK, ) INJUNCTIVE RELIEF  
 17 INC.; MOCO DE GORILA, INC.; and DOES )  
 18 1 through 100, Inclusive, ) (Health and Safety Code § 25249.5 et seq.)  
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1 Plaintiff SHEFA LMV, INC., hereby alleges:

2 **I. PRELIMINARY STATEMENT**

3 1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure  
4 to Diethanolamine (“DEA”), which is a chemical known to the State of California to cause cancer.

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

9 **II. PARTIES**

10 3. Plaintiff is a non-profit, public benefit corporation formed pursuant to the laws of the  
11 State of California, composed of California citizens, and represented by and through its counsel of  
12 record, the Law Office of Daniel N. Greenbaum.

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

15 5. Defendant Henkel Corporation is a business entity with ten or more employees that  
16 sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of  
17 hair gel products, including but not limited to, Wetline Xtreme® Professional Styling Gel; UPC:  
18 871217007416, that contain DEA, for sale within the State of California, without first giving clear  
19 and reasonable warning.

20 6. Defendant Mexilink, Inc., is a business entity with ten or more employees that sells, or  
21 has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of hair gel  
22 products, including but not limited to, Wetline Xtreme® Reaction Styling Gel UPC871217004316,  
23 that contain DEA, for sale within the State of California, without first giving clear and reasonable  
24 warning.

25 7. Defendant Moco de Gorila, Inc. is a business entity with ten or more employees that  
26 sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of  
27 hair gel products, including but not limited to, Moco De Gorila (Gorilla Snot Gel®) Galan By

1 Naturalabs; UPC878971000028, that contain DEA, for sale within the State of California, without  
2 first giving clear and reasonable warning.

3 8. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,  
4 Plaintiff suspects that they are business entities with at least ten or more employees that have sold,  
5 authorized the distribution, or sale of hair gel products that contain DEA for sale within the State of  
6 California, without first giving clear and reasonable warning.

7 9. Defendants named in paragraphs 5 through 8 have at all times relevant to this  
8 complaint, authorized the manufacture, distribution, or sale of hair gel products, including, but not  
9 limited to: Wetline Xtreme® Professional Styling Gel; UPC: 871217007416; Wetline Xtreme®  
10 Reaction Styling Gel UPC871217004316; Moco De Gorila (Gorilla Snot Gel®) Galan By  
11 Naturalabs UPC878971000028 that contain DEA (hereinafter “PRODUCTS”), for sale within the  
12 State of California, without first giving clear and reasonable warning.

### 13 **III. JURISDICTION AND VENUE**

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

16 11. This Court has jurisdiction over Defendants, because they are business entities that do  
17 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail  
18 themselves of the California market, through the sale, marketing, and use of its PRODUCTS in  
19 California, to render the exercise of jurisdiction over it by the California courts consistent with  
20 traditional notions of fair play and substantial justice.

21 12. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles  
22 County because Defendants’ PRODUCTS are sold and consumed in this county.

### 23 **IV. STATUTORY BACKGROUND**

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

26 14. The warning requirement of Proposition 65 is contained in Health and Safety Code  
27 section 25249.6, which provides:

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

5 15. An exposure to a chemical in a consumer product is one “which results from a  
6 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a  
7 consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code Regs.,  
8 tit. 22, § 12601, subd. (b).)

9 16. Proposition 65 establishes a procedure by which the state is to develop a list of  
10 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, §  
11 25249.8.)

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

14 18. Any person “violating or threatening to violate” the statute may be enjoined in any  
15 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)

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

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

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

23 22. Private parties are given authority to enforce Proposition 65 “in the public interest,”  
24 but only if the private party first provides written notice of a violation to the alleged violator, the  
25 Attorney General, and every District Attorney in whose jurisdiction the alleged violation occurs.

26 23. If no public prosecutors commence enforcement within sixty days, then the private  
27 party may sue. (Health & Saf. Code, § 25249.7(d).)

1 **V. FACTS**

2 24. DEA was placed in the Governor's list of chemicals known to the State of California  
3 to cause cancer on June 22, 2012. (Cal. Code Regs., tit. 22, § 12000, subd. (b).)

4 25. Defendants, distribute and market hair gel PRODUCTS for use by individuals in the  
5 home and in other endeavors.

6 26. These PRODUCTS are sold through various retailers, including but not limited to  
7 Target Corporation, Amazon.com, and Kmart Corporation located in California for use by citizens of  
8 the State of California.

9 27. On December 12, 2017 and February 20, 2018, Plaintiff's expert prepared reports  
10 summarizing the results of analysis on the PRODUCTS, including the amount of the DEA in each of  
11 the PRODUCTS.

12 28. Based on the levels, Plaintiff's expert opined that use of the PRODUCTS would lead  
13 to harmful exposures to DEA.

14 29. Based on those reports and opinions, Plaintiff and its counsel prepared the Notices of  
15 Violation.

16 30. Pursuant to the statute and regulations referenced above, on December 21, 2017 and  
17 March 16, 2018, Plaintiff served the Notices of Violation on the Office of the Attorney General,  
18 Defendants, as well as all required public agencies.

19 31. Plaintiff is unaware of any governmental prosecution against Defendant.

20 32. At least sixty (60) days have elapsed since service of the Notices of Violation.

21 33. Based upon consultation with multiple experts, Plaintiff alleges that individuals who  
22 purchase, handle, or use the PRODUCTS are exposed to DEA chiefly through:

- 23 a. contact between the hair gel and the skin of the hands;
- 24 b. transfer of DEA from the skin to the mouth, both by transfer directly from the  
25 hand to mouth and by transfer of the DEA from the skin to objects that are put in  
26 the mouth, such as food, and;
- 27 c. through absorption of DEA through the scalp.



1 43. By committing the acts alleged above, Defendants have, in the course of doing  
2 business, knowingly and intentionally exposed individuals in California to chemicals known to the  
3 State of California to cause cancer without first giving clear and reasonable warning to such  
4 individuals, within the meaning of Health and Safety Code section 25249.6.

5 44. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed  
6 \$2,500 per day for each violation, as well as other remedies, such as injunctive relief requiring  
7 reformulation of the products.


8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays that the Court:

- 10 1. Pursuant to the First Cause of Action, grant civil penalties according to proof;
- 11 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,  
12 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendants from exposing  
13 persons within the State of California to Listed Chemicals caused by the use of their products without  
14 providing clear and reasonable warnings, as Plaintiffs shall specify in further application to the court;
- 15 3. Award Plaintiffs their costs of suit;
- 16 4. Grant such other and further relief as the court deems just and proper.

17  
18 Respectfully submitted,

19 DATED: February 13, 2019

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22 By: DANIEL N. GREENBAUM  
23 Attorney for Plaintiff  
24 Shefa LMV, INC.