Electronically FILED by S	juperior Court of California, County of Los Angeles on 02/13/2019 06:43 PM Sherri R. Carter, Executive Officer/Clerk of Court, by N. Alvarez, Deputy Clerk
	19STCV05343

	Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mark Mooney				
1 2 3 4 5 6 7 8 9		n C. PF TH	E STATE OF CALIFORNIA LOS ANGELES		
 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 	SHEFA LMV, INC., Plaintiff, vs. BAYER CORPORATION; and DOES 1 through 100, Inclusive, Defendants.		Unlimited Jurisdiction CASE NO. COMPLAINT FOR CIVIL PENALTY AND NJUNCTIVE RELIEF (Health and Safety Code § 25249.5 et seq.)		
28	COMPLAINT FOR CIVIL PI	1 enal'	ΓΥ AND INJUNCTIVE RELIEF		

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Plaintiff SHEFA LMV, INC., hereby alleges:

I. PRELIMINARY STATEMENT

1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure 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, commonly known as "Proposition 65," businesses must provide
7 persons with a "clear and reasonable warning" before exposing individuals to chemicals known to the
8 state to cause cancer or reproductive harm.

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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 Bayer Corporation ("Defendant") is a business entity with ten or more
16 employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
17 distribution, or sale of sunburn creams and gels, including but not limited to, Solarcaine® Cool Aloe
18 Pain Relieving Gel; UPC: 041100081384, containing DEA, for sale within the State of California,
19 without first giving clear and reasonable warning.

6. The identities of DOES 1 through 100 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 sunburn creams and gels, including but not limited to,
Solarcaine® Cool Aloe Pain Relieving Gel; UPC: 041100081384, containing DEA, for sale within
the State of California, without first giving clear and reasonable warning.

7. Defendants named in paragraphs 5 through 6 have at all times relevant to this
complaint, authorized the manufacture, distribution, or sale of sunburn creams and gels, including but
not limited to, Solarcaine® Cool Aloe Pain Relieving Gel; UPC: 041100081384 that contain DEA

1	(hereinafter "PRODUCTS"), for sale within the State of California, without first giving clear and			
2	reasonable warning.			
3	III. JURISDICTION AND VENUE			
4	8. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,			
5	because this case is a cause not given by statute to other trial courts.			
6	9. This Court has jurisdiction over Defendant, because it is a business entity that does			
7	sufficient business, has sufficient minimum contacts in California, or otherwise intentionally avail			
8	themselves of the California market, through the sale, marketing, and use of its PRODUCTS in			
9	California, to render the exercise of jurisdiction over it by the California courts consistent with			
10	traditional notions of fair play and substantial justice.			
11	10. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles			
12	County because Defendant's PRODUCTS are sold and consumed in this county.			
13	IV. STATUTORY BACKGROUND			
14	11. The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety			
15	Code §§ 25249.5 et seq.) is an initiative statute passed as "Proposition 65" by a vote of the people in			
16	November of 1986.			
17	12. The warning requirement of Proposition 65 is contained in Health and Safety Code			
18	section 25249.6, which provides:			
19	No person in the course of doing business shall knowingly and intentionally			
20	expose any individual to a chemical known to the state to cause cancer or			
21	reproductive toxicity without first giving clear and reasonable warning to such			
22	individual, except as provided in Section 25249.10.			
23	13. An exposure to a chemical in a consumer product is one "which results from a			
24	person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a			
25	consumer good, or any exposure that results from receiving a consumer service." (22 CCR 12601,			
26	subd. (b).)			
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1 14. Proposition 65 establishes a procedure by which the state is to develop a list of
 2 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, §
 3 25249.8.)

4 15. No warning need be given concerning a listed chemical until twelve (12) months after
5 the chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

6 16. Any person "violating or threatening to violate" the statute may be enjoined in any
7 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)

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

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

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

15 20. Private parties are given authority to enforce Proposition 65 "in the public interest,"
16 but only if the private party first provides written notice of a violation to the alleged violator, the
17 Attorney General, and every District Attorney in whose jurisdiction the alleged violation occurs.

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

FACTS

V.

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21 22. DEA was placed in the Governor's list of chemicals known to the State of California
22 to cause cancer on June 22, 2012. (27 CCR 27001(b))

23 23. Defendant manufactures, distributes, and markets bath and lotion PRODUCTS for use
24 by individuals in the home and other endeavors.

25 24. These PRODUCTS are sold through various retailers, including but not limited to
26 Target Corporation (where Plaintiff acquired the PRODUCT), located in California for use by
27 citizens of the State of California.

1	25.	On December 12, 2017, Plaintiff's expert prepared a report summarizing the results of	
2	analysis on th	e PRODUCTS, including the amount of the DEA in the product.	
3	26.	Based on the levels, Plaintiff's expert opined that use of the PRODUCTS could lead to	
4	harmful expos	sures to DEA.	
5	27.	Based on that report and opinion, Plaintiff and its counsel prepared a Notice of	
6	Violation.		
7	28.	Pursuant to the statute and regulations referenced above, on December 21, 2017,	
8	Plaintiff serve	ed the Notices of Violation on the Office of the Attorney General, Defendant, as well as	
9	all required pu	ublic agencies.	
10	29.	Plaintiff is unaware of any governmental prosecution against Defendant.	
11	30.	At least sixty (60) days have elapsed since service of the Notice of Violation.	
12	31.	Based upon consultation with multiple experts, Plaintiff alleges that individuals who	
13	3 purchase, handle, or use the PRODUCTS are exposed to DEA chiefly through:		
14		a. contact between the lotion and the skin;	
15		b. transfer of DEA from the skin to the mouth, both by transfer directly from the	
16		hand to mouth and by transfer of the DEA from the skin to objects that are put in	
17		the mouth, such as food, and;	
18		c. through absorption of DEA through the skin.	
19	32.	Such individuals are thus exposed to the DEA that is present on and in Defendant's	
20	PRODUCTS	in the course of the intended and reasonably foreseeable use of those PRODUCTS.	
21	33.	At all times material to this complaint, Defendant had knowledge that the lotions	
22	contain DEA	and that skin may come into contact with DEA.	
23	34.	At all times material to this complaint, Defendant had knowledge that individuals	
24	within the Sta	te of California handle Defendant's PRODUCTS that contain DEA.	
25	35.	At all times material to this complaint, Defendant knew that Defendant's PRODUCTS	
26	were sold thr	oughout the State of California in large numbers, and Defendant profited from such	
27	sales through,	among other things, the sale of Defendant's PRODUCTS that were sold in California.	
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36. Notwithstanding this knowledge, Defendant intentionally authorized and reauthorized
 the sale of Defendant's PRODUCTS that contained DEA.

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37. At all times material to this complaint, Defendant has knowingly and intentionally exposed individuals within the State of California to DEA.

5 38. The exposure is knowing and intentional because it is the result of the Defendant's
6 deliberate act of authorizing the sale of PRODUCTS known to contain DEA in a manner whereby
7 these PRODUCTS were, and would inevitably be, sold to consumers within the state of California,
8 and with the knowledge that the intended use of these PRODUCTS will result in exposures to DEA
9 within the State of California.

39. Defendant has failed to provide clear and reasonable warnings that the use of the
PRODUCTS in question in California results in exposure to a chemical known to the State of
California to cause cancer, and no such warning was provided to those individuals by any other
person.

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VI. FIRST CAUSE OF ACTION

(Against Defendant for Violation of Proposition 65)

40. Paragraphs 1 through 39 are re-alleged as if fully set forth herein.

17 41. By committing the acts alleged above, Defendant has, in the course of doing business,
18 knowingly and intentionally exposed individuals in California to chemicals known to the State of
19 California to cause cancer without first giving clear and reasonable warning to such individuals,
20 within the meaning of Health and Safety Code section 25249.6.

42. 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 requiring
reformulation of the products.

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1. Pursuant to the First Cause of Action, grant civil penalties according to proof;

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

1	2.	Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,		
2		preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant		
3		from exposing persons within the State of California to Listed Chemicals caused by		
4		the use of their products without providing clear and reasonable warnings, as Plaintiffs		
5		shall specify in further application to the court;		
6	3.	Award Plaintiff their costs of suit;		
7	4.	Grant such other and further relief as the court deems just and proper		
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10		Respectfully submitted,		
11	DATED: Fe	bruary 13, 2019		
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14		By: DANIEL N. GREENBAUM Attorney for Plaintiff		
15		Shefa LMV, INC.		
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