

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mark Mooney

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 PLAINTIFF SHEFA LMV, INC.

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF LOS ANGELES  
9

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

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Plaintiff SHEFA LMV, INC., hereby alleges:

2 **I. PRELIMINARY STATEMENT**

3 1. This complaint seeks to remedy the failure of Defendant 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, 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.

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 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.

20 6. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,  
21 Plaintiff suspects that they are business entities with at least ten or more employees that have sold,  
22 authorized the distribution, or sale of sunburn creams and gels, including but not limited to,  
23 Solarcaine® Cool Aloe Pain Relieving Gel; UPC: 041100081384, containing DEA, for sale within  
24 the State of California, without first giving clear and reasonable warning.

25 7. Defendants named in paragraphs 5 through 6 have at all times relevant to this  
26 complaint, authorized the manufacture, distribution, or sale of sunburn creams and gels, including but  
27 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).)



1           25.     On December 12, 2017, Plaintiff’s expert prepared a report summarizing the results of  
2 analysis on the 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 exposures 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 served the Notices of Violation on the Office of the Attorney General, Defendant, as well as  
9 all required public 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 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 State 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 throughout 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.

28



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

2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from exposing persons within the State of California to Listed Chemicals caused by the use of their products without providing clear and reasonable warnings, as Plaintiffs shall specify in further application to the court;
3. Award Plaintiff their costs of suit;
4. Grant such other and further relief as the court deems just and proper

Respectfully submitted,

DATED: February 13, 2019



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