

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Daniel Murphy

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9 Attorney for PLAINTIFF
10 SHEFA LMV, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

13 SHEFA LMV, INC.,) Unlimited Jurisdiction
14)
15 Plaintiff,) CASE NO.
16)
17 vs.)
18) COMPLAINT FOR CIVIL PENALTY AND
19 GRISI HNOS., S.A. DE C.V.,) INJUNCTIVE RELIEF
20)
21 Defendant.) (Health and Safety Code § 25249.5 et seq.)
22)
23)
24)
25)
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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 GRISI HNOS., S.A. DE C.V. (“Defendant”) is a business entity with ten or
16 more employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
17 distribution, or sale of lotion products, including but not limited to, Aloe Vera Savila Face & Body
18 Lotion, UPC037836000386, containing DEA, (hereinafter “PRODUCTS”) for sale within the State
19 of California, without first giving clear and reasonable warning.

20 **III. JURISDICTION AND VENUE**

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

23 7. This Court has jurisdiction over Defendant, because it is a business entity that does
24 sufficient business, has sufficient minimum contacts in California, or otherwise intentionally avail
25 themselves of the California market, through the sale, marketing, and use of its PRODUCTS in
26 California, to render the exercise of jurisdiction over it by the California courts consistent with
27 traditional notions of fair play and substantial justice.

1 8. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles
2 County because Defendant's PRODUCTS are sold and consumed in this county.

3 **IV. STATUTORY BACKGROUND**

4 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety
5 Code §§ 25249.5 et seq.) is an initiative statute passed as "Proposition 65" by a vote of the people in
6 November of 1986.

7 10. The warning requirement of Proposition 65 is contained in Health and Safety Code
8 section 25249.6, which provides:

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

13 11. An exposure to a chemical in a consumer product is one "which results from a
14 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
15 consumer good, or any exposure that results from receiving a consumer service." (22 CCR 12601,
16 subd. (b).)

17 12. Proposition 65 establishes a procedure by which the state is to develop a list of
18 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, §
19 25249.8.)

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

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

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

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

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

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

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

9 **V. FACTS**

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

12 21. Defendant manufactures, distributes, and markets bath and lotion PRODUCTS for use
13 by individuals in the home and other endeavors.

14 22. These PRODUCTS are sold through various retailers, including but not limited to
15 Kmart Corporation (where Plaintiff acquired the PRODUCT), located in California for use by
16 citizens of the State of California.

17 23. On February 20, 2018, Plaintiff's expert prepared a report summarizing the results of
18 analysis on the PRODUCTS, including the amount of the DEA in the product.

19 24. Based on the levels, Plaintiff's expert opined that use of the PRODUCTS would lead
20 to harmful exposures to DEA.

21 25. Based on that report and opinion, Plaintiff and its counsel prepared a Notice of
22 Violation.

23 26. Pursuant to the statute and regulations referenced above, on March 16, 2018, Plaintiff
24 served the Notices of Violation on the Office of the Attorney General, Defendant, as well as all
25 required public agencies.

26 27. Plaintiff is unaware of any governmental prosecution against Defendant.

27 28. At least sixty (60) days have elapsed since service of the Notice of Violation.

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

- 3 a. contact between the lotion and the skin of the hands;
- 4 b. transfer of DEA from the skin to the mouth, both by transfer directly from the
5 hand to mouth and by transfer of the DEA from the skin to objects that are put in
6 the mouth, such as food, and;
- 7 c. through absorption of DEA through the skin.

8 30. Such individuals are thus exposed to the DEA that is present on and in Defendant's
9 PRODUCTS in the course of the intended and reasonably foreseeable use of those PRODUCTS.

10 31. At all times material to this complaint, Defendant had knowledge that the lotions
11 contain DEA and that skin may come into contact with DEA.

12 32. At all times material to this complaint, Defendant had knowledge that individuals
13 within the State of California handle Defendant's PRODUCTS that contain DEA.

14 33. At all times material to this complaint, Defendant knew that Defendant's PRODUCTS
15 were sold throughout the State of California in large numbers, and Defendant profited from such
16 sales through, among other things, the sale of Defendant's PRODUCTS that were sold in California.

17 34. Notwithstanding this knowledge, Defendant intentionally authorized and reauthorized
18 the sale of Defendant's PRODUCTS that contained DEA.

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

21 36. The exposure is knowing and intentional because it is the result of the Defendant's
22 deliberate act of authorizing the sale of PRODUCTS known to contain DEA in a manner whereby
23 these PRODUCTS were, and would inevitably be, sold to consumers within the state of California,
24 and with the knowledge that the intended use of these PRODUCTS will result in exposures to DEA
25 within the State of California.

26 37. Defendant has failed to provide clear and reasonable warnings that the use of the
27 PRODUCTS in question in California results in exposure to a chemical known to the State of
28

1 California to cause cancer, and no such warning was provided to those individuals by any other
2 person.

3 **VI. FIRST CAUSE OF ACTION**

4 (Against Defendant for Violation of Proposition 65)

5 38. Paragraphs 1 through 37 are re-alleged as if fully set forth herein.

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

10 40. Said violations render Defendant liable to Plaintiff for civil penalties not to exceed
11 \$2,500 per day for each violation, as well as other remedies, such as injunctive relief requiring
12 reformulation of the products.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays that the Court:

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

23 Respectfully submitted,

24 DATED: February 14, 2019

25 

26 By: _____
27 DANIEL N. GREENBAUM
28 Attorney for Plaintiff
Shefa LMV, INC.