

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stuart Rice

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
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 HAW PAR CORPORATION LIMITED; and) INJUNCTIVE RELIEF
20 DOES 1 through 100, Inclusive,)
21) (Health and Safety Code § 25249.5 et seq.)
22 Defendant.)
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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 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 HAW PAR CORPORATION LIMITED (“Defendant”) is a business entity
16 with ten or more employees that sells, or has, at times relevant to this complaint, authorized the
17 manufacture, distribution, or sale of muscle cream products, including but not limited to, Tiger Balm
18 Muscle Rub, UPC: 039278440201, containing DEA, (hereinafter “PRODUCTS”) for sale within the
19 State of California, 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 muscle cream products, including but not limited to, Tiger Balm
23 Muscle Rub, UPC: 039278440201, containing DEA, for sale within the State of California, without
24 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 muscle cream products, including but
27 not limited to, Tiger Balm Muscle Rub, UPC: 039278440201, that contain DEA (hereinafter
28

1 “PRODUCTS”), for sale within the State of California, without first giving clear and reasonable
2 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 February 20, 2018, 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 would lead
4 to 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 March 16, 2018, Plaintiff
8 served the Notices of Violation on the Office of the Attorney General, Defendant, as well as all
9 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 cream and the skin of the hands;

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 cream
22 contains 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.

1 36. Notwithstanding this knowledge, Defendant intentionally authorized and reauthorized
2 the sale of Defendant’s PRODUCTS that contained DEA.

3 37. At all times material to this complaint, Defendant has knowingly and intentionally
4 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.

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

14 **VI. FIRST CAUSE OF ACTION**

15 (Against Defendant for Violation of Proposition 65)

16 40. Paragraphs 1 through 37 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.

21 42. Said violations render Defendant liable to Plaintiff for civil penalties not to exceed
22 \$2,500 per day for each violation, as well as other remedies, such as injunctive relief requiring
23 reformulation of the products.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays that the Court:

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

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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 19, 2019



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