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ENDORSED
FILED
ALAMEDA COUNTY

SEP 16 2019

CLERK OF THE SUPERIOR COURT
By *Jamie Thomas*
JAMIE THOMAS, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,
11 Plaintiff,
12 vs.
13 THE PROCTOR & GAMBLE
14 COMPANY, WALGREEN CO.,
15 Defendants.

Case No.: RG19035212

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

(Violation of Health & Safety Code § 25249.5 et
seq.)

16 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the
17 following cause of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

19 1. Plaintiff brings this representative action on behalf of all California citizens to
20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
21 at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
22 "[n]o person in the course of doing business shall knowingly and intentionally expose any
23 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
24 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People's right to be informed of the health
27 hazards caused by exposure to diethanolamine (DEA), a toxic chemical found in Aussie Mega
28

Filed By Fax

1 Gel sold and/or distributed by defendants The Procter & Gamble Company (“Procter &
2 Gamble”) and Walgreen Co. (“Walgreen”) (collectively, “Defendants”) in California.

3 3. DEA is a harmful chemical known to the State of California to cause cancer. On
4 June 22, 2012, the State of California listed DEA as a chemical known to the State to cause
5 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal.
6 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

7 4. Proposition 65 requires all businesses with ten (10) or more employees that
8 operate within California or sell products therein to comply with Proposition 65 regulations.
9 Included in such regulations is the requirement that businesses must label any product containing
10 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
11 intentionally” exposing any person to it.

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
13 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
14 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
15 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
16 Code § 25249.7.

17 6. Plaintiff alleges that Defendants manufacture, distribute and/or offer for sale in
18 California, without a requisite exposure warning, Aussie Mega Gel and related
19 creams/gels/lotions (the “Products”) that expose persons to DEA.

20 7. Defendants’ failure to warn consumers and other individuals in California of the
21 health hazards associated with exposure to DEA in conjunction with the sale and/or distribution
22 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and
23 civil penalties described herein.

24 8. Plaintiff seeks civil penalties against each Defendant for their violations of
25 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

26 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
27 Defendants to provide purchasers or users of the Products with required warnings related to the
28

1 dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code
2 § 25249.7(a).

3 **PARTIES**

4 10. Plaintiff is a citizen of the State of California acting in the interest of the general
5 public to promote awareness of exposures to toxic chemicals in products sold in California and
6 to improve human health by reducing hazardous substances contained in such items. He brings
7 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

8 11. Defendant Procter & Gamble, through its business, effectively manufactures,
9 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or
10 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the
11 Products for sale or use in the State of California. Plaintiff alleges that defendant Procter &
12 Gamble is a “person” in the course of doing business within the meaning of Health & Safety
13 Code sections 25249.6 and 25249.11.

14 12. Defendant Walgreen, through its business, effectively imports, distributes, sells,
15 and/or offers the Products for sale or use in the State of California, or it implies by its conduct
16 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of
17 California. Plaintiff alleges that defendant Walgreen is a “person” in the course of doing business
18 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

19 **VENUE AND JURISDICTION**

20 13. Venue is proper in the County of Alameda because one or more of the instances
21 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
22 conducted, and continue to conduct, business in the County of Alameda with respect to the
23 Products.

24 14. This Court has jurisdiction over this action pursuant to California Constitution
25 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
26 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
27 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
28 this Court has jurisdiction over this lawsuit.

1 21. Defendants have, at all times mentioned herein, acted as either the manufacturer,
2 distributor, and/or retailer of the Product.

3 22. The Products contain DEA, a hazardous chemical found on the Proposition 65 list
4 of chemicals known to be hazardous to human health.

5 23. The Product does not comply with the Proposition 65 warning requirements.

6 24. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since September 18, 2018, continuing until the present, that Defendants have
8 continued to knowingly and intentionally expose California users and consumers of the Product
9 to DEA without providing required warnings under Proposition 65.

10 25. The exposures that are the subject of the Notice result from the purchase,
11 acquisition, handling and recommended use of the Product. Consequently, the primary route of
12 exposure to these chemicals is through dermal absorption. Dermal absorption of DEA can occur
13 through direct skin contact with the Product when the Product is applied to a user's hair and
14 comes into contact with the user's skin. Representative areas of the user's skin may include, but
15 are not limited to, the user's scalp, neck, ears, and shoulders. Exposure may continue to occur for
16 a significant period after the initial contact. Finally, while ingestion of the Product does not seem
17 likely, some amount of exposure through ingestion can occur by touching the Product with
18 subsequent touching of the user's hand to mouth, through hand to food to mouth contact, or
19 through hand to cigarette to mouth contact.

20 26. Plaintiff, based on his best information and belief, avers that such exposures will
21 continue every day until clear and reasonable warnings are provided to Product purchasers and
22 users or until this known toxic chemical is removed from the Product.

23 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
24 Product exposes individuals to DEA, and Defendants intend that exposures to DEA will occur by
25 their deliberate, non-accidental participation in the manufacture, importation, distribution, sale
26 and offering of the Products to consumers in California.

27 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
28 Complaint.

