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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

CHANEL, INC.; L'ORÉAL USA, INC.; and
DOES 1 through 200, inclusive,

Defendants.

FILED
ALAMEDA COUNTY

AUG 23 2019

CLERK OF THE SUPERIOR COURT

By Jayana Deputy

RG19038937

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on information and
2 belief and investigation of counsel, except for information based on knowledge, hereby makes the
3 following allegations:

4 INTRODUCTION

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to perfluorooctanoic acid ("PFOA"). PFOA
7 is a chemical known to the State of California to cause birth defects and other reproductive harm.
8 Such exposures have occurred, and continue to occur, through the manufacture, distribution, sale,
9 and/or use of makeup foundation (the "Products"). Individuals in California, including pregnant
10 women, are exposed to PFOA when they use, touch, or handle the Products.

11 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is
12 unlawful for businesses to knowingly and intentionally expose individuals in California to
13 chemicals known to the State to cause birth defects or other reproductive harm without providing
14 clear and reasonable warnings prior to their exposure. Defendants introduce Products
15 contaminated with significant quantities of PFOA into the California marketplace, thereby
16 exposing users of their Products, many of whom are pregnant women, to PFOA.

17 3. Despite the fact that Defendants expose pregnant women and other people who
18 come into contact with the Products to PFOA, Defendants provide no warnings whatsoever about
19 these PFOA exposures. Defendants' conduct thus violates the warning provision of Proposition
20 65. Health & Safety Code § 25249.6.

21 PARTIES

22 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit
23 corporation dedicated to protecting the public from environmental health hazards and toxic
24 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
25 California. CEH is a "person" within the meaning of Health & Safety Code § 25249.11(a) and
26 brings this enforcement action in the public interest pursuant to Health & Safety Code §
27 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
28 prosecuted a large number of Proposition 65 cases in the public interest. These cases have

1 jurisdiction over it by the California courts consistent with traditional notions of fair play and
2 substantial justice.

3 12. Venue is proper in Alameda County Superior Court because one or more of the
4 violations arise in the County of Alameda.

5 **BACKGROUND FACTS**

6 13. The People of the State of California have declared by initiative under Proposition
7 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
8 other reproductive harm.” Proposition 65, § 1(b).

9 14. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals
10 listed by the State of California as known to cause birth defects or other reproductive harm
11 without a “clear and reasonable warning” unless the business responsible for the exposure can
12 prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in
13 pertinent part:

14 No person in the course of doing business shall knowingly and
15 intentionally expose any individual to a chemical known to the state to
16 cause cancer or reproductive toxicity without first giving clear and
reasonable warning to such individual

17 15. On November 10, 2017, the State of California officially listed PFOA as a
18 chemical known to cause reproductive toxicity. PFOA is specifically identified as a
19 developmental toxicant, which means it causes harm to the developing fetus. 27 Cal. Code Regs.
20 (“C.C.R.”) § 27001(c). On November 10, 2018, one year after it was listed as a chemical known
21 to cause reproductive toxicity, PFOA became subject to the clear and reasonable warning
22 requirement regarding reproductive toxicants under Proposition 65. *Id.*; Health & Safety Code §
23 25249.10(b).

24 16. PFOA is a “forever chemical” that is highly persistent and bioaccumulative in the
25 human body. As such, even a short-term exposure to PFOA results in a body burden that can
26 persist for years and even increase with additional exposures. See U.S. Environmental Protection
27 Agency, *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)* (May 2016), at 13,
28 24-25, 55. Exposure to PFOA has been linked to various reproductive impacts, such as decreased

1 fertility and birth weight, and a host of other deleterious health effects, such as liver damage,
2 thyroid disease, and asthma. See U.S. Department of Health and Human Services, Agency for
3 Toxic Substances and Disease Registry, *Toxicological Profile for Perfluoroalkyls (Draft for*
4 *Public Comment)* (June 2018), at 5-6.

5 17. Although PFOA is not an ingredient that is used to manufacture the Products,
6 certain chemicals found in the Products are known to degrade into PFOA. One such chemical is
7 C9-15 fluoroalcohol phosphate, which is intentionally added to the Products as a skin conditioner
8 that helps the Products adhere to the user's skin for longer periods of time. See Ministry of
9 Environment and Food of Denmark, Environmental Protection Agency, *Risk Assessment of*
10 *Fluorinated Substances in Cosmetic Products* (October 2018), at 27. Exposure to PFOA is of
11 particular concern given that the Products are predominantly used by females of reproductive age,
12 including teenage girls.

13 18. Defendants' Products contain sufficient quantities of PFOA such that individuals,
14 including pregnant women, who use, touch, and/or handle the Products are exposed to PFOA
15 through the average use of such Products. The routes of exposure for the violations are dermal
16 absorption directly through the skin when users apply the Products or touch and/or handle
17 Products, and ingestion via hand-to-mouth contact after consumers touch and/or handle the
18 Products.

19 19. No clear and reasonable warning is provided with the Products regarding the
20 exposures to PFOA, which occur through ordinary use of the Products.

21 20. Any person acting in the public interest has standing to enforce violations of
22 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
23 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
24 within such time. Health & Safety Code § 25249.7(d).

25 21. More than sixty days prior to naming each Defendant in this lawsuit, CEH
26 provided a 60-Day "Notice of Violation" of Proposition 65 to the California Attorney General, to
27 the District Attorneys of every county in California, to the City Attorneys of every California city
28 with a population greater than 750,000, and to each of the named Defendants. In compliance with

1 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the
2 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
3 time period during which violations occurred; (4) specific descriptions of the violations, including
4 (a) the routes of exposure to listed chemicals from the Products, and (b) the specific type of
5 Products sold and used in violation of Proposition 65; and (5) the name of the specific Proposition
6 65-listed chemical that is the subject of the violations described in each Notice.

7 22. CEH also sent a Certificate of Merit for each Notice to the California Attorney
8 General, to the District Attorneys of every county in California, to the City Attorneys of every
9 California city with a population greater than 750,000, and to each of the named Defendants. In
10 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate
11 certified that CEH's counsel: (1) has consulted with one or more persons with relevant and
12 appropriate experience or expertise who reviewed facts, studies, or other data regarding the
13 exposures to PFOA alleged in each Notice; and (2) based on the information obtained through
14 such consultations, believes that there is a reasonable and meritorious case for a citizen
15 enforcement action based on the facts alleged in each Notice. In compliance with Health &
16 Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney General
17 included factual information – provided on a confidential basis – sufficient to establish the basis
18 for the Certificate, including the identity of the person(s) consulted by CEH's counsel and the
19 facts, studies, or other data reviewed by such persons.

20 23. None of the public prosecutors with the authority to prosecute violations of
21 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
22 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in
23 CEH's Notices.

24 24. Defendants both know and intend that consumers in California, including pregnant
25 women, will use, touch and/or handle the Products, thus exposing them to PFOA through the
26 average use of the Products. The problem of PFOA in cosmetic products such as makeup has
27 been the subject of extensive media reporting in recent years.

28

1 25. Nevertheless, Defendants continue to expose consumers, including pregnant
2 women, to PFOA without prior clear and reasonable warnings regarding the reproductive hazards
3 of PFOA.

4 26. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
5 filing this Complaint.

6 27. Any person "violating or threatening to violate" Proposition 65 may be enjoined in
7 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is
8 defined to mean "to create a condition in which there is a substantial probability that a violation
9 will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not
10 to exceed \$2,500 per day for each violation of Proposition 65.

11 **FIRST CAUSE OF ACTION**
12 **(Violations of Health & Safety Code § 25249.6)**

13 28. CEH realleges and incorporates by reference as if specifically set forth herein
14 Paragraphs 1 through 27, inclusive.

15 29. PFOA is a chemical listed by the State of California as known to cause birth
16 defects and other reproductive harm.

17 30. By placing their Products into the stream of commerce, each Defendant is a person
18 in the course of doing business within the meaning of Health & Safety Code § 25249.11.

19 31. Defendants know that the average use of their Products will expose users of their
20 Products to PFOA. Defendants intend that the Products be used in a manner that results in users
21 of their Products being exposed to the PFOA contained therein.

22 32. Defendants have failed, and continue to fail, to provide clear and reasonable
23 warnings to users of their Products regarding the exposures to PFOA which occur from use of the
24 Products.

25 33. By committing the acts alleged above, Defendants have at all times relevant to this
26 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to PFOA
27 without first giving clear and reasonable warnings to such individuals regarding those exposures.

28 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

1 **PRAYER FOR RELIEF**

2 Wherefore, CEH prays for judgment against Defendants as follows:

3 1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
4 permanently enjoin Defendants from offering the Products for sale in California without either
5 reformulating the Products such that no Proposition 65 warnings are required or providing prior
6 clear and reasonable warnings, as CEH shall specify in further application to the Court;

7 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants
8 to take action to stop ongoing unwarned exposures to PFOA resulting from use of Products sold
9 by Defendants, as CEH shall specify in further application to the Court;

10 3. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil
11 penalties against each Defendant in the amount of \$2,500 per day for each violation of
12 Proposition 65 according to proof;

13 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
14 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

15 5. That the Court grant such other and further relief as may be just and proper.
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17 Dated: August 23, 2019

Respectfully submitted,

18 LEXINGTON LAW GROUP
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22 _____
23 Howard Hirsch
24 Attorneys for Plaintiff
25 CENTER FOR ENVIRONMENTAL HEALTH
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