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ENDORSED
FILED
ALAMEDA COUNTY

SEP 25 2020

CLERK OF THE SUPERIOR COURT
By Carolyn Lemos, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

RG20075323

11 EMA BELL,

12 Plaintiff,

13 vs.

14 NATERRA INTERNATIONAL, INC.,
15 CVS PHARMACY, INC.,

16 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

17 Plaintiff Ema Bell ("Plaintiff"), by and through her attorneys, alleges the following cause
18 of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People's right to be informed of the health
28 hazards caused by exposure to diethanolamine (DEA), a toxic chemical found in Tree Hut shea
body lotions/moisturizers sold and/or distributed by defendant Naterra International, Inc.

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1 (“Natterra”) and defendant CVS Pharmacy, Inc. (“CVS”) (collectively, the “Defendants”) in
2 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 cancer
5 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs.
6 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 operate
8 within California or sell products therein to comply with Proposition 65 regulations. Included in
9 such regulations is the requirement that businesses must label any product containing a Proposition
10 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”
11 exposing any person to any such listed chemical.

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
13 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
14 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
15 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
16 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
17 25249.7.

18 6. Plaintiff alleges that Defendants distribute and/or offers for sale in California,
19 without a requisite exposure warning, Tree Hut shea body lotions/moisturizers (the “Products”)
20 that expose persons to DEA.

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

25 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
26 65 in accordance with Health and Safety Code § 25249.7(b).

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

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

3 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

4 **PARTIES**

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

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

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

19 **VENUE AND JURISDICTION**

20 14. Venue is proper in the County of Alameda because one or more of the instances of
21 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 15. 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 enforcement
27 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
28 jurisdiction over this lawsuit.

1 to occur for a significant period after the initial contact. Finally, while ingestion of the Products
2 does not seem likely, some amount of exposure through ingestion can occur by touching the
3 Products with subsequent touching of the user's hand to mouth, through hand to food to mouth
4 contact, or through hand to cigarette to mouth contact.

5 24. Defendants have manufactured, processed, marketed, distributed, offered to sell
6 and/or sold the Products in California since at least July 1, 2019. The Products continue to be
7 distributed and sold in California without the requisite warning information.

8 25. At all times relevant to this action, Defendants have knowingly and intentionally
9 exposed users, consumers and/or patients to the Products and the Listed Chemical without first
10 giving a clear and reasonable exposure warning to such individuals.

11 26. As a proximate result of acts by each defendant, as a person in the course of doing
12 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
13 California, including in Alameda County, have been exposed to the Listed Chemical without a
14 clear and reasonable warning on the Products. The individuals subject to the violative exposures
15 include normal and foreseeable users, consumers and patients that use the Products, as well as all
16 others exposed to the Products.

17 **SATISFACTION OF NOTICE REQUIREMENTS**

18 27. On July 1, 2019, Plaintiff gave notice of alleged violation of Health and Safety
19 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
20 DEA contained in the Products without proper warning, subject to a private action to Defendants
21 and to the California Attorney General's office and the offices of the County District attorneys and
22 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
23 violations allegedly occurred.

24 28. The Notice complied with all procedural requirements of Proposition 65 including
25 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
26 least one person with relevant and appropriate expertise who reviewed relevant data regarding
27 DEA exposure, and that counsel believed there was meritorious and reasonable cause for a private
28 action.

1 29. After receiving the Notice, and to Plaintiff's best information and belief, none of
2 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
3 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
4 are the subject of the Notice.

5 30. Plaintiff is commencing this action more than sixty (60) days from the date of the
6 Notice to Defendants, as required by law.

7 **FIRST CAUSE OF ACTION**

8 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

9 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of
10 this Complaint as though fully set forth herein.

11 32. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
12 of the Products.

13 33. The Products contain DEA, a hazardous chemical found on the Proposition 65 list
14 of chemicals known to be hazardous to human health.

15 34. The Products do not comply with the Proposition 65 warning requirements.

16 35. Plaintiff, based on her best information and belief, avers that at all relevant times
17 herein, and at least since July 1, 2019, continuing until the present, that Defendants have continued
18 to knowingly and intentionally expose California users and consumers of the Products to DEA
19 without providing required warnings under Proposition 65.

20 36. The exposures that are the subject of the Notice result from the purchase,
21 acquisition, handling and recommended use of the Products. Consequently, the primary route of
22 exposure to these chemicals is through dermal exposure. Exposure to consumers includes, but is
23 not limited to, when handling the Products, DEA comes into contact with the hands and is then
24 absorbed through the skin. Additionally, dermal absorption of DEA can occur through direct skin
25 contact with the Products when they are applied to the user's body and come into contact with
26 portions of the user's skin that can include the entire body or select placement on portions of the
27 body. Exposure can continue to occur for a significant period after the initial contact. Finally, while
28 ingestion of the Products does not seem likely, some amount of exposure through ingestion can

1 occur by touching the Products with subsequent touching of the user's hand to mouth, through
2 hand to food to mouth contact, or through hand to cigarette to mouth contact.

3 37. Plaintiff, based on her best information and belief, avers that such exposures will
4 continue every day until clear and reasonable warnings are provided to purchasers and users or
5 until this known toxic chemical is removed from the Products.

6 38. Defendants have knowledge that the normal and reasonably foreseeable use of the
7 Product exposes individuals to DEA, and Defendants intend that exposures to DEA will occur by
8 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
9 Products to consumers in California

10 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
11 Complaint.

12 40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
13 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.

14 41. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
15 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
18 relief:

19 A. That the court assess civil penalties against each defendant in the amount of \$2,500
20 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
21 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

22 B. That the court preliminarily and permanently enjoin Defendants mandating
23 Proposition 65 compliant warnings on the Products;

24 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
25 amount of \$50,000.00.

26 D. That the court grant any further relief as may be just and proper.

27 Dated: September 24, 2020

BRODSKY & SMITH, LLC

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