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FILED
Superior Court of California
County of Los Angeles
01/31/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: N. Osollo Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES
9 CENTRAL DISTRICT

10
11 SHEFA LMV, INC.,) Unlimited Jurisdiction
12)
13 Plaintiff,) CASE NO. 21STCV45791
14)
15 vs.)
16) FIRST AMENDED COMPLAINT FOR
17 BRUBAKER HOMESHOPPING, INC.; and) CIVIL PENALTY AND INJUNCTIVE
18 DOES 1 through 100, Inclusive,) RELIEF
19)
20 Defendant.) (Health and Safety Code § 25249.5 et seq.)
21)
22)
23) TOXIC TORT/ENVIRONMENTAL
24)
25)
26)
27)
28)

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2 Plaintiff SHEFA LMV, INC., hereby alleges:
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4 **I. PRELIMINARY STATEMENT**

5 1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure to
6 Cocamide Diethanolamine AKA Cocamide DEA, which is a chemical known to the State of California
7 to cause cancer.

8 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
9 Code section 25249.6, also known as “Proposition 65,” businesses must provide persons with a “clear
10 and reasonable warning” before exposing individuals to chemicals known to the state to cause cancer
11 or reproductive harm.

12 **II. PARTIES**

13 3. Plaintiff is a non-profit public benefit corporation formed pursuant to the laws of the
14 State of California, made up of California citizens, represented by and through its counsel of record,
15 the Law Office of Daniel N. Greenbaum.

16 4. Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition
17 65 may be brought by “any person in the public interest.”

18 5. Defendant BRUBAKER HOMESHOPPING, INC. (hereinafter “Brubaker”) is a
19 business entity with ten or more employees that sells, or has, at times relevant to this complaint,
20 authorized the manufacture, distribution, or sale of shower gel, including but not limited to,
21 BRUBAKER 4 Pcs Gift Set 'Vanilla' Beauty Spa Set; ASIN: B01D9VFSJ4, that contain Cocamide
22 DEA, for sale within the State of California, without first giving clear and reasonable warning.

23 6. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
24 Plaintiff suspects they are business entities with at least ten or more employees that at all times relevant
25 to this complaint, authorized the manufacture, distribution, or sale of shower gel, including but not
26 limited to, BRUBAKER 4 Pcs Gift Set 'Vanilla' Beauty Spa Set; ASIN: B01D9VFSJ4, that contain

1 Cocamide DEA, for sale within the State of California, without first giving clear and reasonable
2 warning.

3 7. Defendants named in paragraphs 5 and 6 have at all times relevant to this complaint,
4 authorized the manufacture, distribution, or sale of shower gel, including but not limited to,
5 BRUBAKER 4 Pcs Gift Set 'Vanilla' Beauty Spa Set; ASIN: B01D9VFSJ4, that contain Cocamide
6 DEA (hereinafter “PRODUCTS”), for sale within the State of California, without first giving clear and
7 reasonable warning

8 III. JURISDICTION AND VENUE

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

11 9. This Court has jurisdiction over Defendant, because they are business entities that do
12 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
13 themselves of the California market, through the sale, marketing, and use of its PRODUCTS in
14 California, to render the exercise of jurisdiction over it by the California courts consistent with
15 traditional notions of fair play and substantial justice.

16 10. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles
17 County because Defendant’ PRODUCTS are sold and consumed in this county.

18 IV. STATUTORY BACKGROUND

19 A. Proposition 65

20 11. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
21 passed as “Proposition 65” by a vote of the people in November of 1986.

22 12. The warning requirement of Proposition 65 is contained in Health and Safety Code
23 section 25249.6, which provides:

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

1 13. An exposure to a chemical in a consumer product is one “which results from a person’s
2 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,
3 or any exposure that results from receiving a consumer service.” (Cal. Code Regs., tit. 22, § 12601,
4 subd. (b).)

5 14. Proposition 65 establishes a procedure by which the state is to develop a list of
6 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, §
7 25249.8.)

8 15. No warning need be given concerning a listed chemical until one year after the chemical
9 first appears on the list. (*Id.*, § 25249.10, subd. (b).)

10 16. Any person “violating or threatening to violate” the statute may be enjoined in any court
11 of competent jurisdiction. (Health & Saf. Code, § 25249.7.)

12 17. To “threaten to violate” is defined to mean “to create a condition in which there is a
13 substantial probability that a violation will occur.” (*Id.*, § 25249.11, subd. (e).)

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

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

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

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

24 22. No such governmental action has been pursued against Defendant.

25 **V. FACTS**

26 23. “Cocamide DEA” was placed in the Governor's list of chemicals known to the State of
27 California to cause cancer on June 22, 2012. (Cal. Code Regs., tit. 22, § 12000, subd. (b).)

1 24. Brubaker manufactures, distributes and markets bath and hand soap PRODUCTS for
2 use by individuals in the home and in other occupational endeavors.

3 25. These PRODUCTS are sold through various retailers located in California for use by
4 citizens of the State of California.

5 26. The PRODUCTS are sold to consumers under the trade names owned by Defendant for
6 their various brands, including those mentioned above, and using the associated trademarks and trade
7 dress for those brands, including the distinctive retailer labels.

8 27. The process followed in manufacturing its PRODUCTS for sale to the consuming public
9 must be approved by Defendant, including the PRODUCT used by individuals for personal use.

10 28. On November 8, 2020, the PRODUCT was purchased on Amazon.com and sold by
11 Brubaker.

12 29. The PRODUCT contains Cocamide DEA and Cocamide DEA is listed on the ingredient
13 label.

14 30. The PRODUCT itself nor the PRODUCT listing on Amazon.com contained a
15 Proposition 65 compliant warning label

16 31. On November 20, 2020, Plaintiff's expert prepared an expert opinion regarding
17 Cocamide DEA in the PRODUCTS.

18 32. Based on that report and opinion, Plaintiff and its counsel prepared a Notice of
19 Violation.

20 33. Pursuant to the statute and regulations referenced above, on December 22, 2020,
21 Plaintiff served the Notice of Violation on the Office of the Attorney General, Defendant, as well as
22 all required public agencies.

23 34. Plaintiff is unaware of any governmental prosecution against Defendant.

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

25 36. Individuals who purchase and use Defendant' PRODUCTS are exposed to Cocamide
26 DEA chiefly through:

27 a. contact between the shower gel and the skin;

- b. transfer of Cocamide DEA from the skin to the mouth, both by transfer directly from the hand to mouth and by transfer of the Cocamide DEA from the skin to objects that are put in the mouth, such as food, and;
- c. through absorption of Cocamide DEA through the skin.

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

38. At all times material to this complaint, Defendant had knowledge that the shower gel contain Cocamide DEA and that skin may come into contact with Cocamide DEA.

39. At all times material to this complaint, Defendant have had knowledge that individuals within the State of California handle Defendant' PRODUCTS that contain Cocamide DEA.

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

41. Notwithstanding this knowledge, Defendant intentionally authorized and reauthorized the sale of Defendant' PRODUCTS that contained Cocamide DEA.

42. At all times material to this complaint, Defendant have knowingly and intentionally exposed individuals within the State of California to Cocamide DEA.

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

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

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VI. FIRST CAUSE OF ACTION

(Against All Defendant for Violation of Proposition 65)

45. Paragraphs 1 through 44 are re-alleged as if fully set forth herein.

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

- 1. Pursuant to the First Cause of Action, grant civil penalties of \$2,000.00;
- 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 the costs of suit;
- 4. Pursuant to Code of Civil Procedure § 1021.5, award Plaintiff their reasonable attorney’s fees and costs of \$16,500 as of the filing of this Complaint; and
- 5. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: January 28, 2022



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