

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Malcolm Mackey

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES  
12 CENTRAL DISTRICT

13 SHEFA LMV, INC., ) Unlimited Jurisdiction  
14 )  
15 Plaintiff, ) CASE NO. **21STCV33571**  
16 )  
17 vs. )  
18 ) COMPLAINT FOR CIVIL PENALTY AND  
19 COSMETICOS TRUJILLO S.A. de C.V., ) INJUNCTIVE RELIEF  
20 )  
21 Defendant. ) (Health and Safety Code § 25249.5 et seq.)  
22 )  
23 ) TOXIC TORT/ENVIRONMENTAL  
24 )  
25 )  
26 )  
27 )  
28 )

1 Plaintiff SHEFA LMV, INC., hereby alleges:  
2

3 **I. PRELIMINARY STATEMENT**

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

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

11 **II. PARTIES**

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

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

17 5. Defendant COSMETICOS TRUJILLO S.A. de C.V. (hereinafter “Cosmeticos”) is a  
18 business entity with ten or more employees that sells, or has, at times relevant to this complaint,  
19 authorized the manufacture, distribution, or sale of hand soaps, including Cherry Cereza hand soap,  
20 UPC: 7702538251635, that contain Cocamide DEA, for sale within the State of California, without  
21 first giving clear and reasonable warning.

22  
23 **III. JURISDICTION AND VENUE**

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

26 7. This Court has jurisdiction over Defendant, because they are business entities that do  
27 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail  
28 themselves of the California market, through the sale, marketing, and use of its PRODUCTS in

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

3 8. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles  
4 County because Defendant' PRODUCTS are sold and consumed in this county.

#### 5 IV. STATUTORY BACKGROUND

##### 6 A. Proposition 65

7 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
8 passed as "Proposition 65" by a vote of the people in November of 1986.

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

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

15 11. An exposure to a chemical in a consumer product is one "which results from a person's  
16 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,  
17 or any exposure that results from receiving a consumer service." (Cal. Code Regs., tit. 22, § 12601,  
18 subd. (b).)

19 12. Proposition 65 establishes a procedure by which the state is to develop a list of  
20 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, §  
21 25249.8.)

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

24 14. Any person "violating or threatening to violate" the statute may be enjoined in any court  
25 of competent jurisdiction. (Health & Saf. Code, § 25249.7.)

26 15. To "threaten to violate" is defined to mean "to create a condition in which there is a  
27 substantial probability that a violation will occur." (*Id.*, § 25249.11, subd. (e).)

28

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

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

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

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

11 20. No such governmental action has been pursued against Defendant.

## 12 V. FACTS

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

15 22. Cosmetics manufactures, distributes and markets bath and hand soap PRODUCTS for  
16 use by individuals in the home and in other occupational endeavors.

17 23. These PRODUCTS are sold through various retailers located in California for use by  
18 citizens of the State of California.

19 24. The PRODUCTS are sold to consumers under the trade names owned by Defendant for  
20 their various brands, including those mentioned above, and using the associated trademarks and trade  
21 dress for those brands, including the distinctive retailer labels.

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

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

26 a. contact between the hand soap and the skin;

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

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

8           28.    At all times material to this complaint, Defendant had knowledge that the soaps contain  
9 Cocamide DEA and that skin may come into contact with Cocamide DEA.

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

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

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

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

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

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

27   **VI. FIRST CAUSE OF ACTION**

28   (Against All Defendant for Violation of Proposition 65)

