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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**01/09/2023**  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,  
12 Plaintiff,

13 vs.

14 NEOTERIC COSMETICS, INC.,  
SCOTT'S LIQUID GOLD, INC.  
15 Defendants.

Case No.:

**CGC-23-603872**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

16 Plaintiff Precila Balabbo ("Plaintiff"), by and through her attorneys, alleges the following  
17 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 at  
21 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 without first giving clear and  
reasonable warning to such individual ...". Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest  
25 of the citizens of the State of California to enforce the People's right to be informed of the health  
26 hazards caused by exposure to coconut oil diethanolamine condensate (cocamide DEA), a toxic  
27 chemical found in Prell Shampoo - Classic Clean sold and/or distributed by defendants Neoteric  
28 Cosmetics, Inc. ("Neoteric") and Scott's Liquid Gold, Inc. ("Scott's") in California.

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

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

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

16          6.       Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
17 without a requisite exposure warning, Prell Shampoo - Classic Clean (the “Products”) that expose  
18 persons to cocomide DEA when used for their intended purpose.

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

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

25          9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
26 defendants to provide purchasers or users of the Products with required warnings related to the  
27 dangers and health hazards associated with exposure to cocomide DEA pursuant to Health and  
28 Safety Code § 25249.7(a).

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

**PARTIES**

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

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

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

**VENUE AND JURISDICTION**

14. Venue is proper in the County of San Francisco because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because defendants conducted, and continue to conduct, business in the County of San Francisco with respect to the Products.

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

16. This Court has jurisdiction over defendants because each defendant is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is

1 registered with the California Secretary of State as foreign corporations authorized to do business  
2 in the State of California, and/or has otherwise purposefully availed itself of the California market.  
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
4 and permissible with traditional notions of fair play and substantial justice.

5 **STATUTORY BACKGROUND**

6 17. The people of the State of California declared in Proposition 65 their right “[t]o be  
7 informed about exposures to chemicals that cause Cancer, birth defects, or other reproductive  
8 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

9 18. To effect this goal, Proposition 65 requires that individuals be provided with a  
10 “clear and reasonable warning” before being exposed to substances listed by the State of California  
11 as causing Cancer or Cancer. H&S Code § 25249.6 states, in pertinent part:

12 No person in the course of doing business shall knowingly and intentionally expose any  
13 individual to a chemical known to the state to cause Cancer or Cancer without first giving  
14 clear and reasonable warning to such individual...

15 19. An exposure to a chemical in a consumer product is one “which results from a  
16 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
17 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
18 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
19 shall provide a warning to any person to whom the product is sold or transferred unless the product  
20 is packaged or labeled with a clear and reasonable warning.”

21 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
22 more of the following methods individually or in combination:<sup>1</sup>

- 23 a. A warning that appears on a product’s label or other labeling.  
24  
25

26 \_\_\_\_\_  
27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,  
2016, and operative on August 30, 2018.

1 b. Identification of the product at the retail outlet in a manner which provides  
2 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
3 thereof.

4 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
5 prominently placed upon a product's labels or other labeling or displayed at the retail outlet  
6 with such conspicuousness, as compared with other words, statements, designs, or devices  
7 in the label, labeling or display as to render it likely to be read and understood by an  
8 ordinary individual under customary conditions of purchase or use.

9 d. A system of signs, public advertising identifying the system and toll-free  
10 information services, or any other system that provides clear and reasonable warnings.

11 21. Proposition 65 provides that any "person who violates or threatens to violate" the  
12 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
13 "threaten to violate" is defined to mean creating "a condition in which there is a substantial  
14 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil  
15 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
16 365 days.

17 **FACTUAL BACKGROUND**

18 22. On June 22, 2012, the State of California listed cocomide DEA as a chemical  
19 known to the State to cause Cancer and it has come under the purview of Proposition 65 regulations  
20 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
21 25249.10(b).

22 23. The exposures that are the subject of the Notice result from the purchase,  
23 acquisition, handling, and recommended use of the Products. The primary route of exposure is  
24 through dermal exposure. Exposure through ingestion will occur by touching the Product with  
25 subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided  
26 with the Products regarding the health hazards of exposure to cocomide DEA.

1           24. Defendants have manufactured, processed, marketed, distributed, offered to sell  
2 and/or sold the Products in California since at least January 11, 2022. The Products continue to be  
3 distributed and sold in California without the requisite warning information.

4           25. At all times relevant to this action, defendants have knowingly and intentionally  
5 exposed users of the Products to cocomide DEA without first giving a clear and reasonable  
6 exposure warning to such individuals.

7           26. As a proximate result of acts by each defendant, as a person in the course of doing  
8 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
9 California, including in San Francisco County, have been exposed to cocomide DEA without a  
10 clear and reasonable warning on the Products. The individuals subject to the violative exposures  
11 include normal and foreseeable users and consumers that use the Products, as well as all others  
12 exposed to the Products.

13   **SATISFACTION OF NOTICE REQUIREMENTS**

14           27. On October 1, 2021, Plaintiff purchased the Product from Neoteric. At the time of  
15 purchase, Neoteric and Scott’s did not provide a Proposition 65 exposure warning for cocomide  
16 DEA or any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1  
17 as described *supra*.

18           28. The Product was sent to a testing laboratory for phthalate testing to determine the  
19 phthalate content of the Product.

20           29. The laboratory provided the results of its analysis. Results of this test determined  
21 the Product exposes users to cocomide DEA (the “Chemical Test Report”).

22           30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist  
23 to determine if, based on the findings of the Chemical Test Report and the reasonable and  
24 foreseeable use of the Product, exposure to cocomide DEA will occur at levels that require  
25 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of  
26 the California Code of Regulations.

1 31. On January 10, 2022, Plaintiff received from the analytical chemist an exposure  
2 assessment report which concluded that persons in California who use the Products will be exposed  
3 to levels of cocomide DEA that require a Proposition 65 exposure warning.

4 32. On January 11, 2022, Plaintiff gave notice of alleged violation of Health and Safety  
5 Code § 25249.6 (the “Notice”) to defendants concerning the exposure of California citizens to  
6 cocomide DEA from use of the Products without proper warning, subject to a private action to  
7 defendants and to the California Attorney General’s office and the offices of the County District  
8 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein  
9 the herein violations allegedly occurred.

10 33. The Notice complied with all procedural requirements of Proposition 65 including  
11 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
12 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
13 cocomide DEA exposure, and that counsel believed there was meritorious and reasonable cause  
14 for a private action.

15 34. After receiving the Notice, and to Plaintiff’s best information and belief, none of  
16 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
17 cause of action against defendants under Proposition 65 to enforce the alleged violations which  
18 are the subject of the Notice.

19 35. Plaintiff is commencing this action more than sixty (60) days from the date of the  
20 Notice to defendants, as required by law.

21 **FIRST CAUSE OF ACTION**

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

23 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of  
24 this Complaint as though fully set forth herein.

25 37. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer  
26 of the Products.  
27  
28

1           38.     Use of the Products will expose users and consumers thereof to cocomide DEA, a  
2 hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human  
3 health.

4           39.     The Products do not comply with the Proposition 65 warning requirements.

5           40.     Plaintiff, based on her best information and belief, avers that at all relevant times  
6 herein, and at least since January 11, 2022, continuing until the present, that defendants have  
7 continued to knowingly and intentionally expose California users and consumers of the Products  
8 to cocomide DEA without providing required warnings under Proposition 65.

9           41.     The exposures that are the subject of the Notice result from the purchase,  
10 acquisition, handling and recommended use of the Products. The primary route of exposure to the  
11 cocomide DEA is through dermal exposure. Additionally, exposure through ingestion will occur  
12 by touching the Product with subsequent touching of the user's hand to mouth. No clear and  
13 reasonable warning is provided with the Products regarding the health hazards of exposure to  
14 cocomide DEA.  
15

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

19           43.     Defendants have knowledge that the normal and reasonably foreseeable use of the  
20 Products exposes individuals to cocomide DEA, and defendants intend that exposures to cocomide  
21 DEA will occur by its deliberate, non-accidental participation in the importation, distribution, sale  
22 and offering of the Products to consumers in California

23           44.     Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
24 Complaint.

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

27           46.     Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
28 authorized to grant injunctive relief in favor of Plaintiff and against defendants.



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against defendants and requests the following  
3 relief:

4 A. That the court assess civil penalties against each defendant in the amount of \$2,500  
5 per day for each violation for up to 365 days in accordance with Health and Safety Code §  
6 25249.7(b);

7 B. That the court preliminarily and permanently enjoin defendants mandating  
8 Proposition 65 compliant warnings on the Products;

9 C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the  
10 amount of \$50,000.00.

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

12 Dated: January 9, 2023

BRODSKY & SMITH

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