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Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CGC-25-627085

ENVIRONMENTAL HEALTH ADVOCATES, INC.,

Plaintiff,

v.

CELLEX-C INTERNATIONAL INC., a Canadian corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.:

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

1. This Complaint is a representative action brought by Environmental Health Advocates, Inc. ("Plaintiff") in the public interest of the citizens of the State of California ("the People"). Plaintiff seeks to remedy Defendants' failure to inform the People of exposure to diethanolamine ("DEA"), a chemical known to the State of California to cause cancer. DEA is a common component of cosmetic and grooming products, and often functions as an emulsifier or foaming agent. Defendants expose consumers to DEA by manufacturing, importing, selling, and/or distributing a variety of facial mist including, but not limited to Cellex-C Betaplex Fresh Complexion Mist ("Products"). Defendants know and intend that customers will use Products containing DEA.

2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code, section 25249.6 et seq. ("Proposition 65"), "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . ." (Health & Safety Code, § 25249.6.)

3. On or around June 22, 2012, the State of California added DEA to Proposition 65 as a known carcinogen, thereby requiring a clear and reasonable warning about potential exposure to DEA on any consumer good. Despite this, Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to DEA in connection with Defendants' manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.

4. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers in California before exposing them to DEA in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendant for violations of Proposition 65 along with attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)

II.
PARTIES

5. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. ("Plaintiff") is a corporation in the State of California dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposure from consumer products. Plaintiff has prosecuted a number of Proposition 65 cases in the public interest. These cases have resulted in significant public

benefit—including the reformulation and repackaging of numerous consumer products—to make them safer for California consumers, and to properly apprise California consumers of any health risks associated with their usage. Plaintiff brings this action in the public interest pursuant to Health and Safety Code, section 25249.7.

6. Defendant CELLEX-C INTERNATIONAL INC. ("Cellex-C") is a corporation organized and existing under the laws of Canada. Cellex-C is registered to do business in California, and does business in the County of San Francisco, within the meaning of Health and Safety Code, section 25249.11. Cellex-C manufactures, imports, sells, or distributes the Products in California and San Francisco County.

7. Plaintiff does not know the true names and/or capacities, whether individual, partners, or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues said Defendants under fictitious names pursuant to Cal. Civ. Proc. § 474. Plaintiff will seek leave to amend this Complaint when the true names and capacities of these Defendants have been ascertained. Plaintiff is informed and believes and thereon alleges that these Defendants are responsible in whole or in part for the remedies and penalties sought herein.

8. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers, joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants, and each of them.

III.
VENUE AND JURISDICTION

9. California Constitution Article VI, Section 10 grants the Superior Court original jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.

10. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendants conducted and continue to conduct business in this County as it relates to Products.

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11. Defendants have sufficient minimum contacts in the State of California or otherwise purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be consistent with traditional notions of fair play and substantial justice.

IV.

BACKGROUND FACTS

12. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code, section 2529.6 et seq. ("Proposition 65"), "no person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state of to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual…" (Health & Safety Code, § 25249.6.)

13. Proposition 65 requires the State of California to maintain "a list of chemicals known to the state to cause cancer or reproductive toxicity," which is to be "revised and republished in light of additional knowledge" on at least an annual basis. (Health & Safety Code, § 25249.8(a).)

14. On June 22, 2012, the State of California formally identified and listed DEA as a chemical known to cause cancer. DEA is a common component of cosmetic and grooming products, and often functions as an emulsifier or foaming agent.

15. In 2012, the International Agency for Research on Cancer (IARC) also formally identified DEA as a Group 2B possible human carcinogen. (*See* IARC Working Group on the Evaluation of Carcinogenic Risks to Humans, Some Chemicals Present in Industrial and Consumer Products, Food and Drinking-Water. Lyon (FR): International Agency for Research on Cancer; 2013, (IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, No. 101.) DIETHANOLAMINE, available at: https://www.ncbi.nlm.nih.gov/books/NBK373177/ [last visited July 9, 2025].)

16. Animal studies have reported effects on various organ systems from long-term topical administration of DEA. For example, a study conducted by the National Toxicology Program (hereinafter, the "NTP study") showed that dermal exposure to DEA amplified the development of tumors in the liver and kidney tubules. (*See* National Toxicology Program, NTP Toxicology and Carcinogenesis Studies of Diethanolamine (CAS No. 111-42-2) in F344/N Rats and B6C3F1 Mice

(Dermal Studies). Natl Toxicol Program Tech Rep Ser. 1999 Jul; 478:1-212. PMID: 12571685., available at: https://pubmed.ncbi.nlm.nih.gov/12571685/ [last visited July 9, 2025].)

17. The Office of Environmental Health Hazard Assessment ("OEHHA") has established specific safe harbor levels for many of the chemicals listed under Proposition 65. For cancer-causing chemicals in particular, a safe harbor level is called a "No Significant Risk Level," or "NSRL." An NSRL is the daily intake level calculated to result in one excess case of cancer in an exposed human population of 100,000, assuming lifetime exposure at the level in question. (*See* OEHHA's Proposition 65 Process for Developing Safe Harbor Numbers (February 2001), *available at* https://oehha.ca.gov/media/downloads/crnr/2001safeharborprocess.pdf [last visited July 9, 2025].) The State of California has not yet established an NSRL for DEA. However, research suggests that an NSRL of 5.6 micrograms/day of DEA is appropriate, where dermal absorption is the route of exposure. (*See* Wang B, Amacher DE, Whittaker MH. Derivation of a No-Significant-Risk-Level (NSRL) for diethanolamine (DEA). Regul Toxicol Pharmacol. 2014 Feb;68(1):76-84. doi: 10.1016/j.yrtph.2013.11.009. Epub 2013 Nov 23. PMID: 24275050 [last visited July 9, 2025].) This NSRL is derived from the NTP study described above, using a benchmark dose modeling method based on the incidence of hepatocellular carcinomas in female mice, in accordance with the guidelines of the California Environmental Protection Agency.

18. In order to ensure that the injunctive relief sought herein confers a public benefit upon California consumers, EHA adopts the NSRL of 5.6 micrograms/day for DEA derived from the NTP study.

V.
CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Violation of Proposition 65 – Against all Defendants)

19. Plaintiff incorporates by reference each and every allegation contained above.

20. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.

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21. Defendants manufactured, imported, sold, and/or distributed Products containing DEA in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such violations have continued after receipt of the Notices and will continue to occur into the future.

22. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to provide a clear and reasonable warning to consumers and individuals in California who may be exposed to DEA through reasonably foreseeable use of the Products.

23. Products expose individuals to DEA through dermal absorption. This exposure is a natural and foreseeable consequence of Defendants placing Products into the stream of commerce. As such, Defendants intend that consumers will use Products, exposing them to DEA.

24. Defendants' Products exceed the NSRL of 5.6 micrograms/day, which was derived from the NTP study.

25. Defendants knew or should have known that the Products contained DEA and exposed individuals to DEA in the ways provided above. The Notice informed Defendants of the presence of DEA in the Products. Likewise, media coverage concerning DEA and related chemicals in consumer products provided constructive notice to Defendants.

26. Defendants' actions in this regard were deliberate and not accidental.

27. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a 60-Day Notice of Violation upon each Defendants as required by and in compliance with Proposition 65. Plaintiff provided the Notice to the various required public enforcement agencies along with a certificate of merit. The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to DEA contained in the Products.

28. The appropriate public enforcement agencies provided with the Notice failed to commence and diligently prosecute a cause of action against Defendants.

29. Individuals exposed to DEA contained in Products through dermal absorption resulting from reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

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30. Defendants are liable for a maximum civil penalty of $2,500 per day for each violation of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also appropriate pursuant to Health and Safety Code, section 25249.7(a).

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. Civil penalties in the amount of $2,500 per day for each violation. Plaintiff alleges that damages total a minimum of $1,000,000;

2. A preliminary and permanent injunction against Defendants from manufacturing, importing, selling, and/or distributing Products in California without providing a clear and reasonable warning as required by Proposition 65 and related Regulations;

3. Reasonable attorney's fees and costs of suit; and

4. Such other and further relief as may be just and proper.

Respectfully submitted:

Dated: July 9, 2025

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