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4	Attorney for Shefa LMV, LLC		
5	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
6	COUNTY OF LOS ANGELES		
7	CENTRAL DISTRICT		
8	Shefa LMV, LLC	) Unlimited Jurisdiction	
9		BC528514	
10	Plaintiff,	CASE NO.	
11		) ) ) COMPLAINT FOR CIVIL	
12	VS.	) PENALTY AND INJUNCTIVE	
13		) RELIEF )	
14	Belwith Management, Inc.; Belwith Products,	) (Health and Safety Code § 25249.5 ) et seg. and Business and Professions	
15	LLC; and DOES 1 THROUGH 25, Inclusive.	Code § 17200)	
16	D.C. 1	TOXIC TORT/ENVIRONMENTAL	
17	Defendants.	ý e e e e e e e e e e e e e e e e e e e	
18		BY FAX	
19	Plaintiff, Shefa LMV, LLC, hereby alleges:		
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21	I. PRELIMINARY STATEMENT		
22	1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure		
23	to lead, which is a chemical known to the State of California to cause birth defects, or other		
24	reproductive harm.		
2 <del>4</del> 25	2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health an		
25 26	Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons wit a "clear and reasonable warning" before exposing individuals to chemicals known to the state t		
27			
28	cause cancer, birth defects or reproductive harm.		
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	II	1	

COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF

### II. PARTIES

- 3. Plaintiff is a limited liability company formed pursuant to the laws of the State of California, made up of California citizens, represented by and through its counsel of record, the Law Office of Daniel N. Greenbaum.
- 4. Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition 65 may be brought by "any person in the public interest."
- 5. Business and Professions Code sections 17200 *et seq.* provide that actions to enforce that statute may be brought in a private "Attorney General" action.
- 6. Defendant BELWITH MANAGEMENT, INC. (hereinafter "BELWITH INC.") is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of Hardware products under the brand name "Belwith" and other brand names, that contain lead, for sale within the State of California, without first giving clear and reasonable warning.
- 7. Defendant BELWITH PRODUCTS, LLC (hereinafter "BELWITH LLC") is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of Hardware products under the brand name "Belwith" and other brand names, that contain lead, for sale within the State of California, without first giving clear and reasonable warning.
- 8. Defendants named in paragraphs 6-7 are hereinafter referred to collectively as "BELWITH."
- 9. The identities of DOES 1 through 25 are unknown to Plaintiff at this time; however, Plaintiff suspects that they are business entities with at least ten or more employees that have sold, authorized the distribution, or sale of Hardware products under the brand name "Belwith" and other brand names, that contain and/or produce lead, for sale within the State of California, without first giving clear and reasonable warning.

<sup>&</sup>lt;sup>1</sup> Hickory Hardware<sup>TM</sup>, Belwith<sup>TM</sup>, Belwith-Keeler<sup>TM</sup>, First Watch<sup>TM</sup>, Period Brass<sup>TM</sup>, Designer Collection, and Keeler Brass<sup>TM</sup>.

10. Defendants named in paragraphs 6 – 9 have at all time relevant hereto authorized the manufacture, distribution, or sale of a flush bolt, UPC 078555770389, (hereinafter "PRODUCT") under the brand name "Belwith" and other brand names, that contains and/or yields lead, for sale within the State of California.

#### III. JURISDICTION AND VENUE

- 11. This Court has jurisdiction pursuant to California Constitution Article VI, section 10, because this case is a cause not given by statute to other trial courts.
- 12. This Court has jurisdiction over Defendants, because they are business entities that do sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market, through the sale, marketing, and use of its products in California, to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.
- 13. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles County because Defendant's products are sold and consumed in this county.

## IV. STATUTORY BACKGROUND

## A. Proposition 65

- 14. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as "Proposition 65" by a vote of the people in November of 1986.
- 15. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

No 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, except as provided in Section 25249.10.

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

- 17. Proposition 65 establishes a procedure by which the state is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, § 25249.8.)
- 18. No warning need be given concerning a listed chemical until one year after the chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)
- 19. Any person "violating or threatening to violate" the statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code, § 25249.7.)
- 20. To "threaten to violate" is defined to mean "to create a condition in which there is a substantial probability that a violation will occur." (*Id.*, § 25249.11, subd. (e).)
- 21. In addition, violators are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)
- 22. Actions to enforce the law "may be brought by the Attorney General in the name of the People of the State of California [or] by any district attorney [or] by any City Attorney of a City having a population in excess of 750,000 . . ." (*Id.*, § 25249.7, subd. (c).)
- 23. Private parties are given authority to enforce Proposition 65 "in the public interest," but only if the private party first provides written notice of a violation to the alleged violator, the Attorney General, and every District Attorney in whose jurisdiction the alleged violation occurs.
- 24. If no public prosecutors commence enforcement within sixty days, then the private party may sue. (Health & Saf. Code, § 25249.7(d).)
  - 25. No such governmental action has been pursued against Defendants.

# B. CALIFORNIA C.C.P. §382 COMMON OR GENERAL INTEREST

## ALLEGATIONS

26. In addition to individual claims in this action, Plaintiff also asserts non-class action claims on behalf of the common or general interest to sue for the benefit of all in cases where the parties are numerous, and it is impracticable to bring them all before the court pursuant to C.C.P. §382.

- 27. The purpose of such claims is to require Defendants to disgorge and restore all monies wrongfully obtained by Defendants through their false advertising and unfair or unlawful business practices.
- 28. A common or general interest action is necessary and appropriate because Defendant has engaged and continues to engage in the wrongful acts, making false and misleading public statements to media described herein as a general business practice.
- 29. A case may be brought under C.C.P. §382 without a class being certified or where class certification is denied as long as the case involves question of the common or general interest.

#### V. FACTS

- 30. "Lead" was placed in the Governor's list of chemicals known to the State of California to cause reproductive toxicity on February 27, 1987.
- 31. It is specifically identified under three subcategories: "developmental reproductive toxicity," which means harm to the developing fetus, "female reproductive toxicity," which means harm to the female reproductive system, and "male reproductive toxicity," which means harm to the male reproductive system. (Cal. Code Regs., tit. 22, § 12000, subd. (c).)
- 32. "Lead and lead compounds" were placed in the Governor's list of chemicals known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit. 22, § 12000, subd. (b).)
- 33. BELWITH is a manufacturer, distributor and marketer of the PRODUCT for use by individuals in the home and in other occupational endeavors.
- 34. The PRODUCT is sold through various retailers located in California for use by citizens of the State of California.
- 35. The PRODUCT sold to consumers under the trade names owned by BELWITH for its various brands, and using the associated trademarks and trade dress for those brands, including the distinctive retailer labels.
- 36. The process followed in manufacturing its products for sale to the consuming public must be approved by BELWITH, including the PRODUCT used by individuals for personal use.

- 37. Individuals who purchase, handle or install the PRODUCT are exposed to lead chiefly through:
  - a. contact between the item and the skin;
  - b. transfer of lead from the skin to the mouth, both by transfer of lead directly from the hand to mouth and by transfer of lead from the skin to objects that are put in the mouth, such as food, and;
  - c. through absorption of lead through the skin.
- 38. Such individuals are thus exposed to the lead that is present on and/or in the PRODUCT in the course of the intended and reasonably foreseeable use of the PRODUCT.
- 39. At all times material to this complaint, Defendants have had knowledge that the PRODUCT contains lead and that skin may come into contact with lead.
- 40. At all times material to this complaint, Defendants have had knowledge that individuals within the State of California handle the PRODUCT which contains and/or yields lead.
- 41. At all times material to this complaint, Defendants knew that the PRODUCT was sold throughout the State of California in large numbers, and Defendants profited from such sales through, among other things, the sale of the PRODUCT that were sold in California.
- 42. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized the sale of the PRODUCT that exposed consumers to lead.
- 43. At all times material to this complaint, Defendants have knowingly and intentionally exposed individuals within the State of California to lead.
- 44. The exposure is knowing and intentional because it is the result of the Defendants' deliberate act of authorizing the sale of products known to contain and/or produce lead 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 this PRODUCT will result in exposures to lead within the State of California.
- 45. Defendants have failed to provide clear and reasonable warnings that the use of the PRODUCT in question in California results in exposure to a chemical known to the State of

## (Against All Defendants for Violation of Proposition 65)

- 46. Paragraphs 1 through 45 are re-alleged as if fully set forth herein.
- 47. By committing the acts alleged above, Defendants 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 or reproductive toxicity without first giving clear and reasonable warning to such individuals, within the meaning of Health and Safety Code section 25249.6.
- 48. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed \$2,500 per day for each violation, as well as other remedies.

## VII. SECOND CAUSE OF ACTION

## (Against ALL Defendants for Unlawful Business Practices)

- 49. Paragraphs 1 through 45 are re-alleged as if fully set forth herein.
- 50. By committing the acts alleged above, Defendants have engaged in unlawful business practices constituting unfair competition within the meaning of Business and Professions Code section 17200.
- 51. By reason of Defendants' fraudulent, deceptive, unfair, and other wrongful conduct as herein alleged, said Defendants have violated California Business and Professions Code 17200, et seq., by the sale and distribution of consumer PRODUCTS into the State that were dangerous to consumers and subsequently worthless.
- 52. Plaintiff individually and other consumers have purchased these Defendant PRODUCTS with the understanding that they had value and would serve their personal or professional needs.
- 53. As a consequence of these purchases of Defendants worthless PRODUCTS, Plaintiffs and other consumers have suffered losses in fact giving them standing to seek recovery as provided for by statute.

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1	54. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed	
2	\$2,500 per day for each violation.	
3	PRAYER FOR RELIEF	
4	WHEREFORE, Plaintiffs pray that the Court:	
5	1. Pursuant to the First and Second Causes of Action, grant civil penalties	
6	according to proof;	
7	2. Pursuant to Health and Safety Code section 25249.7 and Business and	
8	Professions Code section 17203, enter such temporary restraining orders, preliminary	
9	injunctions, permanent injunctions, or other orders prohibiting Defendant from	
10	exposing persons within the State of California to Listed Chemicals caused by the use	
11	of their products without providing clear and reasonable warnings, as Plaintiffs shall	
12	specify in further application to the court;	
13	3. Enter such orders as "may be necessary to restore to any person in interest an	
14	money or property, real or personal, which may have been acquired by means of	
15	these unlawful acts, as provided in Business and Professions Code section 17203 an	
16	other applicable laws;	
17	4. Award Plaintiffs their costs of suit;	
18	5. Grant such other and further relief as the court deems just and proper.	
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20	Respectfully submitted,	
21	DATED: November 21, 2013	
22	Van Ala	
23	By: DANIEL N. GREENBAUM	
24	Attorney for Plaintiff	
25	AFS Enterprises LLC	
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