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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 14 2015

Sherril R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

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

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11 SHEFA LMV, LLC; a *California limited*) Unlimited Jurisdiction BC 581 910
liability company Plaintiff,)
12)
13 vs.) CASE NO.
14 STERLING PLUMBING; and DOES 1) COMPLAINT FOR CIVIL PENALTY AND
through 100, Inclusive,) INJUNCTIVE RELIEF
15 Defendants.) (Health and Safety Code § 25249.5 et seq.
16) TOXIC TORT/ENVIRONMENTAL
17)
18)
19)

By Fax

20 Plaintiff, Shefa LMV, LLC, hereby alleges:
21

22 I. PRELIMINARY STATEMENT

23 1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure
24 to Lead (hereinafter "Pb"), which is a chemical known to the State of California to cause cancer, birth
25 defects, or other reproductive harm.

26 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
27 Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with
28

1 a “clear and reasonable warning” before exposing individuals to chemicals known to the state to
2 cause cancer, birth defects or other reproductive harm.

3 4 **II. PARTIES**

5 3. Plaintiff is a limited liability company formed pursuant to the laws of the State of
6 California, made up of California citizens, represented by and through its counsel of record, the Law
7 Office of Daniel N. Greenbaum.

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

10 5. Defendant STERLING PLUMBING (hereinafter “STERLING”) is a business entity
11 with ten or more employees that sells, or has, at times relevant to this complaint, authorized the
12 manufacture, distribution, or sale of plumbing hardware Diverter Stem product(s) that contain Pb, for
13 sale within the State of California, without first giving clear and reasonable warning.

14 6. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
15 Plaintiff suspects that they are business entities with at least ten or more employees that have sold,
16 authorized the distribution, or sale of plumbing hardware Diverter Stem product(s) that contain Pb,
17 for sale within the State of California, without first giving clear and reasonable warning.

18 7. Defendants (hereinafter and collectively known as the “Defendants”) named in
19 paragraphs 5 – 6 have at all time relevant hereto authorized the manufacture, distribution, or sale of
20 Diverter Stem Plumbing Product(s) including but not limited to those with an identifying designation
21 of UPC 703765211000 and/or SKU ABREL20529 and/or SKU SL21339AVI (hereinafter
22 “PRODUCTS”), which contain Pb, for sale within the State of California.

23 24 **III. JURISDICTION AND VENUE**

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

1 9. This Court has jurisdiction over Defendants, because they are business entities that do
2 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
3 themselves of the California market, through the sale, marketing, and use of its products in
4 California, to render the exercise of jurisdiction over it by the California courts consistent with
5 traditional notions of fair play and substantial justice.

6 10. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles
7 County because Defendant’s products are sold and consumed in this county.
8

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10 **IV. STATUTORY BACKGROUND**

11 **A. Proposition 65**

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

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

16 No person in the course of doing business shall knowingly and
17 intentionally expose any individual to a chemical known to the state to
18 cause cancer or reproductive toxicity without first giving clear and
19 reasonable warning to such individual, except as provided in Section
20 25249.10.

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

25 14. Proposition 65 establishes a procedure by which the state is to develop a list of
26 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, §
27 25249.8.)
28

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

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

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

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

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

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

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

17 22. No such governmental action has been pursued against Defendants.
18

19 **V. FACTS**

20 23. “Lead” was placed in the Governor’s list of chemicals known to the State of California
21 to cause reproductive toxicity on February 27, 1987.

22 24. It is specifically identified under three subcategories: “developmental reproductive
23 toxicity,” which means harm to the developing fetus, “female reproductive toxicity,” which means
24 harm to the female reproductive system, and “male reproductive toxicity,” which means harm to the
25 male reproductive system. (Cal. Code Regs., tit. 22, § 12000, subd. (c).)
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1 25. “Lead and Lead compounds” were placed in the Governor's list of chemicals known to
2 the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit. 22, § 12000, subd.
3 (b).)

4 26. Defendants are the manufacturer and marketer of the PRODUCTS for use by
5 individuals in the home and in other occupational endeavors.

6 27. The PRODUCTS are sold through various retailers located in California for use by
7 citizens of the State of California.

8 28. Individuals who purchase, handle, or install the PRODUCTS are exposed to Pb chiefly
9 through:

10 a. contact between the item and the skin;

11 b. transfer of Pb from the skin to the mouth, both by transfer of Pb directly from
12 the hand to mouth and by transfer of Pb from the skin to objects that are put in the mouth,
13 such as food, and

14 c. through absorption of Pb through the skin.

15 29. Such individuals are thereby exposed to the Pb that is present on or in the
16 PRODUCTS in the course of the intended and reasonably foreseeable use of the PRODUCTS.

17 30. At all times material to this complaint, Defendants have had knowledge that the
18 PRODUCTS contains lead and that an individual’s skin may come into contact with Pb through the
19 intended and reasonably foreseeable use of the PRODUCTS.

20 31. At all times material to this complaint, Defendants have had knowledge that
21 individuals within the State of California handle the PRODUCTS, which contain Pb.

22 32. At all times material to this complaint, Defendants knew that the PRODUCTS were
23 sold throughout the State of California in large numbers, and Defendants profited from such sales.

24 33. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
25 the sale of the PRODUCTS, thereby exposing consumers to Pb.

26 34. At all times material to this complaint, therefore, Defendants have knowingly and
27 intentionally exposed individuals within the State of California to Pb.

1 35. The exposure is knowing and intentional because it is the result of the Defendants'
2 deliberate act of authorizing the sale of products known to contain lead, in a manner whereby these
3 products were, and would inevitably be, sold to consumers within the state of California, and with the
4 knowledge that the intended use of this PRODUCTS would result in exposures to Pb by individuals
5 within the State of California.

6 36. Defendants have failed to provide clear and reasonable warnings that the use of the
7 PRODUCTS in question in California results in exposure to a chemical known to the State of
8 California to cause cancer, birth defects, and other reproductive harm, and no such warning was
9 provided to those individuals by any other person.

10
11 **VI. FIRST CAUSE OF ACTION**

12 **(Against All Defendants for Violation of Proposition 65)**

13 37. Paragraphs 1 through 36 are re-alleged as if fully set forth herein.

14 38. By committing the acts alleged above, Defendants have, in the course of doing
15 business, knowingly and intentionally exposed individuals in California to chemicals known to the
16 State of California to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

18 39. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
19 \$2,500 per day for each violation, as well as other remedies.

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21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray that the Court:

- 23 1. Pursuant to the First Causes of Action, grant civil penalties according to proof;
24 2. Pursuant to Health and Safety Code section 25249.7, enter such temporary
25 restraining orders, preliminary injunctions, permanent injunctions, or other orders
26 prohibiting Defendant from exposing persons within the State of California to Listed
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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. Enter such orders as “may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of” these unlawful acts, as provided in Business and Professions Code section 17203 and other applicable laws;

4. Award Plaintiffs their costs of suit;

5. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: May 14, 2015

LAW OFFICE OF DANIEL N. GREENBAUM



By: DANIEL N. GREENBAUM
Attorneys for Plaintiff
Shefa LMV, LLC