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OF ORIGINAL FILED
Los Angeles Superior Court

MAY 14 2015

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

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

10 BY FAX

11 SHEFA LMV, LLC, a *California limited liability company*) Unlimited Jurisdiction
12 Plaintiff,)
13 vs.) CASE NO. BC 581945
14 SYMMONS INDUSTRIES, INC.; and DOES) COMPLAINT FOR CIVIL PENALTY AND
1 through 100, Inclusive,) INJUNCTIVE RELIEF
15 Defendants.) (Health and Safety Code § 25249.5 et seq.
16) TOXIC TORT/ENVIRONMENTAL
17)
18)
19)

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 SYMMONS INDUSTRIES, INC. (hereinafter “SYMMONS”) is a
11 business entity with ten or more employees that sells, or has, at times relevant to this complaint,
12 authorized the manufacture, distribution, or sale of plumbing hardware Diverter Stem product(s) that
13 contain Pb, for 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 Products including but not limited to those with an identifying designation
21 of UPC 703765211000 and /or UPC 671256526400 (hereinafter “PRODUCTS), which contain Pb,
22 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 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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27
28

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 contain Pb and that an individual’s skin may come into contact with Pb through the
19 intended and reasonably foreseeable use of the S.

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.

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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