

1 LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
2 7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
3 Telephone: (310) 200-2631
Facsimile: (424) 243-7689
4 Email: dgreenbaum@greenbaumlawfirm.com
5 Attorney for SHEFA LMV, LLC

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 10 2016

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF LOS ANGELES

9 SHEFA LMV, LLC,

10 Plaintiff,

12 vs.

14 THE HILLMAN GROUP, INC.;
AMAZON.COM, INC.; and DOES 1 to 25,
15 Inclusive

16 Defendants.

) Unlimited Jurisdiction

) CASE NO.

) COMPLAINT FOR CIVIL
) PENALTY AND INJUNCTIVE
) RELIEF

) (Health and Safety Code § 25249.5 and
) 25249.6)

) TOXIC TORT/ENVIRONMENTAL

BC 6 13 3 2 6

By Fax

18 Plaintiff, SHEFA LMV, LLC, hereby alleges:

20 I. PRELIMINARY STATEMENT

21 1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure
22 to lead, which is a chemical known to the State of California to cause birth defects, or other
23 reproductive harm.

24 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
25 Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with
26 a "clear and reasonable warning" before exposing individuals to chemicals known to the state to
27 cause cancer or reproductive harm.

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1 **II. PARTIES**

2 3. Plaintiff SHEFA LMV, LLC is considered to be a “person” under Health and Safety
3 Code section 25249.7(d), and brings this action by and through its counsel, the Law office of Daniel
4 N. Greenbaum.

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

7 5. Defendant THE HILLMAN GROUP INC. (hereinafter “Hillman”) is a business entity
8 with ten or more employees that sells, or has, at times relevant to this complaint, authorized the
9 manufacture, distribution, or sale of Hardware products under the brand name “Hillman” and other
10 brand names, that contain lead (Pb), for sale within the State of California, without first giving clear
11 and reasonable warning.

12 6. Defendant AMAZON.COM INC. (hereinafter “Amazon”) is a business entity with ten
13 or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
14 distribution, or sale of Hardware products under the brand name “Hillman” and other brand names,
15 that contain lead (Pb), for sale within the State of California, without first giving clear and reasonable
16 warning

17 7. The identities of DOES 1 through 25 are unknown to Plaintiff at this time; however,
18 Plaintiff suspects that they are business entities with at least ten or more employees that have sold,
19 authorized the distribution, or sale of Hardware products under the brand name Hillman and other
20 brand names, that contain lead, for sale within the State of California, without first giving clear and
21 reasonable warning.

22 **III. JURISDICTION AND VENUE**

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

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

3 10. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles
4 County because Defendant's products are sold and consumed in this county.

6 IV. STATUTORY BACKGROUND

7 A. Proposition 65

8 11. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
9 passed as "Proposition 65" by a vote of the people in November of 1986.

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

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

17 13. An exposure to a chemical in a consumer product is one "which results from a
18 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
19 consumer good, or any exposure that results from receiving a consumer service." 27 CCR 25601(b)

20 14. "Expose" as used in this statute is a term of art that is further defined by the
21 implementing regulations. 27 CCR 25102(i).

22 15. The regulation defines "expose" to mean "to cause to ingest, inhale, contact via body
23 surfaces or otherwise come into contact with a listed chemical." *Id.*

24 16. Furthermore, the term "consumer products exposure" is defined as "an exposure that
25 results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable
26 use of a consumer good, or any exposure that results from receiving a consumer service." 27 CCR
27 25602(b).

28 17. Under these express definitions, if a person's bodily surface, i.e., the skin, contacts Pb,
there has been an "exposure" for Proposition 65 purposes.

1 18. Proposition 65 establishes a procedure by which the state is to develop a list of
2 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, §
3 25249.8.)

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

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

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

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

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

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

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

20 26. No such governmental action has been pursued against Defendants.

21 **V. FACTS**

22 27. “Lead” (Pb) was listed by the State of California as a chemical known to cause birth
23 defects or other reproductive harm on February 27, 1987. 27 CCR 27001(c).

24 28. It is specifically identified under three subcategories: “developmental reproductive
25 toxicity,” which means harm to the developing fetus, “female reproductive toxicity,” which means
26 harm to the female reproductive system, and “male reproductive toxicity,” which means harm to the
27 male reproductive system. 27 CCR 27001(c)

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1 29. “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. 27 CCR 27001(c).

3 30. Defendants manufacture, distribute and market hardware products, including but not
4 limited to, the “Solid Brass Surface Bolt,” UPC 008236988093, which was the exemplar in and the
5 subject of the “**60 DAY NOTICE OF VIOLATION**” dated March 30, 2015 served by Plaintiff on
6 Defendant(s), for use by individuals in the home and in other occupational endeavors.

7 31. Many of these parts are sold through various retailers located in California for use by
8 citizens of the State of California.

9 32. The products are then sold by Defendants to consumers under trade names owned by
10 Defendants for its various brands, including “Hillman,” and using the associated trademarks and trade
11 dress for those brands, including the distinctive retailer labels.

12 33. The process followed in manufacturing the Hillman products for sale to the consuming
13 public must be approved by Hillman, including but not limited to, the “solid brass surface bolt” used
14 by individuals for personal use.

15 34. Individuals who purchase, handle or install Hillman products are exposed to lead
16 chiefly through: (1) contact between the brass items and the skin, (2) transfer of lead from the skin to
17 the mouth, both by transfer of lead directly from the hand to mouth and by transfer of lead from the
18 skin to objects that are put in the mouth, such as food and (3) through absorption of lead through the
19 skin.

20 35. Such individuals are thus exposed to the lead that is present on and in Hillman
21 products in the course of the intended and reasonably foreseeable use of those products.

22 36. At all times material to this complaint, Defendants have known, or should have
23 known, that the Hillman products contain lead and that skin may come into contact with lead.

24 37. At all times material to this complaint, Defendants have known, or should have
25 known, that individuals within the State of California handle Hillman brass products that contain
26 lead.

27 38. At all times material to this complaint, Defendants have known, or should have
28 known, the Hillman products were sold throughout the State of California in large numbers, and

1 Defendants profited from such sales through, among other things, the sale of Hillman products that
2 were sold in California.

3 39. Notwithstanding this knowledge, Defendants intentionally authorized the sale of
4 Hillman products that contained lead.

5 40. At all times material to this complaint, Defendants have knowingly and intentionally
6 exposed individuals within the State of California to lead.

7 41. The exposure is knowing and intentional because it is the result of the Defendants'
8 deliberate act of authorizing the sale of products known to contain lead in a manner whereby these
9 products were, and would inevitably be, sold to consumers within the state of California, and with the
10 knowledge that the intended use of these products will result in exposures to lead within the State of
11 California.

12 42. Defendants have failed to provide clear and reasonable warnings that the use of the
13 products in question in California results in exposure to a chemical known to the State of California
14 to cause cancer, birth defects and other reproductive harm, and no such warning was provided to
15 those individuals by any other person.

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17 **VI. FIRST CAUSE OF ACTION**

18 (Against All Defendants for Violation of Proposition 65)

19 43. Paragraphs 1 through 42 are re-alleged as if fully set forth herein.

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

24 45. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
25 \$2,500 per day for each violation, as well as other remedies.

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27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs pray that the Court:

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1. Pursuant to the First Cause of Action, grant civil penalties according to proof;
2. Pursuant to Health and Safety Code section 25249.7, enter such temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from exposing persons within the State of California to Listed 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. Award Plaintiffs their costs of suit pursuant to Health & Saf. Code § 25249.7 and Civ. Code Proc. § 1021.5; and
4. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: March 10, 2016


By: DANIEL N. GREENBAUM
Attorney for Plaintiff
SHEFA LMV, LLC