

1 Evan J. Smith, Esquire (SBN 242352)
Ryan P. Cardona, Esquire (SBN 302113)
2 BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Ste. 900
3 Beverly Hills, CA 90212
Telephone: (877) 534-2590
4 Facsimile: (310) 247-0160
5 *Attorneys for Plaintiff*

ENDORSED
FILED
ALAMEDA COUNTY

DEC 22 2015

CLERK OF THE SUPERIOR COURT
By Xian-Xi Bowie

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10 EMA BELL,
11 Plaintiff,
12 vs.
13 SHARKNINJA OPERATING LLC,
14 Defendant.

CASE NO.: RG 15 7976 31

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5
et seq.)

15
16
17
18
19 Plaintiff Ema Bell ("Plaintiff" or "Bell"), by and through her attorneys, alleges the
20 following cause of action in the public interest of the citizens of the State of California.

21 **BACKGROUND OF THE CASE**

22 1. Plaintiff brings this representative action on behalf of all California citizens to
23 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
24 at the Health and Safety Code § 25249.5 *et seq.* ("Proposition 65"), which reads, in relevant part,
25 "[n]o person in the course of doing business shall knowingly and intentionally expose any
26 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
27 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

28

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by the exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
4 vacuum hoses sold and/or distributed by defendant SharkNinja Operating LLC (“SharkNinja” or
5 “Defendant”) in California.

6 3. DEHP is a harmful chemical known to the State of California to cause cancer and
7 reproductive toxicity. On January 1, 1988 the State of California listed DEHP as a chemical
8 known to the State to cause cancer and it has come under the purview of Proposition 65
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
11 known to cause developmental male reproductive toxicity. *Id.*

12 4. Proposition 65 requires all businesses with ten (10) or more employees that
13 operate within California or sell products therein to comply with Proposition 65 regulations.
14 Included in such regulations is the requirement that businesses must label any product containing
15 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
16 intentionally” exposing any person to it.

17 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
18 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
19 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
20 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
21 Code § 25249.7.

22 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
23 and/or offers for sale, without the required warning, *Shark Bagless Hand Vacs, UPC No. 6*
24 *223565252509 1, Model# V15Z 31* (the “Product”).

25 7. Defendant’s failure to warn consumers, workers, and other individuals in
26 California of the health hazards associated with exposure to DEHP in conjunction with the sale,
27 manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects
28 Defendant to the enjoinder and civil penalties described herein.

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
2 this Court has jurisdiction over this lawsuit.

3 15. This Court has jurisdiction over Defendant because it has sufficient minimum
4 contacts with the State of California, and/or has otherwise purposefully availed itself of the
5 California market. Such purposeful availment has rendered the exercise of jurisdiction by
6 California courts consistent and permissible with traditional notions of fair play and substantial
7 justice.

8 **SATISFACTION OF NOTICE REQUIREMENTS**

9 16. On June 3, 2015, Plaintiff gave notice of alleged violation of Health and Safety
10 Code § 25249.6 (the “Notice”) to Euro-Pro, and Wal-Mart Stores, Inc. (“Wal-Mart”) concerning
11 the exposure of California citizens to DEHP contained in the Product without proper warning,
12 subject to a private action to Defendant and to the California Attorney General’s office and the
13 offices of the County District attorneys and City Attorneys for each city with a population
14 greater than 750,000 persons wherein the herein violations allegedly occurred.

15 17. The Notice complied with all procedural requirements of Proposition 65 including
16 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
17 least one person with relevant and appropriate expertise who reviewed relevant data regarding
18 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a
19 private action.

20 18. After receiving the Notice, and to Plaintiff’s best information and belief, none of
21 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
22 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
23 are the subject of Plaintiff’s notice of violation.

24 19. Plaintiff is commencing this action more than sixty (60) days from the date of her
25 notice to Defendant, as required by law.

26 **FIRST CAUSE OF ACTION**

27 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

28

1 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
2 this complaint as though fully set forth herein.

3 21. Defendant has, at all times mentioned herein, acted as a manufacturer, distributor,
4 and/or retailer of the Product.

5 22. The Product contains DEHP, a hazardous chemical found on the Proposition 65
6 list of a chemical known to be hazardous to human health.

7 23. The Product does not comply with the Proposition 65 warning requirements.

8 24. Plaintiff, based on her best information and belief, avers that at all relevant times
9 herein, and at least since May 13, 2015, continuing until the present, that Defendant has
10 continued to knowingly and intentionally expose California users and consumers of the Product
11 to DEHP without providing required warnings under Proposition 65.

12 25. The exposures that are the subject of the Notice result from the purchase,
13 acquisition, handling and recommended use of the product. Consequently, the primary route of
14 exposure to these chemicals is through skin exposure. Skin exposure to DEHP through the
15 user's hands is likely to occur when the user manipulates the hose. Exposure is also possible
16 through leaching of DEHP into the air passed through the hose during vacuuming. The DEHP
17 containing exhaust air is discharged from the vacuum exhaust during use and the vapor phase
18 DEHP can potentially be ingested by the user or absorbed to the HEPA filter. DEHP from the
19 vacuum hose can absorb onto dust, soils, or debris passing through the hose which potentially
20 can be resuspended in the air and ingested during vacuum canister removal, emptying, and
21 cleaning. The HEPA filter is hand washable with water and is potentially a source of dermal
22 exposure as aqueous DEHP skin permeation rates are faster than neat DEHP permeation.
23 Finally, while mouthing of the product does not seem likely, some amount of exposure through
24 ingestion can occur by handling the product with subsequent touching of the users hand to
25 mouth.

26 28. Plaintiff, based on her best information and belief, avers that such exposures will
27 continue every day until clear and reasonable warnings are provided to Product purchasers and
28 users or until this known toxic chemical is removed from the Product.

