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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

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Sherril R. Carter, Executive Officer/Clerk
By: Charlie L. Coleman, Deputy

5 Attorney for Shefa LMV, INC.

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF LOS ANGELES
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9 SHEFA LMV, INC.,
10 Plaintiff,
11 vs.
12 3M COMPANY; BLUE MAGIC, INC.;
DUROSOL FABRIK OTTO DURST GMBH
13 & CO. KG; AUTOMATION SOLUTIONS
INTERNATIONAL LLC; WEIMAN
14 PRODUCTS LLC; AMAZON.COM, INC.
and DOES 1 to 10, Inclusive,
15 Defendants.
16

) Unlimited Jurisdiction
)
)
) CASE NO. **BC 6 5 0 9 5 9**
)
) COMPLAINT FOR CIVIL PENALTY AND
INJUNCTIVE RELIEF
) (Health & Safety Code § 25249.5 et seq.)
) TOXIC TORT/ENVIRONMENTAL

By Fax

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1 Plaintiff, Shefa LMV, INC., hereby alleges:

2 **I. PRELIMINARY STATEMENT**

3 1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure
4 to Lead (“Pb”), which is a chemical known to the State of California to cause cancer, birth defects, or
5 other reproductive harm.

6 2. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety
7 Code § 25249.6 (also known as “Proposition 65”) businesses must provide persons with a “clear and
8 reasonable warning” before exposing individuals to chemicals known to the state to cause cancer,
9 birth defects or other reproductive harm.

10 **II. PARTIES**

11 3. Plaintiff is a non-profit, public benefit corporation formed pursuant to the laws of the
12 State of California, composed of California citizens, represented by and through its counsel of record,
13 the Law Office of Daniel N. Greenbaum.

14 4. Health & Safety Code § 25249.7(d) provides that actions to enforce Proposition 65
15 may be brought by “any person in the public interest.”

16 5. Defendant 3M COMPANY (“3M”) is a business entity with ten or more employees
17 that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale
18 of metal polish product(s) that expose consumers to Pb, for sale within the State of California,
19 without first giving clear and reasonable warning.

20 6. Defendant BLUE MAGIC, INC. (“BLUE MAGIC”) is a business entity with ten or
21 more employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
22 distribution, or sale of metal polish product(s) that expose consumers to Pb, for sale within the State
23 of California, without first giving clear and reasonable warning.

24 7. Defendant DUROSOL FABRIK OTTO DURST GMBH & CO. KG (“DUROSOL”)
25 is a business entity with ten or more employees that sells, or has, at times relevant to this complaint,
26 authorized the manufacture, distribution, or sale of metal polish product(s) that expose consumers to
27 Pb, for sale within the State of California, without first giving clear and reasonable warning.

1 8. Defendant AUTOMATION SOLUTIONS INTERNATIONAL LLC (“AUTOSOL”)
2 is a business entity with ten or more employees that sells, or has, at times relevant to this complaint,
3 authorized the manufacture, distribution, or sale of metal polish product(s) that expose consumers to
4 Pb, for sale within the State of California, without first giving clear and reasonable warning

5 9. Defendant WEIMAN PRODUCTS, LLC (“WEIMAN”) is a business entity with ten
6 or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
7 distribution, or sale of metal polish product(s) that expose consumers to Pb, for sale within the State
8 of California, without first giving clear and reasonable warning.

9 10. Defendant AMAZON.COM, INC. (“AMAZON”) is a business entity with ten or more
10 employees that sells, or has, at times relevant to this complaint, authorized the distribution, or sale of
11 metal polish product(s) that expose consumers to Pb, for sale within the State of California, without
12 first giving clear and reasonable warning

13 11. The identities of DOES 1 through 10 are unknown to Plaintiff at this time; however,
14 Plaintiff suspects they are business entities with at least ten or more employees that have sold,
15 authorized the distribution, or sale of metal polish product(s) that expose consumers to Pb, for sale
16 within the State of California, without first giving clear and reasonable warning.

17 12. Defendants (hereinafter and collectively known as the “Defendants”) named in
18 paragraphs 5 through 11 have at all time relevant hereto authorized the manufacture, distribution, or
19 sale of metal polish product(s) (hereinafter “PRODUCTS), which expose consumer to Pb, for sale
20 within the State of California.

21 **III. JURISDICTION AND VENUE**

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

24 14. This Court has jurisdiction over Defendants, because they are business entities that do
25 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
26 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 15. 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.

5 IV. STATUTORY BACKGROUND

6 A. Proposition 65

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

9 17. The warning requirement of Proposition 65 is contained in Health & Safety Code §
10 25249.6, which provides:

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

15 18. An exposure to a chemical in a consumer product is one "which results from a
16 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
17 consumer good, or any exposure that results from receiving a consumer service." (27 CCR 25602(b))

18 19. Proposition 65 establishes a procedure by which the State develops a list of chemicals
19 "known to the State to cause cancer or reproductive toxicity." (Health & Safety Code § 25249.8.)

20 20. No warning need be given concerning a listed chemical until one year after the
21 chemical first appears on the list. (Health & Safety Code § 25249.10(b).)

22 21. Any person "violating or threatening to violate" the statute may be enjoined in any
23 court of competent jurisdiction. (Health & Safety Code, § 25249.7.)

24 22. To "threaten to violate" is defined to mean "to create a condition in which there is a
25 substantial probability that a violation will occur." (Health & Safety Code § 25249.11(e).)

26 23. In addition, violators are liable for civil penalties of up to \$2,500 per day for each
27 violation, recoverable in a civil action. (Health & Safety Code § 25249.7 (b).)

1 24. Actions to enforce the law “may be brought by the Attorney General in the name of
2 the People of the State of California [or] by any district attorney [or] by any City Attorney of a City
3 having a population in excess of 750,000 . . .” (Health & Safety Code § 25249.7(c).)

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

7 26. If no public prosecutors commence enforcement within sixty days, then the private
8 party may sue. (Health & Safety Code § 25249.7(d).)

9 27. No such governmental action has been pursued against Defendants.

10 **V. FACTS**

11 28. “Lead” was placed in the Governor's list of chemicals known to the State of California
12 to cause reproductive toxicity on February 27, 1987.

13 29. It is specifically identified under three subcategories: “developmental reproductive
14 toxicity,” which means harm to the developing fetus, “female reproductive toxicity,” which means
15 harm to the female reproductive system, and “male reproductive toxicity,” which means harm to the
16 male reproductive system. (27 CCR 27001(c))

17 30. “Lead and Lead compounds” were placed in the Governor's list of chemicals known to
18 the State of California to cause cancer on October 1, 1992. (27 CCR 27001(b))

19 31. Defendants are the manufacturer, marketer or retailer of the PRODUCTS for use by
20 individuals in the home and in other endeavors.

21 32. The PRODUCTS are sold through various retailers located in California for use by
22 citizens of the State of California.

23 33. Individuals who use the PRODUCTS are exposed to Pb in the following manner:

24 a. Items on which the PRODUCTS are intended to be used are composed of brass
25 or pewter (the “ITEMS”);

26 b. These metals and ITEMS tarnish over time;

27 c. The PRODUCTS are intended to help a consumer polish the ITEMS;
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1 d. During the polishing process, Pb is removed from the ITEMS and becomes
2 imbued in the PRODUCT itself, or in the alternative, in the liquid in the rag or other material
3 a consumer is using to apply the PRODUCTS;

4 e. This mixture of Pb and the PRODUCT shall be called the “byproduct,” and is
5 full of Pb at levels far exceeding the safe harbor levels established by the State of California;

6 f. During and after the Polishing process, contact between the byproduct the skin
7 occurs, both on the hands and other areas;

8 g. Finally, transfer of Pb from the skin to the mouth occurs, both by transfer of Pb
9 directly from the hand to mouth or by transfer of Pb from the skin to objects that are put in the
10 mouth, such as food;

11 h. Or, in the alternative, the Pb through direct absorption of Pb through the skin,
12 especially if there are abrasions or cuts on the hands and fingers.

13 34. Such individuals are thereby exposed to the Pb that is present when using the
14 PRODUCTS to polish the ITEMS in the course of the intended and reasonably foreseeable use of the
15 PRODUCTS.

16 35. At all times material to this complaint, Defendants have had knowledge that the when
17 individuals use the PRODUCTS to polish the ITEMS, they are exposed to Pb and that an individual’s
18 skin may come into contact with Pb through the intended and reasonably foreseeable use of the
19 PRODUCTS.

20 36. At all times material to this complaint, Defendants have had knowledge that
21 individuals within the State of California use the PRODUCTS to polish the ITEMS, which contain
22 Pb.

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

25 38. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
26 the sale of the PRODUCTS, thereby exposing consumers to Pb.
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1 39. At all times material to this complaint, therefore, Defendants have knowingly and
2 intentionally exposed individuals within the State of California to Pb.

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

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

12 **VI. FIRST CAUSE OF ACTION**
13 **(Against All Defendants for Violation of Proposition 65)**

14 42. Paragraphs 1 through 41 are re-alleged as if fully set forth herein.

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

19 44. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
20 \$2,500 per day for each violation, as well as other remedies.

21 **PRAYER FOR RELIEF**

22
23 WHEREFORE, Plaintiffs pray that the Court:

- 24 1. Pursuant to the First Causes of Action, grant civil penalties according to proof;
25 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
26 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from
27 exposing persons within the State of California to Listed Chemicals caused by the use of their
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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 Bus. & Prof. Code § 17203 and other applicable laws;

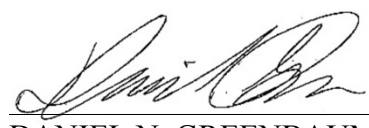
4. Award Plaintiffs their costs of suit;

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

Respectfully submitted,

DATED: February 13, 2017

LAW OFFICE OF DANIEL N. GREENBAUM



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

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

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF LOS ANGELES

9 SHEFA LMV, INC.,) Case No.: BC650959
10 Plaintiff,) Hon. Marc Marmaro
11 vs.)
12 3M COMPANY; BLUE MAGIC, INC.;) CALIFORNIA CODE OF CIVIL
13 DUROSOL FABRIK OTTO DURST GMBH) PROCEDURE § 474 AMENDMENT TO
& CO. KG; AUTOMATION SOLUTIONS) COMPLAINT
14 INTERNATIONAL LLC; WEIMAN)
15 PRODUCTS LLC; AMAZON.COM, INC.) Health and Safety Code §25249.6, et seq.
and DOES 1 to 10, Inclusive,)
16 Defendants.) Dept. 37
17) Action filed: February 17, 2017
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By Fax

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to California Code of Civil Procedure §474, Shefa LMV, Inc. hereby amends the Complaint in *Shefa LMV, LLC v. 3M Company, et al.*, Los Angeles Superior Court Case No. BC650959:

1. By inserting the name ROADWORKS MANUFACTURING, INC. in place of the reference to DOE 1 in each place that it appears in the Complaint in *Shefa LMV, Inc. v. 3M Company, et al.*

Respectfully submitted,

DATED: March 9, 2017



By: DANIEL N. GREENBAUM
Attorney for Plaintiff
Shefa LMV, Inc.