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ENDORSED
FILED
ALAMEDA COUNTY

MAR 29 2017

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF ALAMEDA

8 SHEFA LMV, INC.,

9 Plaintiff,

10 vs.

11 ARIZONA TILE SUPPLY, INC.;
12 STONEPEAK CERAMICS, INC.; MULIA,
13 INC.; NATIVE TRAILS, INC.; LA
14 FUENTE, LLC; LOWE'S COMPANIES,
15 INC.; and DOES 1 to 50, Inclusive,

16 Defendants.

) Unlimited Jurisdiction

) CASE NO.

RG 17854993

) COMPLAINT FOR CIVIL PENALTY AND
17 INJUNCTIVE RELIEF

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

) TOXIC TORT/ENVIRONMENTAL

26 BY FAX

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 ("Proposition 65") businesses must provide persons with a "clear and reasonable
8 warning" before exposing individuals to chemicals known to the state to cause cancer, birth defects
9 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 ARIZONA TILE SUPPLY, INC. ("ARIZONA") is a business entity with
17 ten or more employees that sells, or has, at times relevant to this complaint, authorized the
18 manufacture, distribution, or sale of tile product(s) that expose consumers to Pb, for sale within the
19 State of California, without first giving clear and reasonable warning.

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

24 7. Defendant MULIA, INC. ("MULIA") is a business entity with ten or more employees
25 that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale
26 of tile product(s) that expose consumers to Pb, for sale within the State of California, without first
27 giving clear and reasonable warning.

8. Defendant NATIVE TRAILS, INC. (“NATIVE”) is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of tile product(s) that expose consumers to Pb, for sale within the State of California, without first giving clear and reasonable warning.

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

10. Defendant LOWE’S COMPANIES, INC. (“LOWE’S”) is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of tile product(s) that expose consumers to Pb, for sale within the State of California, without first giving clear and reasonable warning.

11. The identities of DOES 1 to 50 are unknown to Plaintiff at this time; however, Plaintiff suspects they are business entities with at least ten or more employees that have sold, authorized the distribution, or sale of tile product(s) that expose consumers to Pb, for sale within the State of California, without first giving clear and reasonable warning.

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

III. JURISDICTION AND VENUE

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

14. This Court has jurisdiction over Defendants, because they are business entities that do sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market, through the sale, marketing, and use of its products in

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 Alameda
4 County because Defendants' products are sold and used or installed 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 twelve (12) months after
21 the 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).)

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

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

26. If no public prosecutors commence enforcement within sixty (60) days, then the private party may sue. (Health & Safety Code § 25249.7(d).)

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

V. FACTS

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

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

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

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

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

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

- a. The PRODUCTS are composed of different materials (the “MATERIALS”).
- b. Some of the MATERIALS contain Pb.

1 c. While the PRODUCTS are cut, ground, or, in any way, scarred, the Pb is
2 removed or released from the MATERIALS in the form of powder or dust (“the “DUST”).

3 d. The DUST contains Pb at levels far exceeding the safe harbor levels
4 established by the State of California.

5 e. During and after the use or installation of the PRODUCT, the DUST may be
6 inhaled directly into the lungs.

7 f. During and after the use or installation of the PRODUCT, contact between the
8 DUST and the skin occurs, both on the hands and other bodily surface areas.

9 g. Transfer of Pb from the skin to the mouth may occur, both by transfer of Pb
10 directly from the hand to mouth or by transfer of Pb from the skin to objects that are put in the
11 mouth, such as food or cigarettes.

12 h. In the alternative, there will be direct absorption of Pb through the skin,
13 especially if there are abrasions or cuts on the hands and fingers.

14 34. Such individuals are thereby exposed to the Pb present when using or installing the
15 PRODUCTS during the intended and reasonably foreseeable use and installation of the PRODUCTS.

16 35. At all times material to this complaint, Defendants have had knowledge that
17 individuals within the State of California use or install the PRODUCTS, which can contain Pb.

18 36. At all times material to this complaint, Defendants had knowledge that when
19 individuals use or install the PRODUCTS, they are exposed to DUST (that contains Pb), and that an
20 individual’s skin may come into contact with Pb through the intended and reasonably foreseeable use
21 of the PRODUCTS.

22 37. At all times material to this complaint, Defendants had knowledge that the when
23 individuals use or install the PRODUCTS, they are exposed to DUST that contains Pb and DUST
24 may be inhaled into the lungs, thus exposing users to Pb through the intended and reasonably
25 foreseeable use of the PRODUCTS.

26 38. At all times material to this complaint, Defendants knew that the PRODUCTS were
27 sold throughout the State of California, and Defendants profited from such sales.

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

40. Therefore, at all times material to this complaint, Defendants have knowingly and intentionally exposed individuals within the State of California to Pb.

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

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

VI. FIRST CAUSE OF ACTION

(Against All Defendants for Violation of Proposition 65)

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

1. Pursuant to Health & Safety Code § 25249.7, grant civil penalties according to proof;

2. Pursuant to Health & Safety Code § 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 Plaintiff shall specify in further application to the court;

3. Pursuant to Code of Civil Procedure § 1021.5, award Plaintiff their attorney's fees and costs of suit; and

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

Respectfully submitted,

DATED: March 29, 2017

LAW OFFICE OF DANIEL N. GREENBAUM

David B.

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