

SEP 16 2016

Sherri R. Carter, Executive Officer/Clerk  
By Shaunya Bolden, Deputy

1 Daniel N. Greenbaum, Esq. (SBN 268104)  
LAW OFFICE OF DANIEL N. GREENBAUM  
2 The Hathaway Building  
7120 Hayvenhurst Ave., Suite 320  
3 Van Nuys CA 91406  
Telephone: (818) 809-2199  
4 Facsimile: (424) 243-7689  
Email: dgreenbaum@greenbaumlawfirm.com

5 Attorney for Shefa LMV, INC.

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
7 COUNTY OF LOS ANGELES  
8

9	SHEFA LMV, INC.,	)	Unlimited Jurisdiction
10	Plaintiff,	)	
11	vs.	)	CASE NO. <b>BC 6 3 4 2 0 5</b>
12	SNOW JOE, LLC; and DOES 1 through 100,	)	COMPLAINT FOR CIVIL PENALTY AND
13	Inclusive,	)	INJUNCTIVE RELIEF
14	Defendants.	)	(Health & Safety Code § 25249.5 et seq.)
15		)	TOXIC TORT/ENVIRONMENTAL
16		)	
17		)	

*By Fax*

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

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3 **I. PRELIMINARY STATEMENT**

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

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

11 **II. PARTIES**

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

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

17 5. Defendant SNOW JOE, LLC (“SNOW JOE”) is a business entity with ten or more  
18 employees that sells, or has, at times relevant to this complaint, authorized the manufacture,  
19 distribution, or sale of brass garden and hardware product(s) that contain Pb, for sale within the State  
20 of California, without first giving clear and reasonable warning.

21 6. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,  
22 Plaintiff suspects they are business entities with at least ten or more employees that have sold,  
23 authorized the distribution, or sale of brass garden and hardware product(s) that contain Pb, for sale  
24 within the State of California, without first giving clear and reasonable warning.

25 7. Defendants (hereinafter and collectively known as the “Defendants”) named in  
26 paragraphs 5 and 6 have at all time relevant hereto authorized the manufacture, distribution, or sale of  
27 brass garden and hardware Products, including but not limited to, Sunjoe 4” Solid Brass Heavy Duty  
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1 Twist Nozzle with an identifying designation of SJI-4BHN (hereinafter “PRODUCTS), which  
2 contain Pb, for sale within the State of California.

### 3 **III. JURISDICTION AND VENUE**

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

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

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

### 13 **IV. STATUTORY BACKGROUND**

#### 14 **A. Proposition 65**

15 11. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
16 passed as “Proposition 65” by a vote of the people in November of 1986.

17 12. The warning requirement of Proposition 65 is contained in Health & Safety Code §  
18 25249.6, which provides:

19  
20 No person in the course of doing business shall knowingly and intentionally  
21 expose any individual to a chemical known to the state to cause cancer or  
22 reproductive toxicity without first giving clear and reasonable warning to  
such individual, except as provided in Section 25249.10.

23 13. An exposure to a chemical in a consumer product is one “which results from a  
24 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a  
25 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR 25602(b))

26 14. Proposition 65 establishes a procedure by which the State develops a list of chemicals  
27 “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code § 25249.8.)

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

3 16. Any person “violating or threatening to violate” the statute may be enjoined in any  
4 court of competent jurisdiction. (Health & Safety 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.” (Health & Safety Code § 25249.11(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. (Health & Safety Code § 25249.7 (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 . . .” (Health & Safety Code § 25249.7(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 & Safety Code § 25249.7(d).)

17 22. No such governmental action has been pursued against Defendants.

18 **V. FACTS**

19 23. “Lead” was placed in the Governor’s list of chemicals known to the State of California  
20 to cause reproductive toxicity on February 27, 1987.

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

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

1           26. Defendants are the manufacturer and marketer of the PRODUCTS for use by  
2 individuals in the home and in other occupational endeavors.

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

5           28. Individuals who purchase, handle, or install the PRODUCTS are exposed to Pb chiefly  
6 through:

7                   a. contact between the item and the skin;

8                   b. transfer of Pb from the skin to the mouth, both by transfer of Pb directly from  
9 the hand to mouth and by transfer of Pb from the skin to objects that are put in the mouth,  
10 such as food, and

11                   c. through absorption of Pb through the skin.

12           29. Such individuals are thereby exposed to the Pb that is present on or in the  
13 PRODUCTS in the course of the intended and reasonably foreseeable use of the PRODUCTS.

14           30. At all times material to this complaint, Defendants have had knowledge that the  
15 PRODUCTS contain Pb and that an individual's skin may come into contact with Pb through the  
16 intended and reasonably foreseeable use of the PRODUCTS.

17           31. At all times material to this complaint, Defendants have had knowledge that  
18 individuals within the State of California handle the PRODUCTS, which contain Pb.

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

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

23           34. At all times material to this complaint, therefore, Defendants have knowingly and  
24 intentionally exposed individuals within the State of California to Pb.

25           35. The exposure is knowing and intentional because it is the result of the Defendants'  
26 deliberate act of authorizing the sale of products known to contain Pb, in a manner whereby these  
27 products were, and would inevitably be, sold to consumers within the state of California, and with the  
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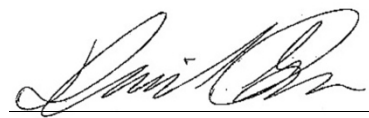
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- 4. Award Plaintiffs their costs of suit;
- 5. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: September 16, 2016

LAW OFFICE OF DANIEL N. GREENBAUM



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