

MAR 10 2017

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By: Charlie L. Coleman, Deputy

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 SHEFA LMV, INC.,

13 Plaintiff,

14 vs.

15 METABO CORPORATION; PROX-TECH,
16 INC. D/B/A PROXXON, INC.; HOME
17 DEPOT USA, INC.; and DOES 1 to 50,
18 Inclusive,

19 Defendants.

) Unlimited Jurisdiction

) CASE NO. **BC 6 5 3 2 2 2**

) 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:

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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 (“Proposition 65”) businesses must provide persons with a “clear and reasonable
9 warning” before exposing individuals to chemicals known to the state to cause cancer, birth defects
10 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, composed 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 METABO CORPORATION (“METABO”) is a business entity with ten or
18 more employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
19 distribution, or sale of power tools product(s) that expose consumers to Pb, for sale within the State
20 of California, without first giving clear and reasonable warning.

21 6. Defendant PROX-TECH, INC. D/B/A PROXXON, INC. (“PROXXON”) is a
22 business entity with ten or more employees that sells, or has, at times relevant to this complaint,
23 authorized the manufacture, distribution, or sale of power tool product(s) that expose consumers to
24 Pb, for sale within the State of California, without first giving clear and reasonable warning.

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

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

5 9. Defendants (hereinafter and collectively known as the "Defendants") named in
6 paragraphs 5 through 8 have at all time relevant hereto authorized the manufacture, distribution, or
7 sale of power tool product(s) (the "PRODUCTS), which expose consumer to Pb, for sale within the
8 State of California.

9 **III. JURISDICTION AND VENUE**

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

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

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

19 **IV. STATUTORY BACKGROUND**

20 **A. Proposition 65**

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

23 14. The warning requirement of Proposition 65 is contained in Health & Safety Code §
24 25249.6, which provides:

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

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

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

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

8 18. Any person “violating or threatening to violate” the statute may be enjoined in any
9 court of competent jurisdiction. (Health & Safety Code, § 25249.7.)

10 19. To “threaten to violate” is defined to mean “to create a condition in which there is a
11 substantial probability that a violation will occur.” (Health & Safety Code § 25249.11(e).)

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

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

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

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

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

23 **V. FACTS**

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

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

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

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

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

9 30. Individuals who use the PRODUCTS are exposed to Pb in the following manner:

10 a. The PRODUCTS are intended to cut, grind, and polish materials that contain
11 lead, including but not limited to tiles, hobby supplies, and brass objects (the
12 “MATERIALS”).

13 b. While using the power tools, Pb is removed from the MATERIALS in the
14 form of powder or dust (“the “DUST”).

15 c. The DUST contains Pb at levels far exceeding the safe harbor levels
16 established by the State of California.

17 d. During and after the use of a power tool, contact between the DUST and the
18 skin occurs, both on the hands and other bodily surface areas.

19 e. During and after the use of a power tool, the DUST and can be inhaled directly
20 into the lungs.

21 f. Finally, transfer of Pb from the skin to the mouth occurs, both by transfer of Pb
22 directly from the hand to mouth or by transfer of Pb from the skin to objects that are put in the
23 mouth, such as food or cigarettes.

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

1 31. Such individuals are thereby exposed to the Pb present when using the PRODUCTS to
2 cut, grind, or polish the ITEMS during the intended and reasonably foreseeable use of the
3 PRODUCTS.

4 32. At all times material to this complaint, Defendants have had knowledge that
5 individuals within the State of California use the PRODUCTS to cut, grind, or polish the ITEMS,
6 which can contain Pb.

7 33. At all times material to this complaint, Defendants had knowledge that when
8 individuals use the PRODUCTS to cut, grind, or polish the ITEMS, they are exposed to DUST that
9 contains Pb and that an individual's skin may come into contact with Pb through the intended and
10 reasonably foreseeable use of the PRODUCTS.

11 34. At all times material to this complaint, Defendants had knowledge that the when
12 individuals use the PRODUCTS to cut, grind, or polish the ITEMS, they are exposed to DUST that
13 contains Pb and DUST may be inhaled into the lungs, thus exposing users to Pb through the intended
14 and reasonably foreseeable use of the PRODUCTS.

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

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

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

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

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

3 **VI. FIRST CAUSE OF ACTION**

4 **(Against All Defendants for Violation of Proposition 65)**

5 40. Paragraphs 1 through 39 are re-alleged as if fully set forth herein.

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

10 42. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
11 \$2,500 per day for each violation, as well as other remedies.

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13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray that the Court:

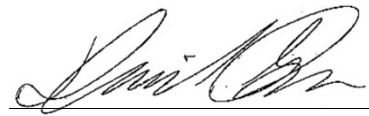
- 15 1. Pursuant to the First Causes of Action, grant civil penalties according to proof;
16 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
17 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from
18 exposing persons within the State of California to Listed Chemicals caused by the use of their
19 products without providing clear and reasonable warnings, as Plaintiffs shall specify in further
20 application to the court;
21 3. Enter such orders as “may be necessary to restore to any person in interest any money
22 or property, real or personal, which may have been acquired by means of” these unlawful
23 acts, as provided in Bus. & Prof. Code § 17203 and other applicable laws;
24 4. Award Plaintiffs their costs of suit; and
25 5. Grant such other and further relief as the court deems just and proper.

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27 Respectfully submitted,

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DATED: March 9, 2017

LAW OFFICE OF DANIEL N. GREENBAUM



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