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

9 SHEFA LMV, INC.,

10 Plaintiff,

11 vs.

12 ROBERT BOSCH TOOL CORPORATION;
and DOES 1 through 100, Inclusive,

13 Defendants.

) Unlimited Jurisdiction

BC 676932

) CASE NO.

) 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 Diisononyl phthalate (“DINP”), a chemical known to the State of California to cause cancer.

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

9 **II. PARTIES**

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

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

15 5. Defendant ROBERT BOSCH TOOL CORPORATION is a business entity with ten or
16 more employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
17 distribution, or sale of flexible shaft attachments for Dremel rotary tools that are manufactured, sold,
18 and/or distributed for authorized sale to consumers in California by Defendants, including, but not
19 limited to, Dremel Flex Shaft 225-01 (UPC: 080596002251), that contain DINP, for sale within the
20 State 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 flexible shaft attachments for Dremel rotary tools that are
24 manufactured, sold, and/or distributed for authorized sale to consumers in California by Defendant,
25 including, but not limited to, Dremel Flex Shaft 225-01 (UPC: 080596002251), that contain DINP,
26 for sale within the State of California, without first giving clear and reasonable warning.

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

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

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

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

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

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

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

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

19 **V. FACTS**

20 22. DINP was placed on the Governor’s list of chemicals known to the State to cause
21 cancer on January 1, 1988. (27 CCR 27001(b))

22 23. Defendant Robert Bosch Tool Corporation is the manufacturer of the PRODUCTS for
23 use by individuals in the home and other endeavors.

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

26 25. Plaintiff’s consulting expert conducted a test on the PRODUCTS to check for the
27 presence of certain phthalates, including DINP.

1 26. Based on the levels, Plaintiff's expert opined that use of the PRODUCTS would lead
2 to exposure to DINP above the safe harbor levels set by the Office of Environment Health Hazard
3 Assessment (OEHHA).

4 27. Based on that report and opinion, Plaintiff and its counsel prepared a Notice of
5 Violation.

6 28. Pursuant to the statute and regulations referenced above, on September 27, 2017
7 Plaintiff served the Notice of Violation on the Office of the Attorney General, Defendant, as well as
8 all required public agencies.

9 29. Plaintiff is unaware of any governmental prosecution against Defendant.

10 30. At least sixty days have elapsed since service of the Notice of Violation.

11 31. Based upon consultation with experts, Plaintiff alleges that individuals who purchase,
12 handle, or use the PRODUCTS are exposed to DINP chiefly through:

13 a. contact between the item and the skin;

14 b. transfer of DINP from the skin to the mouth, both by transfer of DINP directly
15 from the hand to mouth, and indirectly by transfer of DINP from the skin to objects that are
16 placed in the mouth, such as food; and

17 c. through absorption of DINP through the skin.

18 32. Such individuals are thereby exposed to the DINP that is present on or in the
19 PRODUCTS during the intended and reasonably foreseeable use of the PRODUCTS, which is the
20 trimming and care for cuticles of both fingers and toes.

21 33. At all times material to this complaint, Defendants have had knowledge that the
22 PRODUCTS contain DINP and that an individual's skin may contact DINP through the intended and
23 reasonably foreseeable use of the PRODUCTS.

24 34. At all times material to this complaint, Defendants have had knowledge that
25 individuals within the State of California handle the PRODUCTS, which contain DINP.

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

1 36. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
2 the sale of the PRODUCTS, thereby exposing consumers to DINP.

3 37. At all times material to this complaint, therefore, Defendants have knowingly and
4 intentionally exposed individuals within the State of California to DINP.

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

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

14 **VI. FIRST CAUSE OF ACTION**

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

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

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

21 42. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
22 \$2,500 per day for each violation, as well as other remedies.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray that the Court:

- 25 1. Pursuant to the First Causes of Action, grant civil penalties according to proof;
26 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
27 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from
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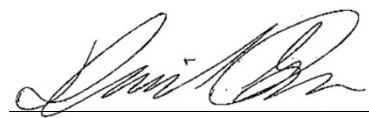
exposing persons within the State of California to Listed Chemicals caused by the use of their products without providing clear and reasonable warnings, as Plaintiffs shall specify in further application to the court;

- 3. Award Plaintiffs their costs of suit;
- 4. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: September 21, 2017

LAW OFFICE OF DANIEL N. GREENBAUM



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