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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 26 2017

Shiori R. Carter, Executive Officer/Clerk
By: Glorietta Robinson, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES
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10 SHEFA LMV, INC.,

11 Plaintiff,

12 vs.

13 BERWICK OFFFRAY LLC; and DOES 1
14 through 100, Inclusive,

15 Defendants.

) Unlimited Jurisdiction

BC 6 6 6 4 1 7

) CASE NO.

) COMPLAINT FOR CIVIL PENALTY AND
16 INJUNCTIVE RELIEF

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

) TOXIC TORT/ENVIRONMENTAL
17)
18)
19)

BY FAX

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

2
3 **I. PRELIMINARY STATEMENT**

4 1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure
5 to Di-[2-Ethylhexyl]Phthalate) (“DEHP”), which is a chemical known to the State of California to
6 cause cancer and reproductive toxicity.

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 BERWICK OFFRAY LLC (“BERWICK”) 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 plastic handled tool products that contain DEHP, for sale within the State of
20 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 plastic handled tool products that contain DEHP, for sale within
24 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 times relevant hereto authorized the manufacture, distribution, or sale
27 of plastic handled tools, including but not limited to Favorite Findings™ Button Shank Remover,
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1 with a product identifier of UPC:075160732962 (hereinafter “PRODUCTS), which contain DEHP,
2 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. Di-[2-Ethylhexyl]Phthalate) (“DEHP”) was placed in the Governor's list of chemicals
20 known to the State of California to cause cancer on January 1, 1988. (27 CCR 27001(b))

21 24. Di-[2-Ethylhexyl]Phthalate) (“DEHP”) was placed in the Governor's list of chemicals
22 known to the State of California to cause reproductive toxicity on October 24, 2003. (27 CCR
23 27001(b))

24 25. Defendants are the manufacturer and marketer of the PRODUCTS for use by
25 individuals in the home and in other occupational endeavors.

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

1 27. Individuals who purchase, handle, or use the PRODUCTS are exposed to DEHP
2 chiefly through:

- 3 a. contact between the item and the skin;
4 b. transfer of DEHP from the skin to the mouth, both by transfer of DEHP
5 directly from the hand to mouth and by transfer of DEHP from the skin to objects that are put
6 in the mouth, such as food, and
7 c. through absorption of DEHP through the skin.

8 28. Such individuals are thereby exposed to the DEHP that is present on or in the
9 PRODUCTS in the course of the intended and reasonably foreseeable use of the PRODUCTS.

10 29. At all times material to this complaint, Defendants have had knowledge that the
11 PRODUCTS contain DEHP and that an individual's skin may come into contact with DEHP through
12 the intended and reasonably foreseeable use of the PRODUCTS.

13 30. At all times material to this complaint, Defendants have had knowledge that
14 individuals within the State of California handle the PRODUCTS, which contain DEHP.

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

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

19 33. At all times material to this complaint, therefore, Defendants have knowingly and
20 intentionally exposed individuals within the State of California to DEHP.

21 34. 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 DEHP, 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 DEHP by
25 individuals within the State of California.

26 35. 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 36. Paragraphs 1 through 35 are re-alleged as if fully set forth herein.

6 37. 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 38. 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.

12 **PRAYER FOR RELIEF**

13
14 WHEREFORE, Plaintiffs pray that the Court:

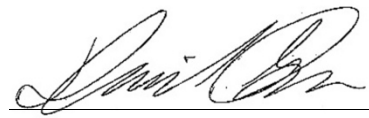
- 15 1. Pursuant to the First Causes of Action, grant civil penalties according to proof;
16 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
17 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from
18 exposing persons within 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. Award Plaintiffs their costs of suit;
22 4. Grant such other and further relief as the court deems just and proper.
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Respectfully submitted,

DATED: June 26, 2017

LAW OFFICE OF DANIEL N. GREENBAUM



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