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ENDORSED
FILED
FEB 16 2018
MARGARET J. DOWNIE

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF ALAMEDA
9

10 SHEFA LMV, INC.,
11 Plaintiff,
12 vs.
13 PRO-TEC ATHLETICS; and DOES 1
through 100, Inclusive,
14 Defendants.
15

) Unlimited Jurisdiction

) CASE NO. **RG 18893496**

) COMPLAINT FOR CIVIL PENALTY AND
INJUNCTIVE RELIEF

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

) TOXIC TORT/ENVIRONMENTAL
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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 and/or
5 reproductive harm.

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

10 3. Plaintiff alleges that Defendant(s) failed to provide such warning before exposing
11 individuals to DINP.

12 **II. PARTIES**

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

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

18 6. Defendant PRO-TEC ATHLETICS is a business entity with ten or more employees that
19 sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of
20 plastic massager products, including, but not limited to, Roller Massager with Trigger Point Release
21 Grips; UPC785702112007, that contain DINP, for sale within the State of California, without first
22 giving clear and reasonable warning.

23 7. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
24 Plaintiff suspects they are business entities with at least ten or more employees that at all times
25 relevant to this complaint, authorized the manufacture, distribution, or sale of plastic massager
26 products, including, but not limited to, Roller Massager with Trigger Point Release Grips;
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1 UPC785702112007, that contain DINP, for sale within the State of California, without first giving
2 clear and reasonable warning.

3 8. Defendants named in paragraphs 5 and 6 have at all times relevant to this complaint,
4 authorized the manufacture, distribution, or sale of plastic massager products, including, but not
5 limited to, Roller Massager with Trigger Point Release Grips; UPC785702112007, that contain DINP
6 (hereinafter “PRODUCTS”), for sale within the State of California, without first giving clear and
7 reasonable warning.

8 III. JURISDICTION AND VENUE

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

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

16 11. Venue is proper in this Court because the cause, or part thereof, arises in Alameda
17 County because Defendant’s products are sold and consumed in this county.

18 IV. STATUTORY BACKGROUND

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

21 13. The warning requirement of Proposition 65 is contained in Health & Safety Code §
22 25249.6, which provides:

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

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

1 27. On January 28, 2017, Plaintiff purchased the PRODUCT from Dick's Sporting Goods
2 retail location in California.

3 28. On February 17, 2017, Plaintiff's expert prepared a report summarizing the results of
4 analysis on the PRODUCTS, including the amount of the DINP in the product.

5 29. Based on the levels found in analysis, Plaintiff's expert opined the use of the
6 PRODUCTS would lead to exposure to DINP above the safe harbor levels set by the Office of
7 Environment Health Hazard Assessment (OEHHA).

8 30. Based on that report and opinion, Plaintiff and its counsel prepared a Notice of
9 Violation.

10 31. Pursuant to the statute and regulations referenced above, on March 02, 2017 Plaintiff
11 served the Notice of Violation on the Office of the Attorney General, Defendant, as well as all
12 required public agencies.

13 32. Plaintiff is unaware of any governmental prosecution against Defendant.

14 33. At least sixty (60) days have elapsed since service of the Notice of Violation.

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

17 a. contact between the item and the skin;

18 b. transfer of DINP from the skin to the mouth, both by transfer of DINP directly
19 from the hand to mouth, and indirectly by transfer of DINP from the skin to objects that are
20 placed in the mouth, such as food or cigarettes; and

21 c. through direct absorption of DINP through the skin.

22 35. Such individuals are thereby exposed to the DINP that is present on or in the
23 PRODUCTS during the intended and reasonably foreseeable use of the PRODUCTS.

24 36. At all times material to this complaint, Defendants have had knowledge that the
25 PRODUCTS contain DINP and that an individual's skin may contact DINP through the intended and
26 reasonably foreseeable use of the PRODUCTS.
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PRAYER FOR RELIEF

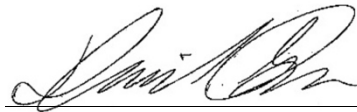
WHEREFORE, Plaintiffs pray that the Court:

1. Pursuant to the First Causes of Action, 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 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: February 9, 2018

LAW OFFICE OF DANIEL N. GREENBAUM



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