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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

SEP 01 2017

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

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF LOS ANGELES
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9 SHEFA LMV, INC.,
10 Plaintiff,
11 vs.
12 EARTH THERAPEUTICS, INC.; and DOES
1 through 100, Inclusive,
13 Defendants.
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) Unlimited Jurisdiction
)
) CASE NO. **BC 674333**
)
) 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 Di[2-Ethylhexyl] Phthalate (“DEHP”), a chemical known to the State of California to cause cancer
6 and/or 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 EARTH THERAPEUTICS, INC. 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 plastic handled cuticle nipper products that are manufactured, sold, and/or
20 distributed for authorized sale to consumers in California by Defendant, including, but not limited to,
21 Soft Touch Cuticle Nipper; UPC: 073377522154, that contain DEHP, for sale within the State of
22 California, without first giving clear and reasonable warning.

23 6. 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 have sold,
25 authorized the distribution, or sale of plastic handled cuticle nipper products that are manufactured,
26 sold, and/or distributed for authorized sale to consumers in California by Defendant, including, but
27 not limited to, Soft Touch Cuticle Nipper; UPC: 073377522154, that contain DEHP, for sale within
28 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 **V.** If no public prosecutors commence enforcement within sixty days, then the private party may
18 sue. (Health & Safety Code § 25249.7(d).) **FACTS**

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

21 22. DEHP was placed on the Governor’s list of chemicals known to the State to cause
22 reproductive toxicity on October 24, 2003. (27 CCR 27001(b))

23 23. Defendant Earth Therapeutics, Inc. is the manufacturer of the PRODUCTS for use by
24 individuals in the home and other endeavors.

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

27 25. On March 12, Plaintiff purchased the Products.
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1 26. Thereafter, Plaintiff's consulting expert conducted a proprietary test on the
2 PRODUCTS to check for the presence of certain phthalates, including DEHP.

3 27. Such presence was confirmed.

4 28. On or about March 23, 2017, Plaintiff's expert sent a piece of the PRODUCTS to an
5 accredited laboratory for non-destructive analysis.

6 29. On or about March 24, 2017, Plaintiff's expert received the results of the laboratory's
7 analysis.

8 30. On March 30, 2017, Plaintiff's expert prepared a report summarizing the results of
9 said analysis, including the amount of the DEHP in the product.

10 31. Based on the levels, Plaintiff's expert opined that use of the PRODUCTS would lead
11 to exposure to DEHP above the safe harbor levels set by the Office of Environment Health Hazard
12 Assessment (OEHHA).

13 32. Based on that report and opinion, Plaintiff and its counsel prepared a Notice of
14 Violation.

15 33. Pursuant to the statute and regulations referenced above, on April 6, 2017 Plaintiff
16 served the Notice of Violation on the Office of the Attorney General, Defendant, as well as all
17 required public agencies.

18 34. Plaintiff is unaware of any governmental prosecution against Defendant.

19 35. At least sixty days have elapsed since service of the Notice of Violation.

20 36. Based upon consultation with experts, Plaintiff alleges that individuals who purchase,
21 handle, or use the PRODUCTS are exposed to DEHP chiefly through:

22 a. contact between the item and the skin;

23 b. transfer of DEHP from the skin to the mouth, both by transfer of DEHP
24 directly from the hand to mouth, and indirectly by transfer of DEHP from the skin to objects
25 that are placed in the mouth, such as food; and

26 c. through absorption of DEHP through the skin.

1 37. Such individuals are thereby exposed to the DEHP that is present on or in the
2 PRODUCTS during the intended and reasonably foreseeable use of the PRODUCTS, which is the
3 trimming and care for cuticles of both fingers and toes.

4 38. At all times material to this complaint, Defendants have had knowledge that the
5 PRODUCTS contain DEHP and that an individual's skin may contact DEHP through the intended
6 and reasonably foreseeable use of the PRODUCTS.

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

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

11 41. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
12 the sale of the PRODUCTS, thereby exposing consumers to DEHP.

13 42. At all times material to this complaint, therefore, Defendants have knowingly and
14 intentionally exposed individuals within the State of California to DEHP.

15 43. The exposure is knowing and intentional because it is the result of the Defendants'
16 deliberate act of authorizing the sale of products known to contain DEHP, in a manner whereby these
17 products were, and would inevitably be, sold to consumers within the state of California, and with the
18 knowledge that the intended use of this PRODUCTS would result in exposures to DEHP by
19 individuals within the State of California.

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

24 **VI. FIRST CAUSE OF ACTION**

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

26 45. Paragraphs 1 through 45 are re-alleged as if fully set forth herein.
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1 46. By committing the acts alleged above, Defendants have, in the course of doing
2 business, knowingly and intentionally exposed individuals in California to chemicals known to the
3 State of California to cause cancer or reproductive toxicity without first giving clear and reasonable
4 warning to such individuals, within the meaning of Health & Safety Code § 25249.6.

5 47. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
6 \$2,500 per day for each violation, as well as other remedies.

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8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray that the Court:

- 10 1. Pursuant to the First Causes of Action, grant civil penalties according to proof;
11 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
12 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from
13 exposing persons within the State of California to Listed Chemicals caused by the use of their
14 products without providing clear and reasonable warnings, as Plaintiffs shall specify in further
15 application to the court;
16 3. Award Plaintiffs their costs of suit;
17 4. Grant such other and further relief as the court deems just and proper.
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20 Respectfully submitted,

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22 DATED: August 31, 2017

23 LAW OFFICE OF DANIEL N. GREENBAUM

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25 _____

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