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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

NOV 30 2017

Sherri R. Carter, Executive Officer/clerk

By Shaunya Bolden, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

9 SHEFA LMV, INC.,

11 Plaintiff,

13 vs.

14 MOREFLAVOR, INC. DBA
15 BREWMASTER; and DOES 1 through 100,
Inclusive,

17 Defendants.

) Unlimited Jurisdiction

) CASE NO.

BC 6 8 5 1 2 1

) COMPLAINT FOR CIVIL PENALTY AND
) INJUNCTIVE RELIEF

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

) TOXIC TORT/ENVIRONMENTAL

BY FAX

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 Lead (“Pb”), which is a chemical known to the State of California to cause cancer, birth defects, or
5 other reproductive harm.

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

10 **II. PARTIES**

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

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

16 5. Defendant MOREFLAVOR, INC. DBA BREWMASTER (“MOREFLAVOR”) is a
17 business entity with ten or more employees that sells, or has, at times relevant to this complaint,
18 authorized the manufacture, distribution, or sale of brass hardware fittings and products that contain
19 Pb, for sale within the State of California, without first giving clear and reasonable warning.

20 6. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
21 Plaintiff suspects they are business entities with at least ten or more employees that have sold,
22 authorized the distribution, or sale of brass hardware fittings and products that contain Pb, for sale
23 within the State of California, without first giving clear and reasonable warning.

24 7. Defendants (hereinafter and collectively known as the “Defendants”) named in
25 paragraphs 5 and 6 have at all time relevant hereto authorized the manufacture, distribution, or sale of
26 brass hardware fittings and products manufactured, distributed and/or sold by Settling Defendant that
27 contain lead and/or lead compounds (“Lead” or “Pb”), including, but not limited to, Brewmaster
28

1 OxyWand Oxygenation System, FE392A and the In-Line Check/Ball Valve D1870 (hereinafter
2 “PRODUCTS), which contain Pb, for sale within the State of California, without first giving clear
3 and reasonable warning.

4 III. JURISDICTION AND VENUE

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

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

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

14 IV. STATUTORY BACKGROUND

15 A. Proposition 65

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

18 12. The warning requirement of Proposition 65 is contained in Health & Safety Code §
19 25249.6, which provides:

20
21 No person in the course of doing business shall knowingly and intentionally
22 expose any individual to a chemical known to the state to cause cancer or
23 reproductive toxicity without first giving clear and reasonable warning to
such individual, except as provided in Section 25249.10.

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

27 14. Proposition 65 establishes a procedure by which the State develops a list of chemicals
28 “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. “Lead” was placed in the Governor's list of chemicals known to the State of California
20 to cause reproductive toxicity on February 27, 1987.

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

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

1 26. Defendants are the manufacturer and marketer of the PRODUCTS for use by
2 individuals in the home and in other occupational endeavors.

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

5 28. On March 17, 2017, Plaintiff purchased the PRODUCTS.

6 29. On or about March 24, 2017, Plaintiff's expert sent pieces of the PRODUCTS to an
7 accredited laboratory for non-destructive analysis.

8 30. On or about March 28, 2017, Plaintiff's expert received the results of the laboratory's
9 analysis.

10 31. On March 30, 2017, Plaintiff's expert prepared reports summarizing the results of said
11 analysis, including the amount of the Pb in the PRODUCTS.

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

15 33. Based on that report and opinion, Plaintiff and its counsel prepared the Notices of
16 Violation.

17 34. Pursuant to the statute and regulations referenced above, on April 6, 2017 Plaintiff
18 served the Notices of Violation on the Office of the Attorney General, Defendant, as well as all
19 required public agencies.

20 35. Plaintiff is unaware of any governmental prosecution against Defendant.

21 36. At least sixty days have elapsed since service of the Notice of Violation.

22 37. Individuals who purchase, handle, or use the PRODUCTS are exposed to Pb chiefly
23 through:

24 a. contact between the item and the skin;

25 b. transfer of Pb from the skin to the mouth, both by transfer of Pb directly from
26 the hand to mouth and by transfer of Pb from the skin to objects that are put in the mouth,
27 such as food, and
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c. through absorption of Pb through the skin.

38. Such individuals are thereby exposed to the Pb that is present on or in the PRODUCTS in the course of the intended and reasonably foreseeable use of the PRODUCTS.

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

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

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

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

43. At all times material to this complaint, therefore, Defendants have knowingly and intentionally exposed individuals within the State of California to Pb.

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

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

VI. FIRST CAUSE OF ACTION

(Against All Defendants for Violation of Proposition 65)

46. Paragraphs 1 through 45 are re-alleged as if fully set forth herein.

1 47. 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 48. 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.

7 **PRAYER FOR RELIEF**

8
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
15 further 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.
18

19 Respectfully submitted,

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21 DATED: November 30, 2017

22 LAW OFFICE OF DANIEL N. GREENBAUM

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