

1 Daniel N. Greenbaum, Esq. (SBN 268104)
2 LAW OFFICE OF DANIEL N. GREENBAUM
3 The Hathaway Building
4 7120 Hayvenhurst Ave., Suite 320
5 Van Nuys CA 91406
6 Telephone: (818) 809-2199
7 Facsimile: (424) 243-7689
8 Email: dgreenbaum@greenbaumlawfirm.com

9 Attorney for Shefa LMV, INC.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

PACIFIC COAST DISTRIBUTING, INC.;
PETSMART, INC.; and DOES 1 through
100, Inclusive,

Defendants.

) Unlimited Jurisdiction

) CASE NO.

) COMPLAINT FOR CIVIL PENALTY AND
) INJUNCTIVE RELIEF

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

) TOXIC TORT/ENVIRONMENTAL

BY FAX

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

NOV 30 2017

Sherri R. Carter, Executive Officer/Clerk

By Shaunya Bolden, Deputy

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 Di[2-Ethylhexyl] Phthalate (“DEHP”), a chemical known to the State of California to cause cancer
5 and/or 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 DEHP.

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 PACIFIC COAST DISTRIBUTING, INC. is a business entity with ten or
19 more employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
20 distribution, or sale of aquarium gravel vacuums, including, but not limited to, Topfin Medium
21 Gravel Vacuum; SKU: 5162806, that contain DEHP, for sale within the State of California, without
22 first giving clear and reasonable warning.

23 7. Defendant PETSMART, INC. is a business entity with ten or more employees that
24 sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of
25 aquarium gravel vacuums, including, but not limited to, Topfin Medium Gravel Vacuum; SKU:
26 5162806, that contain DEHP, for sale within the State of California, without first giving clear and
27 reasonable warning.

8. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however, Plaintiff suspects they are business entities with at least ten or more employees that at all times relevant to this complaint, authorized the manufacture, distribution, or sale of aquarium gravel vacuums, including, but not limited to, Topfin Medium Gravel Vacuum; SKU: 5162806, that contain DEHP, for sale within the State of California, without first giving clear and reasonable warning.

9. Defendants named in paragraphs 6 through 8 have at all times relevant to this complaint, authorized the manufacture, distribution, or sale of aquarium gravel vacuums, including, but not limited to, Topfin Medium Gravel Vacuum; SKU: 5162806, that contain DEHP (hereinafter “PRODUCTS”), for sale within the State of California, without first giving clear and reasonable warning.

III. JURISDICTION AND VENUE

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

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

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

IV. STATUTORY BACKGROUND

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

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

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

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

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

17. No warning must be provided concerning a listed chemical until twelve (12) months after the chemical first appears on the list. (Health & Safety Code § 25249.10(b).)

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

19. Proposition 65 defines to “threaten to violate” as “to create a condition in which there is a substantial probability that a violation will occur.” (Health & Safety Code § 25249.11(e).)

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

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

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

23. If no public prosecutors commence enforcement within sixty (60) days, then the private party may sue. (Health & Safety Code § 25249.7(d).)

V. FACTS

24. The Office of Environmental Health Hazard Assessment (“OEHHA”) is the California agency tasked (in part) with providing the regulatory and scientific framework for Proposition 65.

25. OEHHHA placed DEHP on the list of chemicals known to California to cause cancer on January 1, 1988. (27 CCR 27001(b))

1 26. OEHHA placed DEHP on the list of chemicals known to California to cause
2 reproductive toxicity on October 24, 2003. (27 CCR 27001(b))

3 27. Defendants are the manufacturers and/or distributors of the PRODUCTS for use by
4 individuals in the home and other endeavors.

5 28. On March 25, 2017, Plaintiff purchased the PRODUCTS at PetSmart, a retailer with
6 presence in California—both online and brick-and-mortar storefronts.

7 29. On April 17, 2017, Plaintiff's expert prepared a report summarizing the results of
8 analysis on the PRODUCTS, including the amount of the DEHP in the product.

9 30. Based on the levels found in analysis, Plaintiff's expert opined the use of the
10 PRODUCTS would lead to exposure to DEHP above the safe harbor levels set by the Office
11 OEHHA.

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

14 32. Pursuant to the statute and regulations referenced above, on May 8, 2017, Plaintiff
15 served the Notice of Violation on the Office of the Attorney General, Defendant, as well as all
16 required public agencies.

17 33. Plaintiff is unaware of any governmental prosecution against Defendant.

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

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

21 a. contact between the item and the skin;

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

25 c. through direct absorption of DEHP through the skin.

1 36. 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 using
3 the vacuums to clean the aquarium gravel.

4 37. At all times material to this complaint, Defendants 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 38. At all times material to this complaint, Defendants had knowledge that individuals
8 within the State of California handle the PRODUCTS, which contain DEHP.

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

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

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

15 42. 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 43. 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 44. Paragraphs 1 through 43 are re-alleged as if fully set forth herein.
27
28

1 45. 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 46. 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
8 **PRAYER FOR RELIEF**

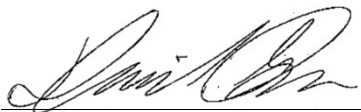
9 WHEREFORE, Plaintiffs pray that the Court:

- 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.
18

19 Respectfully submitted,

20
21 DATED: November 30, 2017

22 LAW OFFICE OF DANIEL N. GREENBAUM

23
24 
25 By: DANIEL N. GREENBAUM
26 Attorneys for Plaintiff
27 Shefa LMV, INC.
28