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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

APR 16 2018

Official Court Executive Officer/Clerk
By: Marlon Gomez, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES

10 SHEFA LMV, INC.,) Unlimited Jurisdiction **BC702370**
11)
12 Plaintiff,)
13) CASE NO.
14 vs.)
15 THE SINGING MACHINE COMPANY,) COMPLAINT FOR CIVIL PENALTY AND
16 INC.; and DOES 1 through 100, Inclusive,) INJUNCTIVE RELIEF
17) (Health & Safety Code § 25249.5 et seq.)
18) TOXIC TORT/ENVIRONMENTAL
19)

21 BY FAX

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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.

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

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

11 **II. PARTIES**

12 4. 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 5. 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 6. Defendant THE SINGING MACHINE COMPANY INC. is a business entity with ten
18 or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
19 distribution, or sale of microphone products, including, but not limited to, (SMM205) Singing
20 Machine; Unidirectional Dynamic Microphone; UPC: 047237002056, that contain DINP, for sale
21 within the State of California, without first giving clear and reasonable warning.

22 7. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
23 Plaintiff suspects they are business entities with at least ten or more employees that at all times
24 relevant to this complaint, authorized the manufacture, distribution, or sale of microphone products,
25 including, but not limited to, (SMM205) Singing Machine; Unidirectional Dynamic Microphone;
26 UPC: 047237002056 that contain DINP, for sale within the State of California, without first giving
27 clear and reasonable warning.

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

3 17. 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 18. Proposition 65 defines to “threaten to violate” as “to create a condition in which there
6 is a substantial probability that a violation will occur.” (Health & Safety Code § 25249.11(e).)

7 19. 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 20. 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 21. 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 22. If no public prosecutors commence enforcement within sixty (60) days, then the
16 private party may sue. (Health & Safety Code § 25249.7(d).)

17 **V. FACTS**

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

20 24. OEHHA placed DINP on the list of chemicals known to California to cause cancer on
21 December 20, 2013. (27 CCR 27001(b))

22 25. Defendant The Singing Machine Company, Inc. is the manufacturer and distributor(s)
23 of the PRODUCTS for use by individuals in the home and other endeavors.

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

26 27. On March 28, 2017, Plaintiff purchased the PRODUCTS.
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1 28. On April 17, 2017, Plaintiff's expert prepared a report summarizing the results of
2 analysis on the PRODUCTS, including the amount of the DINP in the product.

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

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

8 31. Pursuant to the statute and regulations referenced above, on May 08, 2017, Plaintiff
9 served the Notice of Violation on the Office of the Attorney General, Defendant, as well as all
10 required public agencies.

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

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

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

15 a. contact between the item and the skin;

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

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

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

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

25 37. At all times material to this complaint, Defendants have had knowledge that
26 individuals within the State of California handle the PRODUCTS, which contain DINP.
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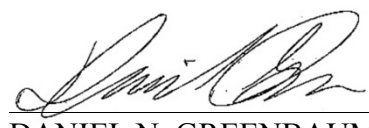
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2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from exposing persons within the State of California to Listed Chemicals caused 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: April 5, 2018

LAW OFFICE OF DANIEL N. GREENBAUM



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