

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

5 Attorney for Shefa LMV, INC.
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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 14 2018

Sherri R. Carter, Executive Officer/Clerk
By Nancy Alvarez, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES
9

10 SHEFA LMV, INC.,) Unlimited Jurisdiction **BC 7 0 6 0 2 6**
11))
12 Plaintiff,))
13 vs.))
14 IML BRAND HOLDING LLC; ISAAC) COMPLAINT FOR CIVIL PENALTY AND
MORRIS LIMITED; HOT TOPIC, INC.; and) INJUNCTIVE RELIEF
15 DOES 1 through 100, Inclusive,)
16 Defendants,) (Health & Safety Code § 25249.5 et seq.)
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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 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 IML BRAND HOLDING LLC. is a business entity with ten or more
19 employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
20 distribution, or sale of plastic earbud products, including, but not limited to, Pusheen® Earbuds, SKU
21 10743682, that contain DINP, for sale within the State of California, without first giving clear and
22 reasonable warning.

23 7. Defendant ISAAC MORRIS LIMITED is a business entity with ten or more
24 employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
25 distribution, or sale of plastic earbud products, including, but not limited to, Pusheen® Earbuds, SKU
26 10743682, that contain DINP, for sale within the State of California, without first giving clear and
27 reasonable warning.

1 15. The warning requirement of Proposition 65 is contained in Health & Safety Code §
2 25249.6, which provides:

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

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

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

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

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

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

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

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

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

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

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V. FACTS

25. 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.

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

27. Defendants IML BRAND HOLDING LLC and ISAAC MORRIS LIMITED are the manufacturer(s) and distributor(s) of the PRODUCTS for use by individuals in the home and other endeavors.

28. The PRODUCTS are sold through various retailers, including but not limited to Defendant HOT TOPIC, INC., located in California for use by citizens of the State of California.

29. On April 30, 2017, Plaintiff purchased the PRODUCT from a HOT TOPIC, INC. retail location in California.

30. On May 17, 2017, Plaintiff’s expert prepared a report summarizing the results of analysis on the PRODUCTS, including the amount of the DINP in the product.

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

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

33. Pursuant to the statute and regulations referenced above, on May 26, 2017 Plaintiff served the Notice of Violation on the Office of the Attorney General, Defendant, as well as all required public agencies.

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

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

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

- a. contact between the item and the skin;

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

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

5 37. Such individuals are thereby exposed to the DINP that is present on or in the
6 PRODUCTS during the intended and reasonably foreseeable use of the PRODUCTS.

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

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

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

14 41. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
15 the sale of the PRODUCTS, thereby exposing consumers to DINP.

16 42. At all times material to this complaint, therefore, Defendants have knowingly and
17 intentionally exposed individuals within the State of California to DINP.

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

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

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VI. FIRST CAUSE OF ACTION

(Against All Defendants for Violation of Proposition 65)

45. Paragraphs 1 through 44 are re-alleged as if fully set forth herein.

46. By committing the acts alleged above, Defendants have, in the course of doing business, knowingly and intentionally exposed individuals in California to chemicals known to the State of California to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individuals, within the meaning of Health & Safety Code § 25249.6.

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

PRAYER FOR RELIEF

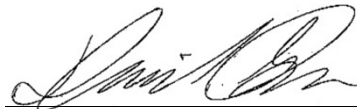
WHEREFORE, Plaintiffs pray that the Court:

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.

DATED: May 3, 2018

Respectfully submitted,

LAW OFFICE OF DANIEL N. GREENBAUM



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