

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 SUMMIT CE GROUP is a business entity with ten or more employees that
18 sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of
19 headphones, including, but not limited to, CVH-814-BLU Coby® Alto Stereo Headphones; ID: 1259
20 – 032089110; UPC: 812180023546, that contain DINP, for sale within the State of California,
21 without first giving clear and reasonable warning.

22 7. Defendant SUMMIT ELECTRONICS LLC is a business entity with ten or more
23 employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
24 distribution, or sale of headphones, including, but not limited to, CVH-814-BLU Coby® Alto Stereo
25 Headphones; ID: 1259 – 032089110; UPC: 812180023546, that contain DINP, for sale within the
26 State of California, without first giving clear and reasonable warning.

1 reproductive toxicity without first giving clear and reasonable warning to
2 such individual, except as provided in Section 25249.10.

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

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

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

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

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

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

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

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

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

24 **V. FACTS**

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

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

1 26. Defendants SUMMIT CE GROUP and SUMMIT ELECTRONICS LLC Are the
2 manufacturer(s) and distributor(s) of the PRODUCTS for use by individuals in the home and other
3 endeavors.

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

6 28. On April 02, 2017, Plaintiff purchased the PRODUCT from a retail location in
7 California.

8 29. On May 5, 2017, Plaintiff's expert prepared a report summarizing the results of
9 analysis on the PRODUCTS, including the amount of the DINP in the product.

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

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

15 32. Pursuant to the statute and regulations referenced above, on May 26, 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 33. Plaintiff is unaware of any governmental prosecution against Defendant.

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

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

22 a. contact between the item and the skin;

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

26 c. through direct absorption of DINP through the skin.
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1 State of California to cause cancer or reproductive toxicity without first giving clear and reasonable
2 warning to such individuals, within the meaning of Health & Safety Code § 25249.6.

3 46. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
4 \$2,500 per day for each violation, as well as other remedies.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray that the Court:

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

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19 DATED: April 24, 2018

20 LAW OFFICE OF DANIEL N. GREENBAUM

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