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ALAMEDA COUNTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SHEFA LMV, INC., Plaintiff, vs. BETTY DAIN CREATIONS LLC; and DOES 1 through 100, Inclusive, Defendants.	Unlimited Jurisdiction CASE NO. RG18920287 COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF (Health & Safety Code § 25249.5 et seq.) TOXIC TORT/ENVIRONMENTAL

BY FAX

Plaintiff, Shefa LMV, INC., hereby alleges:

I. PRELIMINARY STATEMENT

1. This complaint seeks to remedy the failure of Defendant to warn persons of exposure to Diisononyl Phthalate ("DINP"), a chemical known to the State of California to cause cancer and/or reproductive harm.

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

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

II. PARTIES

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

5. Health & Safety Code § 25249.7(d) provides that actions to enforce Proposition 65 may be brought by "any person in the public interest."

6. Defendant BETTY DAIN CREATIONS LLC is a business entity with ten or more employees that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of plastic makeup bag products, including, but not limited to, Black & White Makeup Bag, Artist's Choice; #: 29601 – 155 UPC:013534112460, that contain DINP, for sale within the State of California, without first giving clear and reasonable warning.

7. 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 plastic makeup bag products, including, but not limited to, Black & White Makeup Bag, Artist's Choice; #: 29601 – 155

UPC:013534112460, that contain DINP, for sale within the State of California, without first giving clear and reasonable warning.

8. Defendants named in paragraphs 6 and 7 have at all times relevant to this complaint, authorized the manufacture, distribution, or sale of plastic makeup bag products, including, but not limited to, Black & White Makeup Bag, Artist's Choice; #: 29601 – 155 UPC:013534112460, that contain DINP (hereinafter "PRODUCT"), for sale within the State of California, without first giving clear and reasonable warning.

III. JURISDICTION AND VENUE

9. 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.

10. This Court has jurisdiction over Defendant, 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 PRODUCT in California, to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

11. Venue is proper in this Court because the cause, or part thereof, arises in Alameda County because Defendant's PRODUCT is sold and consumed in this county.

IV. STATUTORY BACKGROUND

12. 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.

13. 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.

14. 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))

15. 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.)

16. 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).)

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

18. 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).)

19. 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).)

20. 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).)

21. 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.

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

V. FACTS

23. 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.

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

25. Defendant BETTY DAIN CREATIONS LLC is the manufacturer(s) and distributor(s) of the PRODUCT for use by individuals in the home and other endeavors.

26. The PRODUCT was sold through various retailers, located in California for use by citizens of the State of California.

27. After the PRODUCT was purchased, Plaintiff's expert prepared a report summarizing the results of analysis on the PRODUCT, including the amount of the DINP in the PRODUCT.

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

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

30. Pursuant to the statute and regulations referenced above, on October 4, 2017 Plaintiff served the Sixty Day Notice of Violation on the Office of the Attorney General, Defendant, as well as all required public agencies.

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

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

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

a. contact between the item and the skin;

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

c. through direct absorption of DINP through the skin.

34. Such individuals are thereby exposed to the DINP that is present on or in the PRODUCT during the intended and reasonably foreseeable use of the PRODUCT.

35. At all times material to this complaint, Defendant has had knowledge that the PRODUCT contains DINP and that an individual's skin may contact DINP through the intended and reasonably foreseeable use of the PRODUCT.

36. At all times material to this complaint, Defendant has had knowledge that individuals within the State of California handle the PRODUCT, which contains DINP.

37. At all times material to this complaint, Defendant knew that the PRODUCT was sold throughout the State of California in large numbers, and Defendant profited from such sales.

38. Notwithstanding this knowledge, Defendant intentionally authorized and reauthorized the sale of a PRODUCT, thereby exposing consumers to DINP.

39. At all times material to this complaint, therefore, Defendant has knowingly and intentionally exposed individuals within the State of California to DINP.

40. The exposure is knowing and intentional because it is the result of the Defendants' deliberate act of authorizing the sale of a product known to contain DINP, in a manner whereby this product was, and would inevitably be, sold to consumers within the state of California, and with the knowledge that the intended use of this PRODUCT would result in exposures to DINP by individuals within the State of California.

41. Defendant has failed to provide clear and reasonable warnings that the use of the PRODUCT 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)

42. Paragraphs 1 through 41 are re-alleged as if fully set forth herein.

43. By committing the acts alleged above, Defendant has, 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.

44. Said violations render Defendant 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 product without providing clear and reasonable warnings, as Plaintiffs shall specify in further application to the court;

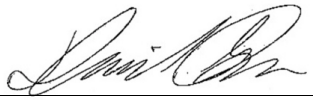
3. Award Plaintiffs their costs of suit;

4. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: September 10, 2018

LAW OFFICE OF DANIEL N. GREENBAUM



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