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ENDORSED
FILED
ALAMEDA COUNTY

JUN 07 2019

CLERK OF THE SUPERIOR COURT

By _____ Deputy

TANIA PIERCE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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EX

9 SHEFA LMV, INC.,

10 Plaintiff,

11 vs.

12 MICHAELS STORES, INC.; and DOES 1
13 through 100, Inclusive,

14 Defendants.

Unlimited Jurisdiction

CASE NO. *Rg18907972*

COMPLAINT FOR CIVIL PENALTY AND
INJUNCTIVE RELIEF

(Health & Safety Code § 25249.5 et seq.)

TOXIC TORT/ENVIRONMENTAL

1 Plaintiff, Shefa LMV, INC., hereby alleges:

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3 **I. PRELIMINARY STATEMENT**

4 1. This complaint seeks to remedy the failure of Defendants to warn persons of exposure
5 to Di[2-Ethylhexyl] Phthalate (“DEHP”), a chemical known to the State of California to cause cancer
6 and/or reproductive harm.

7 2. DEHP is hereinafter referred to as the “Listed Chemical.”

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

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 MICHAELS STORES, INC. 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 jewelry organizer products manufactured by or for Defendant, imported
21 by or for Defendant, or distributed or sold by or for Defendant, including, but not limited to, Bead
22 Landing™ Storage Jewelry Organizer, #: 273399 #: 93056-2016-09; UPC: 886946262630, and
23 plastic keychain products manufactured by or for Defendant, imported by or for Defendant, or
24 distributed or sold by or for Defendant, including, but not limited to Bead Landing™ Keychain With
25 Brown, Tassels; No. 511214; UPC: 886946806605 that contain DEHP, for sale within the State of
26 California, without first giving clear and reasonable warning.

27 7. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
28 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 jewelry organizer products manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for Defendant, including, but not limited to, Bead Landing™ Storage Jewelry Organizer, #: 273399 #: 93056-2016-09; UPC: 886946262630, and plastic keychain products manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for Defendant, including, but not limited to Bead Landing™ Keychain With Brown, Tassels; No. 511214; UPC: 886946806605 that contain DEHP, 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 hereto authorized the manufacture, distribution, or sale of one or more of the plastic jewelry organizer products manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for Defendant, including, but not limited to, Bead Landing™ Storage Jewelry Organizer, #: 273399 #: 93056-2016-09; UPC: 886946262630, and plastic keychain products manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for Defendant, including, but not limited to Bead Landing™ Keychain With Brown, Tassels; No. 511214; UPC: 886946806605 that contain DEHP (hereinafter “PRODUCTS”), 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 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.

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

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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 need be given concerning a listed chemical until one year 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. To “threaten to violate” is defined to mean “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 days, then the private party may sue. (Health & Safety Code § 25249.7(d).)

V. FACTS

23. DEHP was placed on the Governor's list of chemicals known to the State to cause cancer on January 1, 1988. (27 CCR 27001(b))

24. DEHP was placed on the Governor's list of chemicals known to the State to cause reproductive toxicity on October 24, 2003. (Id.)

25. Defendants are the manufacturer, distributor or retailer of the PRODUCTS for use by individuals in the home and other endeavors.

26. The PRODUCTS was sold through various retailers, including but not limited to Defendant Michaels Stores, Inc. located in California for use by citizens of the State of California

27. On July 03, 2017, Plaintiff purchased the PRODUCTS.

28. On August 11, 2017, Plaintiff's expert prepared two reports summarizing the results of the PRODUCTS' analysis, including the amount of the Listed Chemical in the PRODUCTS.

29. Based on the levels reported in the analysis, Plaintiff's expert opined that use of the PRODUCTS would lead to exposure to the Listed Chemical above the safe harbor levels set by the Office of Environment Health Hazard Assessment (OEHHA).

30. Based on that report and opinion, Plaintiff and its counsel prepared Proposition 65 compliant 60 Day Notices of Violation.

31. Pursuant to the statute and regulations referenced above, on or about October 04, 2017, Plaintiff served the 60-Day Notices of Violation on the Office of the Attorney General, Defendant Michaels Stores, Inc., as well as all required public agencies.

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

33. At least sixty days have elapsed since service of the Notices of Violation.

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

a. contact between the PRODUCTS and the skin;

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

4 c. through absorption of the Listed Chemical through the skin.

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

7 36. At all times material to this complaint, Defendants have had knowledge that the
8 PRODUCTS contain the Listed Chemical and that an individual may contact the Listed Chemical
9 through the intended and reasonably foreseeable use of the PRODUCTS.

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

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

15 39. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
16 the sale of the PRODUCTS, thereby exposing consumers to the Listed Chemical.

17 40. At all times material to this complaint, therefore, Defendants have knowingly and
18 intentionally exposed individuals within the State of California to the Listed Chemical.

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

24 42. Defendants have failed to provide clear and reasonable warnings that the use of the
25 PRODUCTS in question in California results in exposure to the Listed Chemical, chemicals known
26 to the State of California to cause cancer, birth defects, and other reproductive harm, and no such
27 warning was 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)

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

44. 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.

45. 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 Chemical 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 25, 2018

LAW OFFICE OF DANIEL N. GREENBAUM



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