

Electronically FILED by Superior Court of California, County of Los Angeles on 03/18/2019 03:00 PM Sherri R. Carter, Executive Officer/Clerk of Court, by K. Vargas, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SHEFA LMV, INC.,)	Unlimited Jurisdiction
Plaintiff,)	
vs.)	CASE NO.
STEVE MADDEN, LTD.,)	COMPLAINT FOR CIVIL PENALTY AND INJUNCTIVE RELIEF
Defendants.)	(Health & Safety Code § 25249.5 et seq.)
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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. This complaint also seeks to remedy the failure of Defendants to warn persons of
8 exposure to Diisononyl Phthalate (“DINP”) a chemical known to the State of California to cause
9 cancer.

10 3. DEHP, and DINP are hereinafter referred to as the “Listed Chemicals.”

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

15 **II. PARTIES**

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

19 6. Health & Safety Code § 25249.7(d) provides that actions to enforce Proposition 65
20 may be brought by “any person in the public interest.”

21 7. Defendant STEVE MADDEN LTD is a business entity with ten or more employees
22 that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale
23 of the products listed in the chart below (hereinafter the “PRODUCTS”), which contain one or more
24 of the Listed Chemicals for sale within the State of California without first giving clear and
25 reasonable warning:

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PRODUCTS

Product Type	Product Name / Identifier	Listed Chemical
Plastic cable products	GRL PWR Power Up Charging Set; UPC: 889487283317; TSM-0223	DINP
Plastic cable products	Phone Charging Crossbody; UPC889487283263 TSM-0220	DINP
Plastic cable products	Luv Betsey Universal Rechargeable Power Bank; ID: 400163830276	DEHP

8. Defendant named in paragraph 7 has at all times relevant hereto authorized the manufacture, distribution, or sale of one or more of the PRODUCTS defined in ¶ 7 that contain one or more of the Listed Chemicals, 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 Los Angeles County because Defendant’s products are 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.

1 13. 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.

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

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

12 16. No warning need be given concerning a listed chemical until one year after the
13 chemical first appears on the list. (Health & Safety Code § 25249.10(b).)

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

16 18. To “threaten to violate” is defined to mean “to create a condition in which there is a
17 substantial probability that a violation will occur.” (Health & Safety Code § 25249.11(e).)

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

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

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

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

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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. DINP was placed on the Governor’s list of chemicals known to the State to cause cancer on December 20, 2013. (Id.)

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

27. The PRODUCTS are sold through various retailer locations in California, for use by citizens of the State of California.

28. On October 29, 2017 and November 20, 2017, Plaintiff purchased the PRODUCTS.

29. On November 15, 2017 and December 7, 2017, Plaintiff’s expert prepared a series of reports summarizing the results of the PRODUCTS’ analysis, including the amount of the Listed Chemicals in the PRODUCTS.

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

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

32. Pursuant to the statute and regulations referenced above, beginning on or about December 21, 2017 Plaintiff served the 60-Day Notices of Violation on the Office of the Attorney General, Defendant’s vendors, as well as all required public agencies.

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

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

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

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- a. contact between the PRODUCTS and the skin;
- b. transfer of the Listed Chemicals from the skin to the mouth, both by transfer of the Listed Chemicals directly from the hand to mouth, and indirectly by transfer of the Listed Chemicals from the skin to objects that are placed in the mouth, such as food; and
- c. through absorption of the Listed Chemicals through the skin.

36. Such individuals are thereby exposed to the Listed Chemicals that are present on or in the PRODUCTS during the intended and reasonably foreseeable use of the PRODUCTS.

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

38. At all times material to this complaint, Defendants have had knowledge that individuals within the State of California handle the PRODUCTS, which contain the Listed Chemicals.

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

40. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized the sale of the PRODUCTS, thereby exposing consumers to the Listed Chemicals.

41. At all times material to this complaint, therefore, Defendants have knowingly and intentionally exposed individuals within the State of California to the Listed Chemicals.

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

43. Defendants have failed to provide clear and reasonable warnings that the use of the PRODUCTS in question in California results in exposure to the Listed Chemicals, chemicals known

1 to the State of California to cause cancer, birth defects, and other reproductive harm, and no such
2 warning was provided to those individuals by any other person.

3 **VI. FIRST CAUSE OF ACTION**

4 **(Against All Defendants for Violation of Proposition 65)**

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

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

10 46. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
11 \$2,500 per day for each violation, as well as other remedies.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray that the Court:

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

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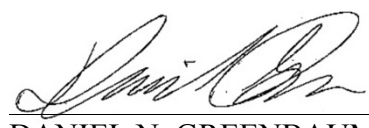
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Respectfully submitted,

DATED: March 18, 2019

LAW OFFICE OF DANIEL N. GREENBAUM



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