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ENDORSED
FILED
ALAMEDA COUNTY

AUG 30 2018

SUE PESKO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SHEFA LMV, INC.,

Plaintiff,

vs.

NVMK SALES, INC.; NANDOG PET
GEAR; and DOES 1 through 100, Inclusive,

Defendant.

) Unlimited Jurisdiction

) CASE NO.

) COMPLAINT FOR CIVIL PENALTY AND
) INJUNCTIVE RELIEF

) (Health & Safety Code § 25249.5 et seq.)

) TOXIC TORT/ENVIRONMENTAL

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

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

11 **II. PARTIES**

12 3. 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 4. 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 5. Defendant NVMK SALES, INC. 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 a
19 pet waste bag products manufactured by or for Defendant, imported by or for Defendant, or
20 distributed or sold by or for Defendant, including, but not limited to Nandog™ Pet Gear 320 Eco-
21 Friendly; Pet Waste Bags; WBR-8716-HPU; UPC: 843646022841, that contain DEHP, for sale
22 within the State of California, without first giving clear and reasonable warning.

23 6. Defendant NANDOG PET GEAR is a business entity with ten or more employees that
24 sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of a
25 pet waste bag products manufactured by or for Defendant, imported by or for Defendant, or
26 distributed or sold by or for Defendant, including, but not limited to Nandog™ Pet Gear 320 Eco-
27 Friendly; Pet Waste Bags; WBR-8716-HPU; UPC: 843646022841, that contain DEHP, for sale
28 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 pet waste bag products manufactured by or for Defendants, imported by or for Defendants, or distributed or sold by or for Defendants, including, but not limited to Nandog™ Pet Gear 320 Eco-Friendly; Pet Waste Bags; WBR-8716-HPU; UPC: 843646022841, that contain DEHP, for sale within the State of California, without first giving clear and reasonable warning.

8. Defendants named in paragraphs 5 through 7 have at all times relevant to this complaint, authorized the manufacture, distribution, or sale of pet waste bag products manufactured by or for Defendants, imported by or for Defendants, or distributed or sold by or for Defendants, including, but not limited to Nandog™ Pet Gear 320 Eco-Friendly; Pet Waste Bags; WBR-8716-HPU; UPC: 843646022841, that contain DEHP (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 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 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 Defendants 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.

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
 such individual, except as provided in Section 25249.10.

6 14. 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 15. 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 16. No warning need be given concerning a listed chemical until one year after the
12 chemical first appears on the list. (Health & Safety Code § 25249.10(b).)

13 17. 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 18. To “threaten to violate” is defined to mean “to create a condition in which there is a
16 substantial probability that a violation will occur.” (Health & Safety Code § 25249.11(e).)

17 19. 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 20. 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 21. 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 22. If no public prosecutors commence enforcement within sixty days, then the private
26 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. (27 CCR 27001(b))

25. Defendants NVMK SALES, INC. and NANDOG PET GEAR are the manufacturers 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. On November 15, 2017, Plaintiff's expert prepared a report summarizing the results of analysis on the PRODUCT, including the amount of the DEHP in the product.

28. Based on the levels, Plaintiff's expert opined that use of the PRODUCT would lead to exposure to DEHP 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 December 21, 2017, Plaintiff served the Sixty Day Notice of Violation on the Office of the Attorney General, Defendants, as well as all required public agencies.

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

32. At least sixty days have elapsed since service of the Sixty Day Notice of Violation.

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

a. contact between the item and the skin;

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

1 c. through absorption of DEHP through the skin.

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

4 35. At all times material to this complaint, Defendants have had knowledge that the
5 PRODUCT contain DEHP and that an individual's skin may contact DEHP through the intended and
6 reasonably foreseeable use of the PRODUCT.

7 36. At all times material to this complaint, Defendants have had knowledge that
8 individuals within the State of California handle the PRODUCT, which contains DEHP.

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

11 38. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
12 the sale of the PRODUCT, thereby exposing consumers to DEHP.

13 39. At all times material to this complaint, therefore, Defendants have knowingly and
14 intentionally exposed individuals within the State of California to DEHP.

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

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

24 **VI. FIRST CAUSE OF ACTION**

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

26 42. Paragraphs 1 through 41 are re-alleged as if fully set forth herein.
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43. 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.

44. 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 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: August 29, 2018

LAW OFFICE OF DANIEL N. GREENBAUM

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