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6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES
9

10 SHEFA LMV, INC.,) Unlimited Jurisdiction
11)
Plaintiff,)
12) CASE NO.
vs.)
13)
PRO PERFORMANCE SPORTS LLC,) COMPLAINT FOR CIVIL PENALTY AND
14) INJUNCTIVE RELIEF
Defendants.)
15) (Health & Safety Code § 25249.5 et seq.)
16) TOXIC TORT/ENVIRONMENTAL
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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 Di[2-Ethylhexyl] Phthalate (“DEHP”), a chemical known to the State of California to cause cancer
5 and/or reproductive harm.

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

10 **II. PARTIES**

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

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

16 5. Defendant PRO PERFORMANCE SPORTS LLC is a business entity with ten or more
17 employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
18 distribution, or sale of plastic jump rope products manufactured by or for Defendant, imported by or
19 for Defendant, or distributed or sold by or for Defendant, including, but not limited to, SKLZ Jump
20 Rope Conditioning Trainer; UPC: 849102018588, that contain DEHP, for sale within the State of
21 California, without first giving clear and reasonable warning.

22 6. Defendants named in paragraphs 5 have at all times relevant to this complaint,
23 authorized the manufacture, distribution, or sale of plastic jump rope products, including, but not
24 limited to, SKLZ Jump Rope Conditioning Trainer; UPC: 849102018588, that contain DEHP
25 (hereinafter “PRODUCTS”), for sale within the State of California, without first giving clear and
26 reasonable warning.

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III. JURISDICTION AND VENUE

7. 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.

8. 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.

9. 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

10. 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.

11. 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.

12. 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))

13. 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.)

14. 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).)

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

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

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

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

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

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

13 **V. FACTS**

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

16 22. DEHP was placed on the Governor’s list of chemicals known to the State to cause
17 reproductive toxicity on October 24, 2003. (27 CCR 27001(b))

18 23. Defendant Pro Performance Sports LLC is the manufacturer of the PRODUCTS for
19 use by individuals in the home and other endeavors.

20 24. The PRODUCTS are sold through various retailers, including but not limited to Dicks
21 Sporting Goods, Inc., located in California for use by citizens of the State of California.

22 25. On May 14, 2017, Plaintiff’s expert prepared a report summarizing the results of
23 analysis on the PRODUCTS, including the amount of the DEHP in the product.

24 26. Based on the levels, Plaintiff’s expert opined that use of the PRODUCTS would lead
25 to exposure to DEHP above the safe harbor levels set by the Office of Environment Health Hazard
26 Assessment (OEHHA).

1 27. Based on that report and opinion, Plaintiff and its counsel prepared a Notice of
2 Violation.

3 28. Pursuant to the statute and regulations referenced above, on May 31, 2017, Plaintiff
4 served the Notices of Violation on the Office of the Attorney General, Defendant, as well as all
5 required public agencies.

6 29. Plaintiff is unaware of any governmental prosecution against Defendant.

7 30. At least sixty days have elapsed since service of the Notice of Violation.

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

10 a. contact between the item and the skin;

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

14 c. through absorption of DEHP through the skin.

15 32. Such individuals are thereby exposed to the DEHP that is present on or in the
16 PRODUCTS during the intended and reasonably foreseeable use of the PRODUCTS.

17 33. At all times material to this complaint, Defendants have had knowledge that the
18 PRODUCTS contain DEHP and that an individual's skin may contact DEHP through the intended
19 and reasonably foreseeable use of the PRODUCTS.

20 34. At all times material to this complaint, Defendants have had knowledge that
21 individuals within the State of California handle the PRODUCTS, which contain DEHP.

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

24 36. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
25 the sale of the PRODUCTS, thereby exposing consumers to DEHP.

26 37. At all times material to this complaint, therefore, Defendants have knowingly and
27 intentionally exposed individuals within the State of California to DEHP.

1 38. The exposure is knowing and intentional because it is the result of the Defendant's
2 deliberate act of authorizing the sale of products known to contain DEHP, in a manner whereby these
3 products were, and would inevitably be, sold to consumers within the state of California, and with the
4 knowledge that the intended use of this PRODUCTS would result in exposures to DEHP by
5 individuals within the State of California.

6 39. Defendants have failed to provide clear and reasonable warnings that the use of the
7 PRODUCTS in question in California results in exposure to a chemical known to the State of
8 California to cause cancer, birth defects, and other reproductive harm, and no such warning was
9 provided to those individuals by any other person.

10 **VI. FIRST CAUSE OF ACTION**

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

12 40. Paragraphs 1 through 39 are re-alleged as if fully set forth herein.

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

17 42. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
18 \$2,500 per day for each violation, as well as other remedies.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs pray that the Court:

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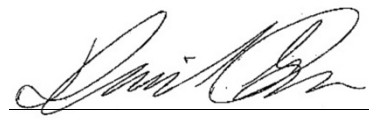
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- 3. Award Plaintiffs their costs of suit;
- 4. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: January 22, 2019

LAW OFFICE OF DANIEL N. GREENBAUM



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