

1 Daniel N. Greenbaum, Esq. (SBN 268104)
LAW OFFICE OF DANIEL N. GREENBAUM
2 The Hathaway Building
7120 Hayvenhurst Ave., Suite 320
3 Van Nuys CA 91406
Telephone: (818) 809-2199
4 Facsimile: (424) 243-7689
Email: dgreenbaum@greenbaumlawfirm.com
5 Attorney for Shefa LMV, INC.
6

FILED
ALAMEDA COUNTY
SEP 11 2019
CLERK OF THE SUPERIOR COURT
BY TANIA PIERCE

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9

10 SHEFA LMV, INC.,

11 Plaintiff,

12 vs.

13 PACIFIC WORLD CORPORATION; and
14 DOES 1 through 100, Inclusive,

15 Defendant.
16
17
18

) Unlimited Jurisdiction

) CASE NO. R618920093

) COMPLAINT FOR CIVIL PENALTY AND
INJUNCTIVE RELIEF

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

) TOXIC TORT/ENVIRONMENTAL
19
20
21
22
23
24
25
26
27
28

BY FAX

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

2 **I. PRELIMINARY STATEMENT**

3 1. This complaint seeks to remedy the failure of Defendant 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 PACIFIC WORLD CORPORATION 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 eyelash curler products manufactured by or for Defendant, imported by or for
19 Defendant, or distributed or sold by or for Defendant, including, but not limited to, Premium Eyelash
20 Curler; UPC 840986050343, that contain DEHP, for sale within the State of California, without first
21 giving clear and reasonable warning.

22 6. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
23 Plaintiff suspects they are business entities with at least ten or more employees that at all times
24 relevant to this complaint, authorized the manufacture, distribution, or sale of eyelash curler products
25 manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for
26 Defendant, including, but not limited to, Premium Eyelash Curler; UPC 840986050343, that contain
27 DEHP, for sale within the State of California, without first giving clear and reasonable warning.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. 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.)

15. 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).)

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

17. 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).)

18. 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).)

19. 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).)

20. 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.

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

V. FACTS

22. 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))

23. 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))

24. Defendant PACIFIC WORLD CORPORATION is the manufacturer of the PRODUCT for use by individuals in the home and other endeavors.

25. The PRODUCT is sold through various retailers located in California for use by citizens of the State of California.

1 26. On February 16, 2018, Plaintiff's expert prepared a report summarizing the results of
2 analysis on the PRODUCT, including the amount of the DEHP in the product.

3 27. Based on the levels, Plaintiff's expert opined that use of the PRODUCT would lead to
4 exposure to DEHP above the safe harbor levels set by the Office of Environment Health Hazard
5 Assessment (OEHHA).

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

8 29. Pursuant to the statute and regulations referenced above, May 31, 2018, Plaintiff
9 served the Sixty Day Notice of Violation on the Office of the Attorney General, Defendant, as well as
10 all required public agencies.

11 30. Plaintiff is unaware of any governmental prosecution against Defendant.

12 31. At least sixty days have elapsed since service of the Notice of Violation.

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

15 a. contact between the item and the skin;

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

19 c. through absorption of DEHP through the skin.

20 33. Such individuals are thereby exposed to the DEHP that is present on or in the
21 PRODUCT during the intended and reasonably foreseeable use of the PRODUCT.

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

25 35. At all times material to this complaint, Defendant has had knowledge that individuals
26 within the State of California handle the PRODUCT, which contain DEHP.

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

3 37. Notwithstanding this knowledge, Defendant intentionally authorized and reauthorized
4 the sale of the PRODUCT, thereby exposing consumers to DEHP.

5 38. At all times material to this complaint, therefore, Defendant has knowingly and
6 intentionally exposed individuals within the State of California to DEHP.

7 39. The exposure is knowing and intentional because it is the result of the Defendant's
8 deliberate act of authorizing the sale of product known to contain DEHP, in a manner whereby this
9 product was, and would inevitably be, sold to consumers within the state of California, and with the
10 knowledge that the intended use of this PRODUCT would result in exposures to DEHP by
11 individuals within the State of California.

12 40. Defendant has failed to provide clear and reasonable warnings that the use of the
13 PRODUCT in question in California results in exposure to a chemical known to the State of
14 California to cause cancer, birth defects, and other reproductive harm, and no such warning was
15 provided to those individuals by any other person.

16 **VI. FIRST CAUSE OF ACTION**

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

18 41. Paragraphs 1 through 40 are re-alleged as if fully set forth herein.

19 42. By committing the acts alleged above, Defendant has, in the course of doing business,
20 knowingly and intentionally exposed individuals in California to chemicals known to the State of
21 California to cause cancer or reproductive toxicity without first giving clear and reasonable warning
22 to such individuals, within the meaning of Health & Safety Code § 25249.6.

23 43. Said violations render Defendant liable to Plaintiffs for civil penalties not to exceed
24 \$2,500 per day for each violation, as well as other remedies.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs pray that the Court:

27 1. Pursuant to the First Causes of Action, grant civil penalties according to proof;
28

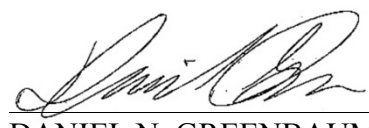
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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



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