

Attorney for Shefa LMV, INC.

(Health & Safety Code § 25249.6 et seq.)

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
5 cancer 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. Shefa LMV, Inc. (hereinafter “Plaintiff”) is a non-profit public benefit corporation
12 formed pursuant to the laws of the State of California, made up of California citizens, represented by
13 and through its counsel of record, 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. MANHATTAN KIDS LLC (hereinafter “Defendant”), is a business entity with ten or
17 more employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
18 distribution, or sale of baby positioners in resealable plastic bag products manufactured by or for
19 Defendant, imported by or for Defendant, or distributed or sold by or for Defendant, including, but
20 not limited to, Elephant Baby Positioner; ID: 400183679732, that contain DEHP, for sale within the
21 State of California, without first 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 baby positioners in
25 resealable plastic 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, Elephant Baby Positioner; ID:
27 400183679732, that contain DEHP, for sale within the State of California, without first giving clear
28

1 and reasonable warning.

2 7. Defendants named in paragraphs 5 through 6 have at all times relevant to this
3 complaint, authorized the manufacture, distribution, or sale of baby positioners in resealable plastic
4 bag products manufactured by or for Defendant, imported by or for Defendant, or distributed or sold
5 by or for Defendant, including, but not limited to, Elephant Baby Positioner; ID: 400183679732, that
6 contain DEHP (hereinafter the “PRODUCTS”), for sale within the State of California, without first
7 providing a clear and reasonable warning.

8 **III. JURISDICTION AND VENUE**

9 8. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
10 because this case is a cause not given by statute to other trial courts.

11 9. This Court has jurisdiction over Defendants, because they are business entities that do
12 sufficient business, have sufficient minimum contacts in California, or otherwise intentionally avail
13 themselves of the California market, through the sale, marketing, and use of its products in
14 California, to render the exercise of jurisdiction over it by the California courts consistent with
15 traditional notions of fair play and substantial justice.

16 10. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles
17 County because Defendant’s products are sold and consumed in this county.

18 **IV. STATUTORY BACKGROUND**

19 11. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
20 passed as “Proposition 65” by a vote of the people in November of 1986.

21 12. The warning requirement of Proposition 65 is contained in Health & Safety Code §
22 25249.6, which provides:

23
24 No person in the course of doing business shall knowingly and intentionally
25 expose any individual to a chemical known to the state to cause cancer or
26 reproductive toxicity without first giving clear and reasonable warning to
27 such individual, except as provided in Section 25249.10.
28

13. 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))

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))

1 24. Defendant is the manufacturer of the PRODUCTS for use by individuals in the home
2 and other endeavors.

3 25. The PRODUCTS are sold through various retailers, including but not limited to Ross
4 Stores, Inc., located in California for use by citizens of the State of California.

5 26. On March 23, 2019, Plaintiff's expert prepared a report summarizing the results of
6 analysis on the PRODUCTS, including the amount of the DEHP in the product.

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

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

12 29. Pursuant to the statute and regulations referenced above, on April 4, 2019, Plaintiff
13 served the Notice of Violation on the Office of the Attorney General, Defendant, as well as all
14 required public agencies.

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

16 31. At least sixty (60) days have elapsed since service of the Notice of Violation.

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

19 a. contact between the item and the skin;

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

23 c. absorption of DEHP through the skin.

24 33. Such individuals are thereby exposed to the DEHP present on or in the PRODUCTS
25 during the intended and reasonably foreseeable use of the PRODUCTS.

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

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

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

8 37. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
9 the sale of the PRODUCTS, thereby exposing consumers to DEHP.

10 38. At all times material to this complaint, therefore, Defendants have knowingly and
11 intentionally exposed individuals within the State of California to DEHP.

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

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

21 **VI. FIRST CAUSE OF ACTION**

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

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

24 42. By committing the acts alleged above, Defendants have, in the course of doing
25 business, knowingly and intentionally exposed individuals in California to chemicals known to the
26 State of California to cause cancer or reproductive toxicity without first giving clear and reasonable
27 warning to such individuals, within the meaning of Health & Safety Code § 25249.6.
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43. 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 products without providing clear and reasonable warnings, as Plaintiffs shall specify in further application to the court;
3. Award Plaintiff the costs of suit;
4. Pursuant to Code of Civil Procedure § 1021.5, award Plaintiff their reasonable attorney's fees and costs, including any and all multipliers allowed under California law; and
5. Grant such other and further relief as the court deems just and proper.

Respectfully submitted,

DATED: March 23, 2020

LAW OFFICE OF DANIEL N. GREENBAUM

By: DANIEL N. GREENBAUM
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Shefa LMV, INC.