

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephanie Bowick

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

13 SHEFA LMV, INC., ) Unlimited Jurisdiction  
14 )  
15 Plaintiff, )  
16 ) CASE NO. 20STCV11560  
17 vs. )  
18 )  
19 PACIFIC COAST DISTRIBUTING, INC., ) COMPLAINT FOR CIVIL PENALTY AND  
20 ) INJUNCTIVE RELIEF  
21 Defendants. )  
22 )  
23 ) (Health & Safety Code § 25249.6 et seq.)  
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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  
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. 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 COAST DISTRIBUTING, INC., 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 private label aquarium fish net with plastic handle products, including, but not  
19 limited to TopFin Fine Mesh Fish Net, UPC 737257322158, that contain DEHP, for sale within the  
20 State of California, without first giving clear and reasonable warning.

21 **III. JURISDICTION AND VENUE**

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

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

2 8. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles  
3 County because Defendant's products are sold and consumed in this county.

4 **IV. STATUTORY BACKGROUND**

5 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
6 passed as "Proposition 65" by a vote of the people in November of 1986.

7 10. The warning requirement of Proposition 65 is contained in Health & Safety Code §  
8 25249.6, which provides:

9 No person in the course of doing business shall knowingly and intentionally  
10 expose any individual to a chemical known to the state to cause cancer or  
11 reproductive toxicity without first giving clear and reasonable warning to  
12 such individual, except as provided in Section 25249.10.

13 11. An exposure to a chemical in a consumer product is one "which results from a  
14 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a  
15 consumer good, or any exposure that results from receiving a consumer service." (27 CCR 25602(b))

16 12. Proposition 65 establishes a procedure by which the State develops a list of chemicals  
17 "known to the State to cause cancer or reproductive toxicity." (Health & Safety Code § 25249.8.)

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

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

22 15. To "threaten to violate" is defined to mean "to create a condition in which there is a  
23 substantial probability that a violation will occur." (Health & Safety Code § 25249.11(e).)

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



1           28. Plaintiff is unaware of any governmental prosecution against Defendant.

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

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

5                 a. contact between the item and the skin;

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

9                 c. absorption of DEHP through the skin.

10          31. Such individuals are thereby exposed to the DEHP present on or in the PRODUCTS  
11 during the intended and reasonably foreseeable use of the PRODUCTS.

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

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

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

19          35. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized  
20 the sale of the PRODUCTS, thereby exposing consumers to DEHP.

21          36. At all times material to this complaint, therefore, Defendants have knowingly and  
22 intentionally exposed individuals within the State of California to DEHP.

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

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

5 **VI. FIRST CAUSE OF ACTION**

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

7 39. Paragraphs 1 through 38 are re-alleged as if fully set forth herein.

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

12 41. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed  
13 \$2,500 per day for each violation, as well as other remedies.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray that the Court:

- 16 1. Pursuant to the First Causes of Action, grant civil penalties according to proof;
  - 17 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,  
18 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant from  
19 exposing persons within the State of California to Listed Chemicals caused by the use of their  
20 products without providing clear and reasonable warnings, as Plaintiffs shall specify in further  
21 application to the court;
  - 22 3. Award Plaintiff the costs of suit;
  - 23 4. Pursuant to Code of Civil Procedure § 1021.5, award Plaintiff their reasonable  
24 attorney's fees and costs, including any and all multipliers allowed under California law; and
  - 25 5. Grant such other and further relief as the court deems just and proper.
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Respectfully submitted,

DATED: March 23, 2020

LAW OFFICE OF DANIEL N. GREENBAUM



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