

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Rafael Ongkeko

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES
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10 SHEFA LMV, INC.,) Unlimited Jurisdiction
11)
Plaintiff,)
12) CASE NO. 20STCV39160
vs.)
13)
O'MALLEY PROMOTIONS, INC.; FIND) COMPLAINT FOR CIVIL PENALTY AND
14 IMPORT CORPORATION; and DOES 1) INJUNCTIVE RELIEF
through 100, Inclusive,)
15) (Health & Safety Code § 25249.5 et seq.)
Defendants.)
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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 O’MALLEY PROMOTIONS, INC., 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 tote bag 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, Opromo Clear
20 PVC Cinch Bag with Drawstring, that contain DEHP, for sale within the State of California, without
21 first giving clear and reasonable warning.

22 6. Defendant FIND IMPORT CORPORATION, is a business entity with ten or more
23 employees that sells, or has, at times relevant to this complaint, authorized the manufacture,
24 distribution, or sale of plastic tote bag products manufactured by or for Defendant, imported by or for
25 Defendant, or distributed or sold by or for Defendant, including, but not limited to, Opromo Clear
26 PVC Cinch Bag with Drawstring, that contain DEHP, for sale within the State of California, without
27 first giving clear and reasonable warning

1 V. FACTS

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

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

6 25. Defendant O’MALLEY PROMOTIONS, INC. is the manufacturer of the
7 PRODUCTS for use by individuals in the home and other endeavors.

8 26. Defendant FIND IMPORT CORPORATION is the distributor and/or seller of the
9 PRODUCTS for use by individuals in the home and other endeavors.

10 27. The PRODUCTS are sold through various retailers, including but not limited to
11 Walmart, Inc., to consumers located in California for use by citizens of the State of California.

12 28. On November 16, 2019, Plaintiff’s expert prepared a report summarizing the results of
13 analysis on the PRODUCTS, including the amount of the DEHP in the product.

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

17 30. Based on that report and opinion, Plaintiff and its counsel prepared a Notice of
18 Violation.

19 31. Pursuant to the statute and regulations referenced above, on December 12, 2019,
20 Plaintiff served the Notices of Violation on the Office of the Attorney General, Defendant, as well as
21 all required public agencies.

22 32. Plaintiff is unaware of any governmental prosecution against Defendant.

23 33. At least sixty days have elapsed since service of the Notice of Violation.

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

- 26 a. contact between the item and the skin;
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VI. FIRST CAUSE OF ACTION

(Against All Defendants for Violation of Proposition 65)

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

44. 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.

45. 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, Plaintiff prays that the Court:

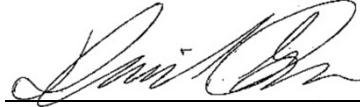
1. Pursuant to the First Cause of Action, grant civil penalties of \$2,500 per violation per day, going back one year from the date of filing, which at the time of filing is \$5,000;
2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders, preliminary injunctions, permanent 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 of at least \$20,000 as of the filing of this Complaint, and an anticipated additional \$7,500 of attorney’s fees to obtain a default judgment, if a default is entered; and
5. Grant such other and further relief as the court deems just and proper.

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Respectfully submitted,

DATED: October 12, 2020

LAW OFFICE OF DANIEL N. GREENBAUM



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