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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SHEFA LMV, INC.,

Plaintiff,

vs.

AMAZON.COM, INC.; AMAZON.COM  
 SERVICES, INC.; and DOES 1 through 100,  
 Inclusive,

Defendants.

) Unlimited Jurisdiction

) CASE NO. 20STCV39282

) COMPLAINT FOR CIVIL PENALTY AND  
 ) INJUNCTIVE RELIEF

) (Health & Safety Code § 25249.5 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 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, birth  
9 defects or other reproductive harm.

10 3. Plaintiff alleges Defendants received notice of a violation of Proposition 65 in one of  
11 the products sold by Defendants without first giving clear and reasonable warning, yet Defendants  
12 continued to sell the violative product without first giving clear and reasonable warning.

13 **II. PARTIES**

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

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

19 6. Defendant AMAZON.COM, INC., is a business entity with ten or more employees that  
20 sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale of  
21 plastic purse products manufactured by or for Defendant, imported by or for Defendant, or distributed  
22 or sold by or for Defendant, including, but not limited to, Cambond Clear Crossbody Purse; ASIN:  
23 B07R6HSHFS, that contain DEHP, for sale within the State of California, without first giving clear  
24 and reasonable warning.

25 7. Defendant AMAZON.COM SERVICES, INC., is a business entity with ten or more  
26 employees that sells, or has, at times relevant to this complaint, authorized the manufacture,  
27 distribution, or sale of plastic purse products manufactured by or for Defendant, imported by or for

1 Defendant, or distributed or sold by or for Defendant, including, but not limited to, Cambond Clear  
2 Crossbody Purse; ASIN: B07R6HSHFS, that contain DEHP, for sale within the State of California,  
3 without first giving clear and reasonable warning.

4 8. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,  
5 Plaintiff suspects they are business entities with at least ten or more employees that at all times relevant  
6 to this complaint, authorized the manufacture, distribution, or sale of plastic purse products  
7 manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for  
8 Defendant, including, but not limited to, Cambond Clear Crossbody Purse; ASIN: B07R6HSHFS, that  
9 contain DEHP, for sale within the State of California, without first giving clear and reasonable warning.

10 9. Defendants named in paragraphs 6 through 8 have at all times relevant to this complaint,  
11 authorized the manufacture, distribution, or sale of plastic purse products manufactured by or for  
12 Defendant, imported by or for Defendant, or distributed or sold by or for Defendant, including, but not  
13 limited to, Cambond Clear Crossbody Purse; ASIN: B07R6HSHFS, that contain DEHP (hereinafter  
14 “PRODUCTS”), for sale within the State of California, without first giving clear and reasonable  
15 warning.

### 16 III. JURISDICTION AND VENUE

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

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

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

### 26 IV. STATUTORY BACKGROUND

27

13. 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.

14. 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.

15. A retail seller is responsible for providing the warning required by Section 25249.6 of the Act for a consumer product exposure only when the retail seller has actual knowledge of the potential consumer product exposure requiring the warning, and there is no manufacturer, producer, packager, importer, supplier, or distributor of the product who: A) Is a “person in the course of doing business” under Section 25249.11(b) of the Act; and B) Has designated an agent for service of process in California, or has a place of business in California. (27 CCR 25600.2(e))

16. “Actual knowledge” means specific knowledge of the consumer product exposure received by the retail seller from any reliable source. (27 CCR 25600.2(f))

17. If the source of this knowledge is a notice served pursuant to Section 25249.7 (d)(1) of the Act, the retail seller shall not be deemed to have actual knowledge of any consumer product exposure that is alleged in the notice until five business days after the retail seller receives a notice that provides a description of the product with sufficient specificity for the retail seller to readily identify the product in accordance with Article 9, section 25903(b)(2)(D). (27 CCR 25600.2(f))

18. 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))

19. 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.)

20. 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).)

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

22. 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).)

23. 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).)

24. 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).)

25. 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.

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

## V. FACTS

27. 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))

28. 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))

29. Defendant Amazon.com, Inc. owns, controls, facilitates, manages and operates the online retail platform Amazon.com.

### A. THE FIRST PRODUCT

30. Plaintiff purchased the first of the PRODUCTS (hereinafter “FIRST PRODUCT”) from Amazon.com on or about October 15, 2019.

31. The online sale of the FIRST PRODUCT was “Fulfilled by Amazon.”

32. Amazon.com facilitated and completed the financial transaction and managed delivery of the FIRST PRODUCT.

33. The FIRST PRODUCT was delivered to Plaintiff two (2) days later, on or about October 17, 2019.

34. Neither the FIRST PRODUCT online listing, nor the FIRST PRODUCT itself, contained or presented a Proposition 65 warning label.

35. On November 21, 2019, Plaintiff's expert prepared a report summarizing the results of analysis on the FIRST PRODUCT, including the amount of the DEHP in the PRODUCTS.

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

37. Based on that report and opinion, and lack of warning labels on the PRODUCTS, Plaintiff and its counsel prepared a Sixty Notice of Violation.

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

39. The Sixty Day Notice of Violation was delivered to J. Chan at Defendant Amazon.com, Inc.'s corporate office via FedEx on December 13, 2019 and on this date, Amazon.com, Inc. received notice of the alleged violations in the PRODUCTS.

## B. THE SECOND PRODUCT

40. More than five (5) business days later, Plaintiff purchased the second of the PRODUCTS (hereinafter “SECOND PRODUCT”) from Amazon.com on or about December 22, 2019.

41. The SECOND PRODUCT was “sold by” Defendant Amazon.com, Inc.’s subsidiary, Defendant Amazon.com Services, Inc.

42. On the SECOND PRODUCT's online listing, the SECOND PRODUCT was also described by Defendant as "Ships from Amazon.com" and "Sold by Amazon Warehouse.".

43. The SECOND PRODUCT was delivered to Plaintiff two (2) days later, on or about December 24, 2019.

44. Neither the SECOND PRODUCT online listing, nor the SECOND PRODUCT itself, contained or provided a Proposition 65 warning label.

45. On January 12, 2020, Plaintiff's expert prepared a report summarizing the results of analysis on SECOND PRODUCT, including the amount of the DEHP in the PRODUCTS.

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

47. Based on that report and opinion, and lack of warning labels on the PRODUCTS, Plaintiff and its counsel prepared a Sixty Notice of Violation.

48. Pursuant to the statute and regulations referenced above, on January 23, 2020, Plaintiff served the Notices of Violation on the Office of the Attorney General, Defendant, as well as all required public agencies.

49. Plaintiff is unaware of any governmental prosecution against Defendant.

50. At least sixty (60) days have elapsed since service of both of the Notices of Violation.

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

- a. contact between the item and the skin;
- b. transfer of DEHP from the skin to the mouth, both by transfer of DEHP directly from the hand to mouth, and indirectly by transfer of DEHP from the skin to objects that are placed in the mouth, such as food; and
- c. through absorption of DEHP through the skin.

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

1           53.     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 and  
3 reasonably foreseeable use of the PRODUCTS.

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

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

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

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

12          58.     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 individuals  
16 within the State of California.

17          59.     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 California  
19 to cause cancer, birth defects, and other reproductive harm, and no such warning was provided to those  
20 individuals by any other person.

21                   **VI.     FIRST CAUSE OF ACTION**

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

23          60.     Paragraphs 1 through 59 are re-alleged as if fully set forth herein.

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



62. 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.

Respectfully submitted,

DATED: October 11, 2020

LAW OFFICE OF DANIEL N. GREENBAUM



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