

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michael Stern

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES
9

10 SHEFA LMV, INC.,) Unlimited Jurisdiction
11)
Plaintiff,)
12) CASE NO. 21STCV11165
vs.)
13)
OLIVIA MILLER, INC.; and DOES 1) COMPLAINT FOR CIVIL PENALTY AND
14 through 100, Inclusive,) INJUNCTIVE RELIEF
15 Defendants.) (Health & Safety Code § 25249.5 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 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 OLIVIA MILLER, INC., is a business entity with ten or more employees
17 that sells, or has, at times relevant to this complaint, authorized the manufacture, distribution, or sale
18 of plastic backpack products manufactured by or for Defendant, imported by or for Defendant, or
19 distributed or sold by or for Defendant, including, but not limited to, Mini Heart Clear Backpack;
20 UPC: 657486565099; SKU: 68593924, that contain DEHP, for sale within the State of California,
21 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 plastic backpack
25 products manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by
26 or for Defendant, including, but not limited to, Mini Heart Clear Backpack; UPC: 657486565099;

1 SKU: 68593924, that contain DEHP, for sale within the State of California, without first giving clear
2 and reasonable warning.

3 7. Defendants named in paragraphs 5 and 6 have at all times relevant to this complaint,
4 authorized the manufacture, distribution, or sale of plastic backpack products manufactured by or for
5 Defendant, imported by or for Defendant, or distributed or sold by or for Defendant, including, but
6 not limited to, Mini Heart Clear Backpack; UPC: 657486565099; SKU: 68593924, that contain
7 DEHP (hereinafter “PRODUCTS”), for sale within the State of California, without first giving clear
8 and reasonable warning.

9 **III. JURISDICTION AND VENUE**

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

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

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

19 **IV. STATUTORY BACKGROUND**

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

22 12. The warning requirement of Proposition 65 is contained in Health & Safety Code §
23 25249.6, which provides:

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

1 State of California to cause cancer or reproductive toxicity without first giving clear and reasonable
2 warning to such individuals, within the meaning of Health & Safety Code § 25249.6.

3 43. Said violations render Defendants liable to Plaintiffs for civil penalties not to exceed
4 \$2,500 per day for each violation, as well as other remedies.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays that the Court:

- 7 1. Pursuant to the First Cause of Action, grant civil penalties of \$2,500 per violation per
8 day, going back one year from the date of filing, which at the time of filing is \$2,500;
- 9 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
10 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendants from
11 exposing persons within the State of California to Listed Chemicals caused by the use of their
12 products without providing clear and reasonable warnings, as Plaintiffs shall specify in further
13 application to the court;
- 14 3. Award Plaintiff the costs of suit;
- 15 4. Pursuant to Code of Civil Procedure § 1021.5, award Plaintiff their reasonable
16 attorney's fees and costs of at least \$20,000 as of the filing of this Complaint, and an
17 anticipated additional \$7,500 of attorney's fees to obtain a default judgment, if a default is
18 entered; and
- 19 5. Grant such other and further relief as the court deems just and proper.

20
21 Respectfully submitted,

22 DATED: March 23, 2021

23 LAW OFFICE OF DANIEL N. GREENBAUM

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