

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Terry Green

1 Daniel N. Greenbaum, Esq. (SBN 268104)
LAW OFFICE OF DANIEL N. GREENBAUM
2 The Hathaway Building
7120 Hayvenhurst Ave., Suite 320
3 Van Nuys CA 91406
Telephone: (818) 809-2199
4 Facsimile: (424) 243-7689
Email: dgreenbaum@greenbaumlawfirm.com
5 Attorney for Shefa LMV, INC.

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

10 SHEFA LMV, INC.,) Unlimited Jurisdiction
11)
Plaintiff,)
12) CASE NO. 21STCV43278
vs.)
13)
SPACEBOUND, INC.; and DOES 1 through) COMPLAINT FOR CIVIL PENALTY AND
14 100, 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, 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 SPACEBOUND, 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 cosmetic bag products manufactured by or for Defendant, imported by or for Defendant, or
22 distributed or sold by or for Defendant, including, but not limited to, 3 Piece Cosmetic Travel Bags;
23 UPC: 897720001864; KSDP – IN5SVYES08, that contain DEHP, for sale within the State of
24 California, without first giving clear and reasonable warning.

25 7. The identities of DOES 1 through 100 are unknown to Plaintiff at this time; however,
26 Plaintiff suspects they are business entities with at least ten or more employees that at all times relevant
27 to this complaint, authorized the manufacture, distribution, or sale of plastic cosmetic bag products

1 manufactured by or for Defendant, imported by or for Defendant, or distributed or sold by or for
2 Defendant, including, but not limited to, 3 Piece Cosmetic Travel Bags; UPC: 897720001864; KSDP
3 – IN5SVYES08, that contain DEHP, for sale within the State of California, without first giving clear
4 and reasonable warning.

5 8. Defendants named in paragraphs 6 through 8 have at all times relevant to this complaint,
6 authorized the manufacture, distribution, or sale of plastic messenger bag products manufactured by or
7 for Defendant, imported by or for Defendant, or distributed or sold by or for Defendant, including, but
8 not limited to, 360 Design Box Clear Messenger Bag ID: B06Y57DYCZ, that contain DEHP
9 (hereinafter “PRODUCTS”), for sale within the State of California, without first giving clear and
10 reasonable warning.

11 III. JURISDICTION AND VENUE

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

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

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

21 IV. STATUTORY BACKGROUND

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

24 13. The warning requirement of Proposition 65 is contained in Health & Safety Code §
25 25249.6, which provides:

26
27 No person in the course of doing business shall knowingly and intentionally
28 expose any individual to a chemical known to the state to cause cancer or

1 reproductive toxicity without first giving clear and reasonable warning to
2 such individual, except as provided in Section 25249.10.

3 14. An exposure to a chemical in a consumer product is one “which results from a person’s
4 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,
5 or any exposure that results from receiving a consumer service.” (27 CCR 25602(b))

6 15. Proposition 65 establishes a procedure by which the State develops a list of chemicals
7 “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code § 25249.8.)

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

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

12 18. To “threaten to violate” is defined to mean “to create a condition in which there is a
13 substantial probability that a violation will occur.” (Health & Safety Code § 25249.11(e).)

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

16 20. Actions to enforce the law “may be brought by the Attorney General in the name of the
17 People of the State of California [or] by any district attorney [or] by any City Attorney of a City having
18 a population in excess of 750,000 . . .” (Health & Safety Code § 25249.7(c).)

19 21. Private parties are given authority to enforce Proposition 65 “in the public interest,” but
20 only if the private party first provides written notice of a violation to the alleged violator, the Attorney
21 General, and every District Attorney in whose jurisdiction the alleged violation occurs.

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

24 **V. FACTS**

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

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

3 25. Defendant SPACEBOUND, INC. are the manufacturers and distributors of the
4 PRODUCTS through its website, XSDEPOT.COM and other retailers, for use by individuals in the
5 home and other endeavors.

6 26. The PRODUCTS are sold through various retailers, including but not limited to
7 Walmart.com, to consumers located in California for use by citizens of the State of California.

8 27. After the PRODUCTS were purchased, Plaintiff's expert prepared a report summarizing
9 the results of analysis on the PRODUCTS, including the amount of the DEHP in the product.

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

13 29. Based on that report and opinion, Plaintiff and its counsel prepared a Notice of
14 Violation.

15 30. Pursuant to the statute and regulations referenced above, on November 25, 2020,
16 Plaintiff served the Notices of Violation on the Office of the Attorney General, Defendants, as well as
17 all required public agencies.

18 31. Plaintiff is unaware of any governmental prosecution against Defendants.

19 32. At least sixty days have elapsed since service of the Notice of Violation.

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

22 a. contact between the item and the skin;

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

26 c. through absorption of DEHP through the skin.
27

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

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

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

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

10 38. Notwithstanding this knowledge, Defendants intentionally authorized and reauthorized
11 the sale of the PRODUCTS, thereby exposing consumers to DEHP.

12 39. At all times material to this complaint, therefore, Defendants have knowingly and
13 intentionally exposed individuals within the State of California to DEHP.

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

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

23 **VI. FIRST CAUSE OF ACTION**

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

25 42. Paragraphs 1 through 41 are re-alleged as if fully set forth herein.

26 43. By committing the acts alleged above, Defendants have, in the course of doing business,
27 knowingly and intentionally exposed individuals in California to chemicals known to the State of

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

3 44. 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 \$5,000;
- 9 2. Pursuant to Health & Safety Code § 25249.7, enter such temporary restraining orders,
10 preliminary injunctions, permanent injunctions, or other orders prohibiting Defendant 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 anticipated
17 additional \$7,500 of attorney's fees to obtain a default judgment, if a default is entered; and
- 18 5. Grant such other and further relief as the court deems just and proper.

19 Respectfully submitted,

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21 DATED: November 24, 2021

22 LAW OFFICE OF DANIEL N. GREENBAUM

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