

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address). Brian Gaffney, Esq. (SBN 168778) LAW OFFICES OF BRIAN GAFFNEY 605 Market St., Suite 505, San Francisco, CA. 94105 TELEPHONE NO.: 415-442-0711 FAX NO.: 415-442-0713 ATTORNEY FOR (Name): As You Sow		FOR COURT USE ONLY ENDORSED FILED San Francisco County Superior Court NOV 1 2006 GORDON PARK-LI, Clerk BY: BRISTINA E. BALTISTA, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: 400 McAllister Street, Room 103 CITY AND ZIP CODE: San Francisco, CA. 94102 BRANCH NAME:		
CASE NAME: As You Sow v. Eckler Industries, Inc. et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: CGC06-4575-0 JUDGE: DEPT:
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)		

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input checked="" type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)	Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)	Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 3 (Injunctive relief, civil penalties, & declaratory relief)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015)

Date: November 1, 2006

Brian Gaffney

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

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8 Attorney for Plaintiff
9 AS YOU SOW

ENDORSED
FILED
San Francisco County Superior Court

NOV 1 2006

GORDON PARK-LI, Clerk
BY: CRISTINA ENCARNATA
Deputy Clerk
CASE MANAGEMENT CONFERENCE

APR 6 2007 - 9:00 AM

DEPARTMENT 212
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
(Unlimited Jurisdiction)

11 AS YOU SOW,

CASE NO. 08C06-457548

12 Plaintiff,

13 v.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL
PENALTIES

15 ECKLER INDUSTRIES LLC; ECKLER
16 INDUSTRIES, INC.; SMART CHOICE
17 AUTOMOTIVE GROUP, INC.; and DOES 1
through 100 INCLUSIVE,

TOXIC TORT/ENVIRONMENTAL

18 Defendants.

JURY TRIAL REQUESTED

19 AS YOU SOW alleges as follows:

BY FAX

INTRODUCTION

21 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
22 failure of Defendant to give clear and reasonable warnings to residents of California, who use, spray
23 and/or inhale paint stripping products ("paint strippers" or "products") that are manufactured,
24 distributed, marketed and/or sold by Defendants and which contain Methylene Chloride
25 (Dichloromethane) and/or Toluene at levels above the stated Proposition 65 limits.

26 2. The use, spraying and/or inhalation of Defendants' products causes residents of
27 California and the City and County of San Francisco to be exposed to Methylene Chloride
28 (Dichloromethane) and/or Toluene, which are both chemicals known to the State of California to

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 cause cancer, and/or birth defects and other reproductive harm.

2 3. Defendants intend that residents of California use the paint strippers that Defendants
3 manufacture, market, sell and/or distribute. When these products are used in their normally intended
4 manner, they expose people to Methylene Chloride (Dichloromethane) and/or Toluene. In spite of
5 knowing that residents of California were and are being exposed to these chemicals when they use,
6 spray and/or inhale these products, Defendants do not and did not provide clear and reasonable
7 warning that these products cause exposure to chemicals known to cause cancer, and/or birth defects
8 and other reproductive harm.

9 4. Plaintiff seeks injunctive relief pursuant to Health & Safety Code section 25249.7 to
10 compel Defendants to bring their business practices into compliance with Health & Safety Code
11 sections 25249.5 et seq. ("Proposition 65") by providing a clear and reasonable warning to each
12 Californian who has been, or in the future may be, exposed to the above mentioned toxic chemicals
13 from the use of Defendants' products.

14 5. In addition to injunctive relief, Plaintiff seeks civil penalties to remedy the
15 Defendants' failure to provide clear and reasonable warnings to individuals that have been and
16 continue to be exposed to chemicals known to cause cancer, and/or birth defects and other
17 reproductive harm.

18 PARTIES

19 6. Plaintiff AS YOU SOW ("AYS") is a non-profit foundation organized under
20 California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes,
21 the protection of the environment, the promotion of human health, the improvement of worker and
22 consumer safety, environmental education and corporate accountability.

23 7. AYS is a "person" pursuant to Health & Safety Code section 25118. AYS is located
24 at 311 California Street, Suite 510, San Francisco, CA 94104. AYS brings this enforcement action
25 in the public interest pursuant to Health & Safety Code section 25249.7(d). Residents of California
26 are exposed to Methylene Chloride (Dichloromethane) and/or Toluene from paint strippers
27 manufactured, distributed, sold and/or marketed by Defendants without a clear and reasonable
28 Proposition 65 warning.

1 16. Plaintiff brings this enforcement action against Defendants pursuant to Health &
2 Safety Code section 25249.7(d). AYS sent a 60-Day Notice of Proposition 65 violations to
3 Defendants, to California's Attorney General, to every District Attorney in the State, and to the City
4 Attorneys of every California city with a population greater than 750,000, on or about June 29, 2006.
5 This notice was issued pursuant to, and in compliance with, the requirements of Health & Safety
6 Code section 25249.7(d) and the statute's implementing regulations regarding the notice of the
7 violations to be given to certain public enforcement agencies and to the violator. Attached to the 60-
8 Day Notice Letter sent to each Defendant was a summary of Proposition 65 that was prepared by
9 California's Office of Environmental Health Hazard Assessment. Each 60-Day Notice Letter
10 Plaintiff sent was accompanied by a Certificate of Service and a Certificate of Merit. In addition,
11 the 60-Day Notice Letter which Plaintiff sent to California's Attorney General was accompanied by
12 the information required by California Code of Regulations, title 11, section 3102.

13 17. On the date this Complaint is filed, over 70 days have elapsed since June 29, 2006,
14 in compliance with Health & Safety Code section 25249.7(d)(1).

15 VENUE

16 18. Venue is proper in this Court because Defendants market, sell and/or distribute their
17 products in and around San Francisco, have violated one or more of the California laws specified
18 herein in the City and County of San Francisco, and have caused people to be exposed to Methylene
19 Chloride (Dichloromethane) and/or Toluene while those people are physically present in San
20 Francisco. Liability for Plaintiff's causes of action, or some parts thereof, has accordingly arisen in
21 San Francisco during the times relevant to this Complaint.

22 FIRST CAUSE OF ACTION
23 (Claim for Injunctive Relief)

24 19. Plaintiff realleges and incorporates by reference the allegations contained in the
25 preceding paragraphs.

26 20. The People of the State of California have declared by referendum under Proposition
27 65 their right "[t]o be informed about exposures to chemicals that cause cancer."

28 21. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates that
persons who, in the course of doing business, knowingly and intentionally expose any individual to

1 a chemical known to the State of California to cause cancer or birth defects or other reproductive
2 harm must first provide a clear and reasonable warning to such individual(s) prior to the exposure.

3 22. Since at least June 29, 2003, each and every Defendant has engaged in conduct which
4 violates Health and Safety Code section 25249.6 et seq. This conduct includes knowingly and
5 intentionally exposing California residents who use, spray and/or inhale Defendants' products to
6 Methylene Chloride (Dichloromethane) and/or Toluene. The normally intended use of Defendants'
7 paint strippers causes exposure to Methylene Chloride (Dichloromethane) and/or Toluene, which
8 are chemicals known to the State of California to cause cancer, and/or birth defects and other
9 reproductive harm. Defendants have not provided clear and reasonable warnings, within the
10 meaning of Health & Safety Code sections 25249.6 and 25249.11.

11 23. At all times relevant to this action, Defendants knew that the products they
12 manufactured, distributed, sold and/or marketed were causing exposures to Methylene Chloride
13 (Dichloromethane) and/or Toluene. Defendants intended that residents of California use, spray
14 and/or inhale paint strippers in such ways as would result in significant exposures to these chemicals.

15 24. By the above described acts, each Defendants have violated Health & Safety Code
16 section 25249.6 and are therefore subject to an injunction ordering Defendants to stop violating
17 Proposition 65 and requiring Defendants to provide warnings to its past customers who purchased
18 Defendants' products without receiving a clear and reasonable warning.

19 SECOND CAUSE OF ACTION
20 (Claim for Civil Penalties)

21 25. Plaintiff realleges and incorporates by reference the allegations contained in the
22 preceding paragraphs.

23 26. By the above described acts, each Defendant is liable and should be liable, pursuant
24 to Health & Safety Code section 25249.7(b), for a civil penalty of \$2,500.00 per day for each
25 individual exposed without proper warning to Methylene Chloride (Dichloromethane) and/or
26 Toluene from the use, spraying and/or inhaling of Defendant's paint strippers.

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THIRD CAUSE OF ACTION
Declaratory Relief Regarding Actual and Present Controversy over
Defendant's Compliance with Proposition 65
(Code of Civil Procedure section 1060)

27. Plaintiff hereby realleges and incorporates by reference the allegations contained in the preceding paragraphs.

28. An actual and present controversy exists between Plaintiff and Defendants as to whether Defendants are fully complying with Proposition 65.

29. Plaintiff contends that Defendants have failed to fully comply with Proposition 65 as alleged in this Complaint.

30. Defendants deny each of Plaintiff's contentions.

31. Plaintiff seeks a judicial determination and declaration that Defendants have an obligation to fully comply with Proposition 65.

32. Such a declaration is necessary and appropriate at this time in order that Plaintiff may ascertain the right to have Defendants act in accordance with the obligations under Proposition 65.

33. Unless restrained by this Court, Defendants will continue to violate Proposition 65.

34. Said course of conduct by Defendants irreparably harms and will continue to irreparably harm Plaintiff in that Defendants' actions knowingly and intentionally expose individuals to chemicals known to the State of California to cause cancer and/or birth defects and other reproductive harm without first providing a clear and reasonable warning to such individuals prior to the exposure.

35. Plaintiff has no adequate remedy in the ordinary course of law to obtain relief from the consequences of said actions by Defendants for the harms alleged herein.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief against Defendants:

1. Pursuant to the First Cause of Action, a preliminary and permanent injunction enjoining, restraining, and ordering all Defendants to comply with the provisions of Section 25249.6 of the California Health & Safety Code;

2. Pursuant to the First Cause of Action, a preliminary and permanent injunction enjoining, restraining, and ordering all Defendants to identify and locate each individual who

1 purchased paint strippers from June 29, 2003 to the present and notify all such individuals that 1)
2 the paint strippers cause an exposure to Methylene Chloride (Dichloromethane) and/or Toluene,
3 which are chemicals known to the State of California to cause cancer and and/or birth defects and
4 other reproductive harm; 2) certain actions can be taken to minimize that exposure; and 3) they may
5 return any such purchase for a full refund;

6 3. Pursuant to the Second Cause of Action, that each Defendant be assessed a civil
7 penalty in an amount equal to \$2,500.00 per day per individual exposed to Methylene Chloride
8 (Dichloromethane) and/or Toluene from June 29, 2005 to the present for violation of Section
9 25249.6 of the California Health & Safety Code, as the result of Defendants' manufacturing,
10 distributing, selling and/or marketing of paint strippers in California without the proper clear and
11 reasonable warning;

12 4. Pursuant to the Third Cause of Action, for a judicial determination and declaration
13 that Defendants are obliged to comply with Proposition 65;

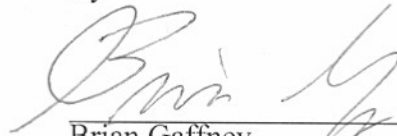
14 5. For costs of the suit incurred herein;

15 6. For attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure; and

16 7. For such other relief as this Court deems just and proper.

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18 Dated: November 1, 2006

By

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21 Brian Gaffney
22 Matt McFarland
23 Attorneys for Plaintiff
24 Environmental Rights Foundation
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