

1 Lucas Novak (SBN 257484)  
2 LAW OFFICES OF LUCAS T. NOVAK  
3 8335 W Sunset Blvd., Suite 217  
4 Los Angeles, CA 90069  
5 Telephone: (323) 337-9015  
6 Email: lucas.nvk@gmail.com

7 Attorney for Plaintiff, APS&EE, LLC

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

APR 16 2018

Sherri R. Carter, Executive Officer/Clerk  
By: Glorietta Robinson, Deputy

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

10 APS&EE, LLC, a limited liability company, )  
11 Plaintiff, )

12 v. )

13 DAISO CALIFORNIA LLC, a limited )  
14 liability company, DAISO HOLDINGS USA, )  
15 INC., a corporation, and DOES 1 through 100, )  
16 inclusive, )

17 Defendants. )

CASE NO. BC678119

PLAINTIFF'S FIRST AMENDED  
COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

(Health & Safety Code § 25249.6 et seq.)

Judge: Hon. David Sotelo

Dept.: 40

Compl. Filed: October 3, 2017

Unlimited Jurisdiction

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2. The purpose of this Complaint is to remedy Defendants' continuing failure to warn California residents about the risk of exposure to:

- The products described in this paragraph shall hereinafter collectively be referred to as the "Products".

4. Children and adults are exposed to the Listed Chemicals when they use, touch, handle, play with, repair, maintain, or install the Products.

6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”)

1 provides in pertinent part: “[n]o person in the course of doing business shall knowingly and  
2 intentionally expose any individual to a chemical known to the state to cause cancer or  
3 reproductive toxicity without first giving clear and reasonable warning to such individual...”

4 7. Studies repeatedly conclude that exposure to the Listed Chemicals is hazardous to  
5 the health of children and adults. Accordingly, DBP is listed by the State of California as known  
6 to cause birth defects and other reproductive harm; DEHP is listed as known to cause cancer and  
7 reproductive toxicity, developmental, male; Lead is listed as known to cause cancer and birth  
8 defects or other reproductive harm, and therefore subject to Proposition 65 warning  
9 requirements.

10 8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell  
11 the Products without the required warnings. Defendants’ conduct violates the warning  
12 requirements of Proposition 65.

### 13 PARTIES

14 9. Plaintiff is an organization based in California acting in the public interest.  
15 Plaintiff brings this action in the public interest pursuant to California Health and Safety Code  
16 section 25249.7(d).

17 10. Defendant, DAISO CALIFORNIA LLC is a person in the course of doing  
18 business within the meaning of California Health and Safety Code section 25249.11. DAISO  
19 CALIFORNIA LLC manufactures, distributes, and/or sells the Products for sale and use in  
20 California.

21 11. Defendant, DAISO HOLDINGS USA, INC. is a person in the course of doing  
22 business within the meaning of California Health and Safety Code section 25249.11. DAISO  
23 HOLDINGS USA, INC. manufactures, distributes, and/or sells the Products for sale and use in  
24 California.

25 12. DOES 1 through 100 are each a person in the course of doing business within the  
26 meaning of California Health and Safety Code section 25249.11. DOES 1 through 100  
27 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of  
28 DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered,

1 Plaintiff's Complaint shall be amended to reflect their true names.

2 13. The defendants identified in paragraphs 10-12 shall collectively be referred to  
3 herein as "Defendants".

4 **JURISDICTION AND VENUE**

5 14. This Court has jurisdiction over this action pursuant to California Health and  
6 Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction,  
7 and pursuant to California Constitution Article VI, Section 10, because this lawsuit is based on a  
8 cause not given by statute to other trial courts. Moreover, this action belongs in unlimited  
9 jurisdiction since the amount in controversy exceeds \$25,000 and Plaintiff seeks permanent  
10 injunctive relief.

11 15. This Court has jurisdiction over Defendants because each is a person, firm,  
12 corporation, or association with sufficient minimum contacts in the State of California, or  
13 otherwise purposefully avails itself to the California market as to render jurisdiction by the  
14 California courts consistent with traditional notions of fair play and substantial justice.

15 16. Venue is proper in Los Angeles County Superior Court because one or more  
16 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,  
17 and/or because Defendants conducted, and continue to conduct, business in this County with  
18 respect to the Products.

19 **FIRST CAUSE OF ACTION**

20 **(Violations of Health & Safety Code Section 25249.6 et seq.)**

21 17. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
22 Paragraphs 1 through 16, inclusive.

23 18. On July 24, 2017, sixty-day notices of violation along with Certificates of Merit,  
24 were provided to DAISO CALIFORNIA LLC, DAISO HOLDINGS USA, INC. and the various  
25 public enforcement agencies with respect to the Proposition 65 violations related to DBP, DEHP,  
26 and/or Lead in each of the Products. In addition, on said date, in compliance with Health &  
27 Safety Code section 25249.7(d), confidential factual information sufficient to establish the basis  
28 for each Certificate of Merit was provided to the California Attorney General. On February 8,

1 2018, a supplemental sixty-day notice of violation along with a Certificate of Merit was provided  
2 to DAISO CALIFORNIA LLC, DAISO HOLDINGS USA, INC. and the various public  
3 enforcement agencies with respect to the Proposition 65 violations related to DBP, DEHP, and  
4 Lead in Daiso Japan hammers. The notices described in this paragraph shall hereinafter  
5 collectively be referred to as the "60-Day Notices."

6 19. None of the public prosecutors with the authority to prosecute Proposition 65  
7 violations has commenced and/or is diligently prosecuting the causes of action against  
8 Defendants based on the claims asserted in Plaintiff's 60-Day Notices.

9 20. By placing the Products into the stream of commerce, each Defendant is a person  
10 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

11 21. Defendants knew and intended that consumers, including children, will use,  
12 touch, handle, play with, repair, maintain, or install the Products.

13 22. Defendants knew that the Products contain the Listed Chemicals. Defendants,  
14 who are in the business of marketing consumer goods, also should have known or have  
15 constructive knowledge that the Products contain the Listed Chemicals from widespread media  
16 coverage and/or other channels of information concerning the presence of the Listed Chemicals  
17 in the types of consumer goods similar to the Products.

18 23. Defendants' Products contain sufficient quantities of the Listed Chemicals such  
19 that consumers, including children, who use, touch, handle, play with, repair, maintain, or install  
20 the Products are exposed to unsafe levels of the Listed Chemicals. The Listed Chemicals are  
21 present in the Products in such a way as to expose individuals to them, as exposure is defined by  
22 27 CCR section 25602(b): "...that results from a person's acquisition, purchase, storage,  
23 consumption, or other reasonably foreseeable use of a consumer good..." Exposure occurs  
24 through inhalation, ingestion and/or dermal contact during the reasonably foreseeable use of the  
25 Products.

26 24. Defendants knew or should have known that the reasonably foreseeable use of the  
27 Products exposes individuals to the Listed Chemicals through inhalation, ingestion and/or dermal  
28 contact.

25. Defendants failed to provide a “clear and reasonable warning” to individuals in the State of California who were or could become exposed to the Listed Chemicals during the reasonably foreseeable use of the Products.

26. By committing the acts alleged in this Complaint, Defendants have violated California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally exposing individuals to the Listed Chemicals without first giving clear and reasonable warnings to such individuals regarding exposure and toxicity of the Listed Chemicals.

27. As a result of Defendants' wrongful conduct, individuals in the State of California have been exposed to the Listed Chemicals through the inhalation, ingestion and/or dermal contact during the reasonably foreseeable use of the Products without a "clear and reasonable warning", and have suffered and continue to suffer harm, each and every day since at least July 24, 2014.

### PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

1. That the Court, pursuant to California Health & Safety Code section 25249.7(b), assess civil penalties against Defendants in the amount of \$2,500 per day for each violation alleged herein;

2. That the Court, pursuant to California Health & Safety Code section 25249.7(a), preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering the Products for sale in California without providing “clear and reasonable warnings” as defined by 27 CCR section 25601;

3. That the Court, pursuant to California Health & Safety Code section 25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to the Listed Chemicals resulting from use of Products sold by Defendants;

///

///

///

111

1           4.       That the Court, pursuant to California Code of Civil Procedure section 1021.5, or  
2 any other applicable theory, grant Plaintiff's reasonable attorneys' fees and costs of suit; and

3           5.       Such other and further relief as may be just and proper.  
4

5 Dated: April 16, 2018

LAW OFFICES OF LUCAS T. NOVAK

6  
7 By: 

LUCAS T. NOVAK  
Attorney for Plaintiff, APS&EE, LLC  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28