

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

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

APS&EE, LLC, a limited liability company,

Plaintiff,

v.

USA MINISO DEPOT, INC., a corporation,
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 19STCV39831

**PLAINTIFF'S COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge:

Dept.:

Compl. Filed:

Unlimited Jurisdiction

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INTRODUCTION

1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public interest of the citizens of the State of California, a representative action to enforce the People’s right to be informed of the presence of Di (2-ethylhexyl) Phthalate also known as Bis (2-ethylhexyl) Phthalate (“DEHP”) and Lead, chemicals known to the State of California to cause cancer and reproductive toxicity, found in Miniso Pliers sold by Defendants.

2. The purpose of this Complaint is to remedy Defendants’ continuing failure to warn California residents about the risk of exposure to DEHP and Lead in the Miniso Pliers, that have been manufactured, distributed, sold, and/or offered for sale to consumers in California.

3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell Miniso Pliers, such as the Miniso Dual-use Screwdriver and Pliers Kit #4-504671-290013 containing hazardous levels of DEHP and Lead. The Miniso Pliers shall hereinafter collectively be referred to as the “Products”.

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

5. Hazardous levels of DEHP and Lead are found in the accessible surface areas of the Products manufactured, distributed, sold, and/or offered for sale by Defendants to consumers in California.

6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”) provides in pertinent part: “[n]o 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...”

7. Studies repeatedly conclude that exposure to DEHP and Lead are hazardous to the health of children and adults. Accordingly, California has listed DEHP as a chemical known to the state to cause cancer and reproductive toxicity, Lead as known to cause cancer and birth defects or other reproductive harm, and therefore both chemicals subject to Proposition 65 warning requirements.

8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell

1 the Products without the required warnings. Defendants' conduct violates the warning
2 requirements of Proposition 65.

3 **PARTIES**

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

7 10. Defendant, USA MINISO DEPOT, INC. is a person in the course of doing
8 business within the meaning of California Health and Safety Code section 25249.11. USA
9 MINISO DEPOT, INC. manufactures, distributes, and/or sells the Products for sale and use in
10 California.

11 11. DOES 1 through 100 are each a person in the course of doing business within the
12 meaning of California Health and Safety Code section 25249.11. DOES 1 through 100
13 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of
14 DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered,
15 Plaintiff's Complaint shall be amended to reflect their true names.

16 12. The defendants identified in paragraphs 10-11 shall collectively be referred to
17 herein as "Defendants".

18 **JURISDICTION AND VENUE**

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

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

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

FIRST CAUSE OF ACTION

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

16. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 15, inclusive.

17. On August 20, 2019, Plaintiff served a sixty-day notice of violation (the “Notice”), along with a Certificate of Merit, to USA MINISO DEPOT, INC., Miniso Depot Pasadena, Inc., Miniso Depot CA, Inc., Miniso Industries Co., Ltd., Miniso International Co., Ltd, and the various public enforcement agencies with respect to the Proposition 65 violations related to DEHP and Lead in the Products. In addition, on said date, in compliance with Health & Safety Code section 25249.7(d), Plaintiff provided confidential factual information sufficient to establish the basis for the Certificate of Merit to the California Attorney General.

18. None of the public prosecutors with the authority to prosecute Proposition 65 violations has commenced and/or is diligently prosecuting the causes of action against Defendants based on the claims asserted in Plaintiff's Notice.

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

20. Defendants knew and intended that consumers, including children, will use, touch, handle, play with, repair, and/or maintain the Products.

21. Defendants knew that the Products contain DEHP and Lead. Defendants, who are in the business of marketing consumer goods, also should have known or have constructive knowledge that the Products contain DEHP and Lead from widespread media coverage and/or other channels of information concerning the presence of these chemicals in the types of consumer goods similar to the Products.

22. DEHP is a chemical listed by the State of California as known to cause cancer and

reproductive toxicity. Lead is a chemical listed by the State of California as known to cause cancer and birth defects or other reproductive harm.

23. Defendants' Products contain sufficient quantities of DEHP and Lead such that consumers, including children, who use, touch, handle, play with, repair, or maintain the Products are exposed to unsafe levels of DEHP and Lead. DEHP and Lead are present in the Products in such a way as to expose individuals to each chemical, as exposure is defined by 27 CCR section 25600.1(e): "...that results from a person's acquisition, purchase, storage, consumption, or any reasonably foreseeable use of a consumer good..." Exposure occurs through inhalation, ingestion and/or dermal contact during the reasonably foreseeable use of the Products.

24. Defendants knew or should have known that the reasonably foreseeable use of the Products exposes individuals to DEHP and Lead through inhalation, ingestion and/or dermal 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 DEHP and/or Lead 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 DEHP and/or Lead without first giving clear and reasonable warnings to such individuals regarding the toxicity of DEHP and/or Lead.

27. As a result of Defendants' wrongful conduct, individuals in the State of California have been exposed to DEHP and/or Lead 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 August 20, 2016.

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),

1 assess civil penalties against Defendants in the amount of \$2,500 per day for each violation
2 alleged herein;

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

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

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

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

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14 Dated: November 5, 2019

LAW OFFICES OF LUCAS T. NOVAK

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16 By: 

LUCAS T. NOVAK
Attorney for Plaintiff, APS&EE, LLC