

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Gregory Alarcon

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

10 APS&EE, LLC, a limited liability company, )  
11 )  
12 ) Plaintiff, )  
13 )  
14 ) v. )  
15 )  
16 ) BARON USA, LLC, a limited liability )  
17 ) company, and DOES 1 through 100, inclusive, )  
18 )  
19 ) Defendants. )

CASE NO. \_\_\_\_\_

**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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1 **INTRODUCTION**

2 1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public  
3 interest of the citizens of the State of California, a representative action to enforce the People’s  
4 right to be informed of the presence of lead (“Lead”), a chemical known to the State of  
5 California to cause cancer and birth defects or other reproductive harm, found in Five Oceans  
6 brass whistles sold by Defendants.

7 2. The purpose of this Complaint is to remedy Defendants’ continuing failure to  
8 warn California residents about the risk of exposure to the Lead in the Five Oceans brass  
9 whistles manufactured, distributed, sold, and/or offered for sale to consumers in California.

10 3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell  
11 Five Oceans brass whistles containing dangerous levels of the Lead, including, without limitation  
12 #2220. The whistles come in various sizes. The products described in this paragraph shall  
13 hereinafter be referred to as the “Products”.

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

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

19 6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”)  
20 provides in pertinent part: “[n]o person in the course of doing business shall knowingly and  
21 intentionally expose any individual to a chemical known to the state to cause cancer or  
22 reproductive toxicity without first giving clear and reasonable warning to such individual...”

23 7. Studies repeatedly conclude that exposure to the Lead is hazardous to the health  
24 of children and adults. Children are especially vulnerable to the toxic effects of Lead.  
25 Accordingly, California has listed the Lead as a chemical known to the state to cause cancer and  
26 birth defects or other reproductive harm, and therefore subject to Proposition 65 warning  
27 requirements.

28 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, BARON USA, LLC is a person in the course of doing business within  
8 the meaning of California Health and Safety Code section 25249.11. BARON USA, LLC  
9 manufactures, distributes, and/or sells the Products for sale and use in California.

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

15 12. The defendants identified in paragraphs 10-11 shall collectively be referred to  
16 herein as “Defendants”.

17 **JURISDICTION AND VENUE**

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

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

28 15. Venue is proper in Los Angeles County Superior Court because one or more

1 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,  
2 and/or because Defendants conducted, and continue to conduct, business in this County with  
3 respect to the Products.

4 **FIRST CAUSE OF ACTION**

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

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

8 17. On September 6, 2019, a sixty-day notice of violation (the “Notice”), along with a  
9 Certificate of Merit, was provided to BARON USA, LLC and the various public enforcement  
10 agencies with respect to the Proposition 65 violations related to Lead in the Products. In addition,  
11 on said date, in compliance with Health & Safety Code section 25249.7(d), confidential factual  
12 information sufficient to establish the basis for the Certificate of Merit was provided to the  
13 California Attorney General.

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

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

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

21 21. Defendants knew that the Products contain Lead. Defendants, who are in the  
22 business of marketing consumer goods, also should have known or have constructive knowledge  
23 that the Products contain Lead from widespread media coverage and/or other channels of  
24 information concerning the presence of Lead in brass and similar products.

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

27 23. Defendants’ Products contain sufficient quantities of the Lead such that  
28 consumers, including children, who use, touch, handle, play with, repair, maintain, or mouth the

1 Products are exposed to unsafe levels of Lead. Lead is present in the Products in such a way as to  
2 expose individuals to Lead, as exposure is defined by 27 CCR section 25600.1(e): "...that results  
3 from a person's acquisition, purchase, storage, consumption, or any reasonably foreseeable  
4 use..." Exposure occurs through inhalation, ingestion and/or dermal contact during the  
5 reasonably foreseeable use of the Products.

6 24. Defendants knew or should have known that the reasonably foreseeable use of the  
7 Products exposes individuals to Lead through inhalation, ingestion and/or dermal contact.

8 25. Defendants failed to provide a "clear and reasonable warning" to individuals in  
9 the State of California who were or could become exposed to Lead during the reasonably  
10 foreseeable use of the Products.

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

15 27. As a result of Defendants' wrongful conduct, individuals in the State of California  
16 have been exposed to Lead through the inhalation, ingestion and/or dermal contact during the  
17 reasonably foreseeable use of the Products without a "clear and reasonable warning", and have  
18 suffered and continue to suffer harm, each and every day since at least September 6, 2016.

19 **PRAYER FOR RELIEF**

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

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

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

28 3. That the Court, pursuant to California Health & Safety Code section 25249.7(a),

1 order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use  
2 of Products sold by Defendants;

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

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

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Dated: November 26, 2019

LAW OFFICES OF LUCAS T. NOVAK

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