

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Draper

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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 Plaintiff,)
12 v.)
13 SHAPIRO METAL SUPPLY COMPANY, a)
14 corporation, and DOES 1 through 100,)
15 inclusive,)
16 Defendants.)
17)

CASE NO. 20STCV10147

**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 brass bars sold
6 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 brass bars manufactured,
9 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 Shapiro Metal Supply brass bars, including 3/8” square bar. The brass bars come in all lengths
12 and include flat bars, rectangular bars, round bars, square bars, and hexagon bars of various
13 thicknesses and widths. The products described in this paragraph shall hereinafter be referred to
14 as the “Products”.

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

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

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

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

1 California courts consistent with traditional notions of fair play and substantial justice.

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

6 **FIRST CAUSE OF ACTION**

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

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

10 17. On November 5, 2019, Plaintiff served a sixty-day notice of violation (the
11 “Notice”), along with a Certificate of Merit, to SPEEDY METALS, LLC and the various public
12 enforcement agencies with respect to the Proposition 65 violations related to Lead in the
13 Products. In addition, on said date, in compliance with Health & Safety Code section 25249.7(d),
14 confidential factual information sufficient to establish the basis for the Certificate of Merit was
15 provided to the California Attorney General.

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

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

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

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

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

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

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

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

13 26. Defendants advertise themselves as national suppliers of the Products, that they
14 fill the demand "in all 50 states and several foreign countries" and that they have "truly become
15 part of our growing global economy." Any person with internet access is free to purchase the
16 Products, no business account required. All that person needs to do is add the Products of any
17 quantity to his/her cart and then check out. That consumer could be intending to use the Products
18 for decorating, constructing cabinets, home projects, marine projects, crafts, art projects, or all
19 other foreseeable uses, and Defendants have no control over how the products are used after they
20 sell them. It is common knowledge that online sales are displacing brick and mortar sales, and
21 Defendants advertise sales from their website(s) to all consumers; for example, the
22 shapirosupply.com website states that the company has a "long-standing policy of no minimum
23 orders, no minimum size and no minimum quantity!"

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

28 28. As a result of Defendants' wrongful conduct, individuals in the State of California

1 have been exposed to Lead through the inhalation, ingestion and/or dermal contact during the
2 reasonably foreseeable use of the Products without a “clear and reasonable warning”, and have
3 suffered and continue to suffer harm, each and every day since at least November 5, 2016.

4 **PRAYER FOR RELIEF**

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

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

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

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

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

18 5. Such other and further relief as may be just and proper.
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20 Dated: March 13, 2020

LAW OFFICES OF LUCAS T. NOVAK

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22 By: 

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