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21STCV11854

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

21STCV11854

APS&EE, LLC, a limited liability company, Plaintiff, v. E. MISHAN & SONS, INC., a corporation, and DOES 1 through 100, inclusive, 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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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 lead ("Lead"), a chemical known to the State of California to cause cancer and birth defects or other reproductive harm, found in Emson XHoses, including but not limited to 25ft, 0-80313-01255-6, 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 the Lead in the XHoses 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 the Emson XHoses, including but not limited to 25ft, 0-80313-01255-6. The products described in this paragraph shall hereinafter be referred to as the "Products".

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

5. Hazardous levels of the 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 the Lead is hazardous to the health of children and adults. Children are especially vulnerable to the toxic effects of Lead. Accordingly, California has listed the Lead as a chemical known to the state to cause cancer and birth defects or other reproductive harm, and therefore subject to Proposition 65 warning requirements.

8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell the Products without the required warnings. Defendants' conduct violates the warning

requirements of Proposition 65.

PARTIES

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

10. Defendant, E. MISHAN & SONS, INC. is a person in the course of doing business within the meaning of California Health and Safety Code section 25249.11. E. MISHAN & SONS, INC. manufactures, distributes, and/or sells the Products for sale and use in California.

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

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

JURISDICTION AND VENUE

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

14. This Court has jurisdiction over Defendants because each is a person, firm, corporation, or association with sufficient minimum contacts in the State of California, or otherwise purposefully avails itself to the California market as to render jurisdiction by the 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 September 28, 2020, Plaintiff provided a sixty-day notice of violation (the "Notice"), along with a Certificate of Merit, to E MISHAN & SONS, INC., as well as GREEN THUMB INTERNATIONAL, INC., and the various public enforcement agencies with respect to the Proposition 65 violations related to 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, maintain, install, and clean the Products.

21. Defendants knew that the Products contain Lead. Defendants, who are in the business of marketing consumer goods such as irrigation supplies, also should have known or have constructive knowledge that the Products contain Lead from widespread media coverage and/or other channels of information concerning the presence of Lead in similar materials, including California's "Lead free" law, known as AB 1953, governing Lead content in fixtures for plumbing systems.

22. 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 the Lead such that consumers, including children, who use, touch, handle, play with, repair, maintain, install, drink downstream from, and clean the Products are exposed to unsafe levels of Lead. Lead is present in the Products in such a way as to expose individuals to Lead, 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…" Direct and indirect 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 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 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 Lead without first giving clear and reasonable warnings to such individuals regarding the toxicity of Lead.

27. As a result of Defendants' wrongful conduct, individuals in the State of California have been exposed to 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 September 28, 2017.

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 Lead resulting from use of Products sold by Defendants;

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

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

Dated: March 26, 2021

LAW OFFICES OF LUCAS T. NOVAK

By:

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