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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.

NORMA PENNSYLVANIA, INC., a  
 corporation, and DOES 1 through 100,  
 inclusive,

Defendants.

CASE NO. **21STCV24758**

**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”), Lead, and Di-n-Butyl Phthalate (“DBP”), chemicals known to the State of California to cause cancer and reproductive toxicity, found in NDS brand of Rubber Couplings, also knowing as flexible couplings, sold by Defendants. DEHP, Lead, and DBP shall hereinafter be referred to as the “Listed Chemicals”.

2. The purpose of this Complaint is to remedy Defendants’ continuing failure to warn California residents about the risk of exposure to the Listed Chemicals in the Rubber Couplings 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 NDS brand of Rubber Couplings, also knowing as flexible couplings, including 56-33, 3x3 CI/PVC, 0-52063-04934-2; the Rubber Couplings come in various lengths/dimensions. The products described in this paragraph shall hereinafter 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.

5. Hazardous levels of the Listed Chemicals 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 Listed Chemicals is hazardous to the health of children and adults. Accordingly, California has listed the Listed Chemicals as a chemical known to the state to cause cancer and reproductive toxicity, 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, NORMA PENNSYLVANIA, INC. is a person in the course of doing business within the meaning of California Health and Safety Code section 25249.11. NORMA PENNSYLVANIA, 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

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 March 1, 2021, a sixty-day notice of violation (the “Notice”), along with a  
11 Certificate of Merit, was provided to NORMA PENNSYLVANIA, INC., EWING IRRIGATION  
12 & LANDSCAPE SUPPLY COMPANY, EWING IRRIGATION PRODUCTS, INC., and the  
13 various public enforcement agencies with respect to the Proposition 65 violations related to  
14 Listed Chemicals in the Products. In addition, on said date, in compliance with Health & Safety  
15 Code section 25249.7(d), confidential factual information sufficient to establish the basis for the  
16 Certificate of Merit was provided to the California Attorney General.

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

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

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

24 21. Defendants knew that the Products contain the Listed Chemicals. Defendants,  
25 who are in the business of marketing hardware and/or similar products related to home  
26 improvement and/or plumbing/irrigation systems, also should have known or have constructive  
27 knowledge that the Products contain Listed Chemicals from widespread media coverage and/or  
28 other channels of information concerning the presence of Listed Chemicals in similar materials

1 and systems.

2 22. Lead is listed as known to cause cancer and birth defects or other reproductive  
3 harm. DBP is listed by the State of California as known to cause birth defects and other  
4 reproductive harm. DEHP is listed as known to cause cancer and reproductive toxicity.

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

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

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

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

23 27. As a result of Defendants' wrongful conduct, individuals in the State of California  
24 have been exposed to the Listed Chemicals through the inhalation, ingestion and/or dermal  
25 contact during the reasonably foreseeable use of the Products without a "clear and reasonable  
26 warning", and have suffered and continue to suffer harm, each and every day since at least  
27 March 1, 2018.

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1 **PRAYER FOR RELIEF**

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

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

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


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

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

15 5. Such other and further relief as may be just and proper.  
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17 Dated: July 6, 2021

LAW OFFICES OF LUCAS T. NOVAK

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