

**FILED**

**JUN 25 2021**

**JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: L. Perdigao, Deputy**

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF MARIN  
10 UNLIMITED CIVIL JURISDICTION  
11

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 GROBET FILE COMPANY OF AMERICA,  
16 LLC, GROBET USA, ESSLINGER & CO.,  
INC. AND DOES 1-150,

17 Defendants.  
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Case No. CIV 2102515

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

*(Cal. Health & Safety Code § 25249.6 et seq.)*

FILED

JUN 2 2021

MARRS M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
395 S. Berkeley Drive

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1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff SUSAN DAVIA, in the  
3 public interest of the citizens of the State of California, to enforce the People’s right to be informed  
4 of the presence of Lead, Lead compounds, di(2-ethylhexyl)phthalate (“DEHP”) and  
5 di(isononyl)phthalate (DINP), toxic chemicals found in certain Grobet brass craft caliper/gauge  
6 products with vinyl cases manufactured, distributed and/or otherwise sold by defendants in  
7 California.

8 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
9 California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “No person in the course  
10 of doing business shall knowingly and intentionally expose any individual to a chemical known to  
11 the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning  
12 to such individual. . .” (*Cal. Health & Safety Code § 25249.6.*)

13 3. On October 24, 2003, the State listed di(2-ethylhexyl)phthalate as a chemical known to  
14 cause birth defects and other reproductive harm. DEHP became subject to the warning requirement  
15 one year later and was therefore subject to the “clear and reasonable warning” requirements of  
16 Proposition 65, beginning on October 24, 2004. (27 CCR § 27001(c); *Cal. Health & Safety Code*  
17 *§ 25249.8.*) On December 20, 2013, the State listed DINP as a chemical known to cause cancer. DINP  
18 became subject to the “clear and reasonable warning” requirements Of Proposition 65 on December  
19 20, 2014. On February 27, 1987, the State of California identified and listed Lead as a chemical  
20 known to cause birth defects and other reproductive harm. Lead became subject to the warning  
21 requirement one year later and was subject to the “clear and reasonable warning” requirements of  
22 Proposition 65 on February 27, 1988.

23 4. DEHP and DINP shall hereinafter be referred to as “LISTED CHEMICAL.”

24 5. Significant levels of Lead have been discovered in or on the brass components of  
25 Grobet brass craft caliper/gauge products, including, but not limited to, Grobet USA Brass Caliper  
26 100mm (35.0204 A). Significant levels of the LISTED CHEMICAL have been discovered in or on  
27 vinyl/PVC cases of Grobet brass craft caliper/gauge products, including, but not limited to, Grobet  
28 USA Brass Caliper 100mm (35.0204 A). All such brass craft caliper/gauge products comprised of

1 brass or vinyl/PVC materials and containing any Lead or LISTED CHEMICAL shall hereinafter be  
2 referred to as the "PRODUCTS."

3 6. Defendants' failure to warn consumers and/or other individuals in the State of  
4 California about their exposures to Lead or the LISTED CHEMICAL in conjunction with  
5 defendants' sale of the PRODUCTS is a violation of Proposition 65.

6 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
7 permanent injunctive relief to compel defendants to provide employees handling the PRODUCTS  
8 and purchasers or users of the PRODUCTS with the required warning regarding the health hazards  
9 of Lead and the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

10 8. Plaintiff also seeks civil penalties against defendants for their violations of  
11 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

12 **PARTIES**

13 9. Plaintiff SUSAN DAVIA is a citizen of the State of California who is dedicated to  
14 protecting the health of California citizens through the elimination or reduction of toxic exposures  
15 from consumer products and brings this action in the public interest pursuant to California Health  
16 & Safety Code Section 25249.7.

17 10. Based upon publicly available information, plaintiff is informed and believes, and  
18 thereupon alleges, that each defendant GROBET FILE COMPANY OF AMERICA, LLC, GROBET  
19 USA and ESSLINGER & CO., INC. is a person doing business within the meaning of California  
20 Health & Safety Code Section 25249.11.

21 11. Based upon publicly available information, plaintiff is informed and believes, and  
22 thereupon alleges, that each defendant GROBET FILE COMPANY OF AMERICA, LLC, GROBET  
23 USA and ESSLINGER & CO., INC. is legally responsible for the manufacture, distribution, and/or  
24 offer of the PRODUCTS for sale or use in the State of California or implies by its conduct that it  
25 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

26 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons  
27 doing business within the meaning of California Health & Safety Code Section 25249.11.  
28

1 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
2 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
3 engage in the process of research, testing, designing, assembling, fabricating, and/or  
4 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

5 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing  
6 business within the meaning of California Health & Safety Code Section 25249.11.

7 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
8 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in the  
9 State of California.

10 16. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing  
11 business within the meaning of California Health & Safety Code Section 25249.11.

12 17. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State  
13 of California.

14 18. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
15 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code  
16 of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that  
17 each of the fictitiously named defendants is responsible for the acts and occurrences herein alleged.  
18 When ascertained, their true names shall be reflected in an amended complaint.

19 19. GROBET FILE COMPANY OF AMERICA, LLC, GROBET USA, ESSLINGER & CO.,  
20 INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL  
21 DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as  
22 "DEFENDANTS".

23 VENUE AND JURISDICTION

24 20. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil  
25 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,  
26 because one or more instances of wrongful conduct occurred, and continues to occur, in the County  
27 of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this  
28 County with respect to the PRODUCTS.

1 21. The California Superior Court has jurisdiction over this action pursuant to California  
2 Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all  
3 causes except those given by statute to other trial courts.” The statute under which this action is  
4 brought does not specify any other basis of subject matter jurisdiction.

5 22. The California Superior Court has jurisdiction over DEFENDANTS based on  
6 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
7 association that either are citizens of the State of California, have sufficient minimum contacts in the  
8 State of California, or otherwise purposefully avail themselves of the California market.  
9 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
10 courts consistent with traditional notions of fair play and substantial justice.

11 **FIRST CAUSE OF ACTION**  
12 **(Violation of Proposition 65 - Against All Defendants)**

13 23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
14 Paragraphs 1 through 22, inclusive.

15 24. In passing Proposition 65, the citizens of the State of California expressed their intent  
16 through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that they must  
17 be “informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
18 harm.”

19 25. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
20 and intentionally expose any individual to a chemical known to the state to cause cancer or  
21 reproductive toxicity without first giving clear and reasonable warning to such individual . . .”  
22 Health & Safety Code § 25249.6.

23 26. On March 19, 2021, a valid and compliant Proposition 65 60-Day Notice of Violation  
24 (“60-Day Notice”), together with a valid, requisite Certificate of Merit, were provided to GROBET  
25 FILE COMPANY OF AMERICA, LLC, GROBET USA, ESSLINGER & CO., INC. and various public  
26 enforcement agencies stating that as a result of the DEFENDANTS’ manufacture, distribution and  
27 sales of the PRODUCTS, workers, purchasers and users in the State of California are being exposed  
28 to Lead and the LISTED CHEMICAL resulting from the reasonably foreseeable uses of certain of

1 the PRODUCTS, without the individual purchasers and users first having been provided with a  
2 “clear and reasonable warning” regarding such toxic exposures.

3 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
4 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and  
5 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering  
6 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6  
7 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff further  
8 alleges and believes that such violations will continue to occur into the future.

9 28. After receipt of the claims asserted in the 60-Day Notice and Supplemental 60-Day  
10 Notice, the appropriate public enforcement agencies have failed to commence and diligently  
11 prosecute a cause of action against DEFENDANTS under Proposition 65.

12 29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
13 California by DEFENDANTS, contain Lead and one or more LISTED CHEMICAL.

14 30. DEFENDANTS knew or should have known that the PRODUCTS contained Lead  
15 and such LISTED CHEMICAL.

16 31. Lead and a LISTED CHEMICAL is present in or on the PRODUCTS in such a way as  
17 to expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section  
18 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence of  
19 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as  
20 well as the reasonably foreseeable use of the PRODUCTS.

21 32. DEFENDANTS knew or should have known that the packing, shipping, unpacking,  
22 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable  
23 use of the PRODUCTS exposes individuals to Lead and a LISTED CHEMICAL through dermal  
24 contact and/or ingestion and/or inhalation.

25 33. DEFENDANTS’ participation in the manufacture, distribution and/or offer for sale  
26 or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

27 34. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
28 employees, consumers and/or other individuals in the State of California who were or who could

1 become exposed to Lead or a LISTED CHEMICAL during the reasonably foreseeable retail receipt,  
2 display and organization of PRODUCTS as well as the reasonably foreseeable use of the  
3 PRODUCTS.

4 35. Contrary to the express policy and statutory prohibition of Proposition 65,  
5 employees and individuals exposed to Lead or a LISTED CHEMICAL through dermal contact  
6 and/or ingestion and/or inhalation resulting from the reasonably foreseeable use of the  
7 PRODUCTS, sold by DEFENDANTS without a "clear and reasonable warning", have suffered, and  
8 continue to suffer, irreparable harm, for which harm they have no other plain, speedy or adequate  
9 remedy at law.

10 36. As a consequence of the above-described acts, DEFENDANTS are liable for a  
11 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to California  
12 Health & Safety Code Section 25249.7(b).

13 37. As a consequence of the above-described acts, California Health & Safety Code  
14 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
15 DEFENDANTS.

16 **PRAYER FOR RELIEF**

17 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
18 follows:

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

22 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),  
23 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering  
24 the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as  
25 defined by 27 CCR Section 25601, as to the harms associated with exposures to Lead and each  
26 LISTED CHEMICAL;

27 3. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and  
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4. That the Court grant such other and further relief as may be just and proper.

Dated: June 25, 2021

Respectfully submitted,

SHEFFER LAW FIRM

By:   
Gregory M. Sheffer  
Attorneys for Plaintiff  
SUSAN DAVIA