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FILED

AUG 25 2022

JAMES M. KIM
COURT EXECUTIVE OFFICER
MARIN CO. SUPERIOR COURT
BY: N. JOHNSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,

Plaintiff,

v.

GROBET FILE COMPANY OF AMERICA,
LLC, GROBET USA, ESSLINGER & CO.,
INC., TESTEQUITY LLC, TECHNI-TOOL
AND DOES 1-150,

Defendants.

Case No. CIV 2102515

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

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 pin vise and craft
6 caliper/gauge products with vinyl cases and certain vinyl-handled craft hemostat products
7 manufactured, distributed and/or otherwise sold by defendants in 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 pin vise and caliper/gauge products, including, but not limited to, Grobet pin
26 vise double ended #58.240 and Grobet USA Brass Caliper 100mm (35.0204 A). Significant levels of
27 each LISTED CHEMICAL have been discovered in or on vinyl/PVC cases of Grobet brass craft
28 caliper/gauge products, including, but not limited to, Grobet USA Brass Caliper 100mm (35.0204

1 A). Significant levels of DEHP been discovered in or on the vinyl/PVC handles of Grobet hemostat
2 clamps products, including, but not limited to, Grobet USA Hemostat Straight Serrated 46.454
3 with red vinyl grips. All such vinyl-handled hemostat products and brass craft pin vise and
4 caliper/gauge products comprised of brass or vinyl/PVC materials and containing any Lead or
5 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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

15 **PARTIES**

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

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

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

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

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

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

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

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

16 17. RETAIL DEFENDANTS, ESSLINGER & CO., INC., TESTEQUITY LLC and
17 TECHNI-TOOL offer of the PRODUCTS for sale to individuals in the State of California.

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

23 19. GROBET FILE COMPANY OF AMERICA, LLC, GROBET USA, TESTEQUITY LLC,
24 TECHNI-TOOL, ESSLINGER & CO., INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
26 hereinafter as "DEFENDANTS".
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1 VENUE AND JURISDICTION

2 21.20. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
3 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because one or more instances of wrongful conduct occurred, and continues to occur, in the County
5 of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this
6 County with respect to the PRODUCTS.

7 22.21. The California Superior Court has jurisdiction over this action pursuant to California
8 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
9 causes except those given by statute to other trial courts." The statute under which this action is
10 brought does not specify any other basis of subject matter jurisdiction.

11 23.22. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
13 association that either are citizens of the State of California, have sufficient minimum contacts in the
14 State of California, or otherwise purposefully avail themselves of the California market.
15 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
16 courts consistent with traditional notions of fair play and substantial justice.

17 FIRST CAUSE OF ACTION
18 (Violation of Proposition 65 - Against All Defendants)

19 24.23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 22, inclusive.

21 25.24. In passing Proposition 65, the citizens of the State of California expressed their intent
22 through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that they must
23 be "informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
24 harm."

25 26.25. Proposition 65 states, "[n]o person in the course of doing business shall knowingly
26 and intentionally expose any individual to a chemical known to the state to cause cancer or
27 reproductive toxicity without first giving clear and reasonable warning to such individual . . ."
28 Health & Safety Code § 25249.6.

1 ~~27.~~26. On March 19, 2021, a valid and compliant Proposition 65 60-Day Notice of Violation
2 (“60-Day Notice”), together with a valid, requisite Certificate of Merit, were provided to GROBET
3 FILE COMPANY OF AMERICA, LLC, GROBET USA, ESSLINGER & CO., INC. and various public
4 enforcement agencies stating that as a result of the DEFENDANTS’ manufacture, distribution and
5 sales of the Grobet brass craft caliper/gauge with vinyl case PRODUCTS, workers, purchasers and
6 users in the State of California are being exposed to Lead and the LISTED CHEMICAL resulting
7 from the reasonably foreseeable uses of certain of the PRODUCTS, without the individual
8 purchasers and users first having been provided with a “clear and reasonable warning” regarding
9 such toxic exposures.

10 ~~28.~~27. On February 18, 2022, a valid and compliant Proposition 65 Supplemental 60-Day
11 Notice of Violation (“Supplemental 60-Day Notice”), together with a valid, requisite Certificate of
12 Merit, were provided to GROBET FILE COMPANY OF AMERICA, LLC, TESTEQUITY LLC,
13 TECHNI-TOOL and various public enforcement agencies stating that as a result of the
14 DEFENDANTS’ manufacture, distribution and sales of the Grobet brass craft pin vise PRODUCTS,
15 workers, purchasers and users in the State of California are being exposed to Lead resulting from
16 the reasonably foreseeable uses of certain of the PRODUCTS, without the individual purchasers
17 and users first having been provided with a “clear and reasonable warning” regarding such toxic
18 exposures.

19 ~~29.~~28. On May 16, 2022, a valid and compliant Proposition 65 Supplemental 60-Day Notice
20 of Violation (“Second Supplemental 60-Day Notice”), together with a valid, requisite Certificate of
21 Merit, were provided to GROBET FILE COMPANY OF AMERICA, LLC, TESTEQUITY LLC,
22 TECHNI-TOOL and various public enforcement agencies stating that as a result of the
23 DEFENDANTS’ manufacture, distribution and sales of the hemostat clamps with vinyl grips
24 PRODUCTS, workers, purchasers and users in the State of California are being exposed to DEHP
25 from the reasonably foreseeable uses of certain of the PRODUCTS, without the individual
26 purchasers and users first having been provided with a “clear and reasonable warning” regarding
27 such toxic exposures.

1 30-29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
2 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
3 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering
4 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
5 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further
6 alleges and believes that such violations will continue to occur into the future.

7 31-30. After receipt of the claims asserted in the 60-Day Notice and Supplemental 60-Day
8 Notice, the appropriate public enforcement agencies have failed to commence and diligently
9 prosecute a cause of action against DEFENDANTS under Proposition 65.

10 32-31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
11 California by DEFENDANTS, contain Lead and one or more LISTED CHEMICAL.

12 33-32. DEFENDANTS knew or should have known that the PRODUCTS contained Lead
13 and such LISTED CHEMICAL.

14 34-33. Lead and a LISTED CHEMICAL is present in or on the PRODUCTS in such a way as
15 to expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
16 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence of
17 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
18 well as the reasonably foreseeable use of the PRODUCTS.

19 35-34. DEFENDANTS knew or should have known that the packing, shipping, unpacking,
20 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable
21 use of the PRODUCTS exposes individuals to Lead and a LISTED CHEMICAL through dermal
22 contact and/or ingestion and/or inhalation.

23 36-35. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale
24 or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

25 37-36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 employees, consumers and/or other individuals in the State of California who were or who could
27 become exposed to Lead or a LISTED CHEMICAL during the reasonably foreseeable retail receipt,
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1 display and organization of PRODUCTS as well as the reasonably foreseeable use of the
2 PRODUCTS.

3 ~~38.37.~~ Each of the RETAIL DEFENDANTS, ESSLINGER & CO., INC., TESTEQUITY LLC
4 and TECHNI-TOOL has actual knowledge of the potential consumer product exposures to the
5 LISTED CHEMICAL both pursuant to information obtained by them from reliable sources in the
6 course of doing business and pursuant to the 60-Day Notice, Supplemental 60-Day Notice and
7 Second Supplemental 60-Day Notice.

8 ~~39.38.~~ No manufacturer, producer, packager, importer, supplier, or distributor of the
9 PRODUCTS sold by RETAIL DEFENDANTS, ESSLINGER & CO., INC., TESTEQUITY LLC and
10 TECHNI-TOOL has designated an agent for service of process in California or has a place of
11 business in California.

12 ~~40.39.~~ Contrary to the express policy and statutory prohibition of Proposition 65,
13 employees and individuals exposed to Lead or a LISTED CHEMICAL through dermal contact
14 and/or ingestion and/or inhalation resulting from the reasonably foreseeable use of the
15 PRODUCTS, sold by DEFENDANTS without a "clear and reasonable warning", have suffered, and
16 continue to suffer, irreparable harm, for which harm they have no other plain, speedy or adequate
17 remedy at law.

18 ~~41.40.~~ As a consequence of the above-described acts, DEFENDANTS are liable for a
19 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to California
20 Health & Safety Code Section 25249.7(b).

21 ~~42.41.~~ As a consequence of the above-described acts, California Health & Safety Code
22 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
23 DEFENDANTS.

24 **PRAYER FOR RELIEF**

25 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
26 follows:

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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 or use in California, without providing "clear and reasonable warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to Lead and each LISTED CHEMICAL;

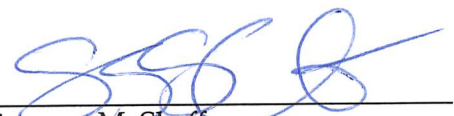
3. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and

4. That the Court grant such other and further relief as may be just and proper.

Dated: August 17, 2022

Respectfully submitted,

SHEFFER LAW FIRM

By: 
Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA