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Attorneys for Plaintiff
SUSAN DAVIA

FILED

AUG 13 2021

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,

Plaintiff,

v.

ESSLINGER & CO., INC. AND DOES 1-150,

Defendants.

Case No. CIV 2102990

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

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

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

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

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

PARTIES

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

10. Based upon publicly available information, plaintiff is informed and believes, and thereupon alleges, that defendant ESSLINGER & CO., INC. is a person doing business within the meaning of California Health & Safety Code Section 25249.11.

11. Based upon publicly available information, plaintiff is informed and believes, and thereupon alleges, that defendant ESSLINGER & CO., INC. is legally responsible for the manufacture, distribution, and/or offer of the PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

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

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

19. ESSLINGER & CO., INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as “DEFENDANTS”.

VENUE AND JURISDICTION

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

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

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

7 **FIRST CAUSE OF ACTION**
8 **(Violation of Proposition 65 - Against All Defendants)**

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

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

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

19 26. On March 19, 2021, a valid and compliant Proposition 65 60-Day Notice of Violation
20 ("60-Day Notice 1"), together with a valid, requisite Certificate of Merit, were provided to
21 ESSLINGER & CO., INC. and various public enforcement agencies stating that as a result of the
22 DEFENDANTS' manufacture, distribution and sales of the brass pin vise and set case PRODUCTS,
23 workers, purchasers and users in the State of California are being exposed to Lead and the LISTED
24 CHEMICAL resulting from the reasonably foreseeable uses of certain of the PRODUCTS, without
25 the individual purchasers and users first having been provided with a "clear and reasonable
26 warning" regarding such toxic exposures. On March 19, 2021, a separate valid and compliant
27 Proposition 65 60-Day Notice of Violation ("60-Day Notice 2"), together with a valid, requisite
28 Certificate of Merit, were provided to ESSLINGER & CO., INC. and various public enforcement

1 agencies stating that as a result of the DEFENDANTS' manufacture, distribution and sales of the
2 brass craft gauge/caliper PRODUCTS, workers, purchasers and users in the State of California are
3 being exposed to Lead resulting from the reasonably foreseeable uses of certain of the PRODUCTS,
4 without the individual purchasers and users first having been provided with a "clear and
5 reasonable warning" regarding such toxic exposures. The 60-Day Notice 1 and 60-Day Notice 2
6 shall hereafter collectively be referred to as "60-Day Notices".

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

13 28. After receipt of the claims asserted in the 60-Day Notices, the appropriate public
14 enforcement agencies have failed to commence and diligently prosecute a cause of action against
15 DEFENDANTS under Proposition 65.

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

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

20 31. Lead and a LISTED CHEMICAL is present in or on the PRODUCTS in such a way as
21 to expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
22 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence of
23 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
24 well as the reasonably foreseeable use and misuse of the PRODUCTS.

25 32. DEFENDANTS knew or should have known that the packing, shipping, unpacking,
26 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable
27 use and misuse of the PRODUCTS exposed individuals to Lead and a LISTED CHEMICAL through
28 dermal contact and/or ingestion and/or inhalation.

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

34. DEFENDANTS failed to provide a “clear and reasonable warning” to those employees, consumers and/or other individuals in the State of California who were or who could become exposed to Lead or a LISTED CHEMICAL during the reasonably foreseeable retail receipt, display and organization of PRODUCTS as well as the reasonably foreseeable use and misuse of the PRODUCTS.

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

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

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, 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 or use in California, without providing “clear and reasonable warnings” as

1 defined by 27 CCR Section 25601, as to the harms associated with exposures to Lead and each
2 LISTED CHEMICAL;

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

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

5 Dated: August 13, 2021

Respectfully submitted,

6 SHEFFER LAW FIRM

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8 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA