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Gregory M. Sheffer, State Bar No. 173124
SHEFFER LAW FIRM
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941
Telephone: 415.388.0911

Attorneys for Plaintiff
SUSAN DAVIA

FILED

NOV 10 2021

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.

JOHARA, INC. DBA SEATTLE FINDINGS &
SUPPLY CENTER AND DOES 1-150,

Defendants.

Case No. CIV 2103858

**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 and di(2-ethylhexyl)phthalate (“DEHP”), toxic chemicals found in certain
5 Seattle Findings hand tool products with vinyl grips & brass craft tool products manufactured,
6 distributed and/or otherwise sold by defendants in California.

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

12 3. On October 24, 2003, the State listed DEHP as a chemical known to cause birth defects
13 and other reproductive harm. DEHP became subject to the Proposition 65 statutory “clear and
14 reasonable” warning requirement on October 24, 2004. (*27 CCR § 27001(c); Cal. Health & Safety Code*
15 *§ 25249.8.*) On February 27, 1987, the State of California identified and listed Lead as a chemical
16 known to cause birth defects and other reproductive harm. Lead became subject to the Proposition
17 65 statutory “clear and reasonable” warning requirement on February 27, 1988.

18 4. DEHP shall hereinafter be referred to as “LISTED CHEMICAL.”

19 5. Significant levels of Lead have been discovered in or on the brass components of
20 Seattle Findings brass craft and jewelry tools, including, but not limited to, brass slide gauge (all
21 sizes, including 35-204, 35-156, 35-170) and brass ring stamping block (55-420). Significant levels of
22 the LISTED CHEMICAL have been discovered in or on Seattle Findings hand tool products with
23 vinyl grips, including, but not limited to, mini 4 plier set (46-500), hemostat locking plier (46-454),
24 jump ring plier (46-260), hole punch plier (46-1241). All such brass craft and jewelry tool products
25 comprised and hand tool products with vinyl grips containing any Lead or LISTED CHEMICAL
26 shall hereinafter be referred to as the “PRODUCTS.”

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

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

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

10 **PARTIES**

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

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

18 11. Based upon publicly available information, plaintiff is informed and believes, and
19 thereupon alleges, that defendant JOHARA, INC. DBA SEATTLE FINDINGS & SUPPLY CENTER
20 is legally responsible for the manufacture, distribution, and/or offer of the PRODUCTS for sale or
21 use in the State of California or implies by its conduct that it manufactures, distributes, and/or
22 offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

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

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

15 19. JOHARA, INC. DBA SEATTLE FINDINGS & SUPPLY CENTER, MANUFACTURER
16 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where
17 appropriate, collectively be referred to hereinafter as "DEFENDANTS".

18 **VENUE AND JURISDICTION**

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

24 21. The California Superior Court has jurisdiction over this action pursuant to California
25 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
26 causes except those given by statute to other trial courts." The statute under which this action is
27 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 April 16, 2021, a valid and compliant Proposition 65 60-Day Notice of Violation
20 ("60-Day Notice"), together with a valid, requisite Certificate of Merit, were provided to JOHARA,
21 INC. DBA SEATTLE FINDINGS & SUPPLY CENTER and various public enforcement agencies
22 stating that as a result of the DEFENDANTS' manufacture, distribution and sales of the
23 PRODUCTS, workers, purchasers and users in the State of California are being exposed to Lead
24 and the LISTED CHEMICAL resulting from the reasonably foreseeable uses of certain of the
25 PRODUCTS, without the individual purchasers and users first having been provided with a "clear
26 and reasonable warning" regarding such toxic exposures.

27 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
28 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and

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

5 28. After receipt of the claims asserted in the Notices, the appropriate public
6 enforcement agencies have failed to commence and diligently prosecute a cause of action against
7 DEFENDANTS under Proposition 65.

8 29. The brass craft tool PRODUCTS manufactured, distributed, and/or offered for sale
9 or use in California by DEFENDANTS contain Lead and the vinyl-grip hand tool PRODUCTS
10 manufactured, distributed, and/or offered for sale or use in California by DEFENDANTS contain
11 one or more LISTED CHEMICAL.

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

14 31. 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
17 of, the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS
18 as well as the reasonably foreseeable use of the PRODUCTS.

19 32. 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 33. 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 34. 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 35. Contrary to the express policy and statutory prohibition of Proposition 65,
4 employees and individuals exposed to Lead or a LISTED CHEMICAL through dermal contact
5 and/or ingestion and/or inhalation resulting from the reasonably foreseeable use of the
6 PRODUCTS, sold by DEFENDANTS without a "clear and reasonable warning", have suffered, and
7 continue to suffer, irreparable harm, for which harm they have no other plain, speedy or adequate
8 remedy at law.

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

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

15 38. In addition to the commission of all acts and actions identified hereinabove,
16 defendant JOHARA, INC. DBA SEATTLE FINDINGS & SUPPLY CENTER further violated 27
17 C.C.R. 25600.2(g), by failing to promptly provide the name and contact information for the
18 manufacturer, producer, packager, importer, supplier, and distributor of the product to plaintiff as
19 demanded in her Notices.

20 **PRAYER FOR RELIEF**

21 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
22 follows:

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

26 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
27 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering
28 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: November 10, 2021

Respectfully submitted,

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SHEFFER LAW FIRM

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By: 

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Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA

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