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**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.

PAUL H. GESSWEIN & CO., INC. AND  
DOES 1-150,

Defendants.

Case No. CIV **2103854**

**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”), di-isodecyl  
5 phthalate (“DIDP”) and diisononyl phthalate (“DINP”), toxic chemicals found in certain Grobet  
6 brass craft caliper/gauge products with vinyl cases manufactured, distributed and/or otherwise  
7 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 Proposition 65  
15 statutory “clear and reasonable” warning requirement on October 24, 2004. (27 CCR § 27001(c); *Cal.*  
16 *Health & Safety Code § 25249.8.*) On December 20, 2013, the State listed DINP as a chemical known to  
17 cause cancer. DINP became subject to the Proposition 65 statutory “clear and reasonable” warning  
18 requirement on December 20, 2014. On April 20, 2007, the state listed DIDP as a chemical known to  
19 cause developmental toxicity. DIDP became subject to the Proposition 65 statutory “clear and  
20 reasonable” warning requirement on April 20, 2008. (27 CCR § 27001(c); *Cal. Health & Safety Code*  
21 *§ 25249.8.*) On February 27, 1987, the State of California identified and listed Lead as a chemical  
22 known to cause birth defects and other reproductive harm. Lead became subject to the Proposition  
23 65 statutory “clear and reasonable” warning requirement on February 27, 1988.

24 4. DEHP, DIDP and DINP shall hereinafter be referred to as “LISTED CHEMICAL.”

25 5. Significant levels of Lead have been discovered in or on the brass components of  
26 Gesswein brass craft and jewelry tools, including, but not limited to, Brass Pin Vise 820-4300, Brass  
27 Sliding Caliper 813-1200. Significant levels of the LISTED CHEMICAL have been discovered in or  
28 on Gesswein vinyl-coated hand tool and tool kit case products, including, but not limited to,

1 Economy Plier, Set 4 Ylw 180-0360 case (clear and blue material), Economy Plier, Set 4 Ylw 180-0360  
2 pliers, Value Line Round Nose Plier 180-0342, Economy Stone Setting Plier 181-2950, Foam Grip  
3 Bent Chain Nose Plier 180-0336, Foam Grip Bent Chain Nose Plier 180-0336, Value Line Flat Nose  
4 Plier 180-0341. All such brass craft and jewelry tool products comprised and vinyl-coated hand tool  
5 and tool kit case products containing any Lead or LISTED CHEMICAL shall hereinafter be referred  
6 to as the "PRODUCTS."

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

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

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

16 **PARTIES**

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

21 10. Based upon publicly available information, plaintiff is informed and believes, and  
22 thereupon alleges, that defendant PAUL H. GESSWEIN & 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 defendant PAUL H. GESSWEIN & CO., INC. is legally responsible for the  
26 manufacture, distribution, and/or offer of the PRODUCTS for sale or use in the State of California  
27 or implies by its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or  
28 use in the State of California.

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

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

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

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

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

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

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

21 19. PAUL H. GESSWEIN & CO., INC., MANUFACTURER DEFENDANTS,  
22 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively  
23 be referred to hereinafter as "DEFENDANTS".

24 VENUE AND JURISDICTION

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

1 of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this  
2 County with respect to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**  
14 **(Violation of Proposition 65 - Against All Defendants)**

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

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

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

25 26. On May 24, 2021, a valid and compliant Proposition 65 60-Day Notice of Violation  
26 (“60-Day Notice 1”), together with a valid, requisite Certificate of Merit, were provided to PAUL H.  
27 GESSWEIN & CO., INC. and various public enforcement agencies stating that as a result of the  
28 DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS, workers, purchasers and

1 users in the State of California are being exposed to Lead and the LISTED CHEMICAL resulting  
2 from the reasonably foreseeable uses of certain of the brass jewelry and craft tool PRODUCTS,  
3 without the individual purchasers and users first having been provided with a “clear and  
4 reasonable warning” regarding such toxic exposures. On June 25, 2021, a valid and compliant  
5 Proposition 65 60-Day Notice of Violation (“60-Day Notice 2”), together with a valid, requisite  
6 Certificate of Merit, were provided to PAUL H. GESSWEIN & CO., INC. and various public  
7 enforcement agencies stating that as a result of the DEFENDANTS’ manufacture, distribution and  
8 sales of the vinyl-coated hand tool and tool kit case products PRODUCTS, workers, purchasers and  
9 users in the State of California are being exposed to the LISTED CHEMICAL resulting from the  
10 reasonably foreseeable uses of certain of the vinyl PRODUCTS, without the individual purchasers  
11 and users first having been provided with a “clear and reasonable warning” regarding such toxic  
12 exposures. Both 60-Day Notice 1 and 60-Day Notice 2 shall hereafter be collectively referred to as  
13 “Notices.”

14 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
15 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and  
16 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering  
17 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6  
18 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s Notices. Plaintiff further  
19 alleges and believes that such violations will continue to occur into the future.

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

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

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

27 31. Lead and a LISTED CHEMICAL is present in or on the PRODUCTS in such a way as  
28 to expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section

1 25602(b), through dermal contact and/or ingestion and/or inhalation during, or as a consequence  
2 of, the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS  
3 as well as the reasonably foreseeable use of the PRODUCTS.

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

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

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

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

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

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

27 38. In addition to the commission of all acts and actions identified hereinabove,  
28 defendant PAUL H. GESSWEIN & CO., INC. further violated 27 C.C.R. 25600.2(g), by failing to

1 promptly provide the name and contact information for the manufacturer, producer, packager,  
2 importer, supplier, and distributor of the product to plaintiff as demanded in her Notices.

3 PRAYER FOR RELIEF

4 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
5 follows:

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

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

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

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

16 Dated: November 10, 2021

Respectfully submitted,

17 SHEFFER LAW FIRM

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19 By: 

20 Gregory M. Sheffer  
21 Attorneys for Plaintiff  
22 SUSAN DAVIA  
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