

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Maurice Leiter

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 APS&EE, LLC, a limited liability company,)
11)
12 Plaintiff,)
13 v.)
14 MSKS IP INC., a corporation, METAL)
15 SUPERMARKETS FRANCHISING)
16 AMERICA INC., a corporation, and DOES 1)
17 through 100, inclusive,)
18 Defendants.)

CASE NO. 22STCV17979

**PLAINTIFF'S COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge:
Dept.:
Compl. Filed:

Unlimited Jurisdiction

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INTRODUCTION

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2 1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public
3 interest of the citizens of the State of California, a representative action to enforce the People’s
4 right to be informed of the presence of lead (“Lead”), a chemical known to the State of
5 California to cause cancer and birth defects or other reproductive harm, found in brass bars sold
6 by Defendants.

7 2. The purpose of this Complaint is to remedy Defendants’ continuing failure to
8 warn California residents about the risk of exposure to the Lead in the brass bars manufactured,
9 distributed, sold, and/or offered for sale to consumers in California.

10 3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell
11 the brass bars containing dangerous levels of the Lead, including, without limitation: 0.5” square
12 bar. The brass bars come in all lengths and include flat bars, rectangular bars, round bars, square
13 bars, and hexagon bars of various thicknesses and widths. The products described in this
14 paragraph shall hereinafter be referred to as the “Products”.

15 4. Children and adults are exposed to the Lead when they use, touch, handle, play
16 with, repair, maintain, or install the Products.

17 5. Hazardous levels of the Lead are found in the accessible surface areas of the
18 Products manufactured, distributed, sold, and/or offered for sale by Defendants to consumers in
19 California.

20 6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”)
21 provides in pertinent part: “[n]o person in the course of doing business shall knowingly and
22 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 7. Studies repeatedly conclude that exposure to the Lead is hazardous to the health
25 of children and adults. Children are especially vulnerable to the toxic effects of Lead.
26 Accordingly, California has listed the Lead as a chemical known to the state to cause cancer and
27 birth defects or other reproductive harm, and therefore subject to Proposition 65 warning
28 requirements.

1 Products contain Lead from widespread media coverage and/or other channels of information
2 concerning the presence of Lead in brass.

3 23. Lead is a chemical listed by the State of California as known to cause cancer and
4 birth defects or other reproductive harm.

5 24. Defendants' Products contain sufficient quantities of the Lead such that
6 consumers, including children, who use, touch, handle, play with, repair, maintain, or install the
7 Products are exposed to unsafe levels of Lead. Lead is present in the Products in such a way as to
8 expose individuals to Lead, as exposure is defined by 27 CCR section 25600.1(e): "...that results
9 from a person's acquisition, purchase, storage, consumption, or any reasonably foreseeable
10 use..." Exposure occurs through inhalation, ingestion and/or dermal contact during the
11 reasonably foreseeable use of the Products.

12 25. Defendants knew or should have known that the reasonably foreseeable use of the
13 Products exposes individuals to Lead through inhalation, ingestion and/or dermal contact.

14 26. Defendants failed to provide a "clear and reasonable warning" to individuals in
15 the State of California who were or could become exposed to Lead during the reasonably
16 foreseeable use of the Products.

17 27. Defendants advertise themselves as national suppliers of the Products with
18 multiple brick and mortar stores in California. Consumers can simply add the Products of any
19 quantity to their online carts and then check out. Consumers could be intending to use the
20 Products for decorating, constructing cabinets, home projects, marine projects, crafts, art
21 projects, or all other foreseeable uses. Defendants provide no Proposition 65 warnings.
22 Defendants have control over what products are presented on their websites and whether
23 warnings should accompany such products.

24 28. By committing the acts alleged in this Complaint, Defendants have violated
25 California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally
26 exposing individuals to Lead without first giving clear and reasonable warnings to such
27 individuals regarding the toxicity of Lead.

28 29. As a result of Defendants' wrongful conduct, individuals in the State of California

1 have been exposed to Lead through the inhalation, ingestion and/or dermal contact during the
2 reasonably foreseeable use of the Products without a “clear and reasonable warning”, and have
3 suffered and continue to suffer harm, each and every day since at least March 1, 2019.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff prays for judgment against Defendants as 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 in California without providing “clear and reasonable warnings” as defined
12 by 27 CCR section 25601;


13 3. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
14 order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use
15 of Products sold by Defendants;

16 4. That the Court, pursuant to California Code of Civil Procedure section 1021.5, or
17 any other applicable theory, grant Plaintiff’s reasonable attorneys’ fees and costs of suit; and

18 5. Such other and further relief as may be just and proper.

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20 Dated: June 1, 2022

LAW OFFICES OF LUCAS T. NOVAK

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22 By: 
23 LUCAS T. NOVAK
24 Attorney for Plaintiff, APS&EE, LLC
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