

Juan Salas, Esq. (SBN 306345)
WATKINS & LETOFSKY, LLP
2900 S Harbor Blvd., Suite 240
Santa Ana, CA 92704
Office: (949) 476-9400; Fax: (949) 476-9407
Attorney for Plaintiff, STATE FARM
GENERAL INSURANCE COMPANY

FILED
SAN DIEGO SUPERIOR COURT
DEC 31 2018
CLERK OF THE SUPERIOR COURT
BY: _____

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY**

STATE FARM GENERAL INSURANCE
COMPANY,

Plaintiff,

vs.

OETIKER, INC., and DOES 1 to 20,
Inclusive

Defendants.

Case No.: **37-2019-00069011-CL-NP-NC**
Assigned for all Purposes to Dept.
The Honorable
[Limited Civil Case]
[Amount demanded is less than \$10,000]

COMPLAINT FOR DAMAGES

- 1. Negligence**
- 2. Strict Products Liability**
- 3. Breach of Implied Warranties**

TRIAL DATE: Not Yet Assigned

COMES NOW PLAINTIFF, STATE FARM GENERAL INSURANCE COMPANY
("Plaintiff"), who is informed and believes and thereon alleges against the Defendants and Does
1-20, inclusive, and each of them as follows:

1. Plaintiff is a corporation organized and existing under the laws of the State of
California, and is and was at all times mentioned herein, qualified to do business in the State of
California.

2. Defendant, OETIKER, INC., is a corporation with its headquarters in the State of
Minnesota, and was conducting business in the State of California.

1 3. Plaintiff, STATE FARM GENERAL INSURANCE COMPANY, alleges that
2 this is the proper court because the transaction and occurrence (“the incident”) took place at

3 [REDACTED]
4 4. Plaintiff is ignorant of the true names and capacities of the defendants sued
5 herein as DOES 1-20, inclusive, and therefore sues these defendants by fictitious names.
6 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
7 Plaintiff is informed and believes and thereon alleges that at all times mentioned herein, each of
8 the fictitiously named defendants is negligently or otherwise responsible in some manner, along
9 with the named defendants, for the occurrences herein alleged, and Plaintiff’s damages as herein
10 alleged were legally and proximately caused by that negligence or other wrongful acts and/or
11 omissions and the negligence or other acts and/or omissions of both the named and fictitiously
12 named defendants.

13 5. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, the defendants named in this action, as well as the fictitiously named defendants,
15 and each of them, were agents and employees of the remaining defendants, and in doing the
16 things hereinafter complained of, were acting within the course and scope of such agency and/or
17 employment and with the knowledge and consent of the remaining defendants.

18 6. On or about March 12, 2019, a water loss occurred at [REDACTED],
19 [REDACTED], which
20 caused property damage. The insureds woke up on the loss date and heard water running in the
21 first floor bathroom. Water was flowing through the bathroom vent. A PEX pipe joint in a
22 bathroom ceiling had failed.

23 7. Plaintiff’s expert engineer non-destructively examined PEX pipes, a brass tee
24 and three stainless steel ear clamps. The subject clamps were manufactured by Oetiker, Inc.
25 The clamps were labeled “A,” “B” and “C.” Clamp “A” had cracked and severed, causing the
26 water loss. Examination of the severed surfaces of clamp “A” revealed red corrosion deposits
27 and a brittle appearance. Additional crack propagation was found on clamp “A,” and it was
28

1 tested with a magnet. The test revealed that the clamp exhibits ferromagnetic properties.
2 Clamp "A" was then examined microscopically, confirming red corrosion deposits on the crack
3 surfaces. Corrosion deposits were found near the additional crack propagation. The failure
4 found in this clamp is similar to other failed Oetiker clamps previously examined by the
5 engineer. A correctly made 300-series stainless steel clamp should exhibit little or no
6 ferromagnetism. An increased level of magnetism in austenitic stainless steel indicates higher
7 ferrite content and a high level of ferrite in an austenitic can decrease its corrosion resistance.
8 The clamp and product specifications contain no provisions to prevent cracking. The product
9 specifications suggest to the installer that the clamps are able to withstand moderate exposure to
10 a chloride-containing solution. The installer would not expect the clamps to fail at the chloride
11 concentrations normally found in potable drinking water. It is our opinion that the submitted
12 clamp was defective and prone to stress corrosion cracking due to exposure to potable water.
13 There are no warnings or cautionary statements present in the installation instructions to
14 indicate that installing the clamps on a hot water line may accelerate or cause corrosion and
15 failure of the clamps.

16 8. Plaintiff, STATE FARM GENERAL INSURANCE COMPANY, is informed
17 and believes, and thereon alleges, that the water that leaked into Plaintiff's insureds' property
18 originated from the subject stainless steel clamp, and/or its component parts, that was
19 manufactured, designed, distributed, inspected, supplied and/or sold by Defendants, OETIKER,
20 INC., and DOES 1-20, inclusive.

21 **FIRST CAUSE OF ACTION FOR NEGLIGENCE**

22 **[Against All Defendants]**

23 9. Plaintiff incorporates by reference paragraphs 1 through 8 as though fully set
24 forth herein.

25 10. Defendants, OETIKER, INC., and DOES 1-20, inclusive, had a duty to use
26 reasonable care with respect to the manufacture, design, distribution, inspection, supply and/or sale
27 of the subject stainless steel clamp, and/or its component parts.
28

1 11. Defendants, OETIKER, INC., and DOES 1-20, inclusive, negligently
2 manufactured, designed, distributed, inspected and/or supplied the subject stainless steel clamp,
3 and/or its component parts, and/or negligently failed to issue adequate instruction or warnings
4 regarding the subject stainless steel clamp, and/or its component parts, such that the subject
5 stainless steel clamp, and/or its component parts, left Defendants' possession or control in a
6 defective condition, with manufacturing and/or design defects and/or insufficient instruction or
7 warning of safety hazards and/or installation instructions of the subject stainless steel clamp,
8 and/or its component parts. A manufacturer, designer, distributor, inspector, supplier and/or seller
9 is negligent if it fails to use the amount of care in manufacturing, designing, distributing,
10 inspecting, supplying and/or selling the product that a reasonably careful manufacturer, designer,
11 distributor, inspector, supplier, seller would use in similar circumstances to avoid exposing others
12 to a foreseeable risk of harm. In determining whether Defendants used reasonable care, a trier of
13 fact shall balance what Defendants knew or should have known about the likelihood and severity
14 of potential harm from the product against the burden of taking safety measures to reduce or avoid
15 the harm.

16 12. The afore-described acts and/or omissions on the part of Defendants and each of
17 them caused water to leak and escape inside the insureds' property from the subject stainless
18 steel clamp, and/or its component parts, and to cause a water loss to Plaintiff's insureds'
19 property on or about March 12, 2019, and harmed Plaintiff's insureds and Plaintiff.

20 13. The afore-described acts and/or omissions of Defendants and each of them were the
21 legal and proximate cause of damages to Plaintiff's insureds and to Plaintiff.

22 14. The acts and/or omissions of Defendants and each of them were a substantial factor
23 in causing harm to Plaintiff's insureds and to Plaintiff.

24 15. As a result of the negligence of Defendants and each of them, Plaintiff's insureds
25 sustained at least \$4,733.82 in damages. Plaintiff paid to or on behalf of its insureds the amount of
26 \$4,733.82, to date, and further monetary damages are expected and will be according to proof.
27 This sum includes Plaintiff's insureds' \$2,454.00 deductible, which is recoverable by Plaintiff
28

1 under the respective policy of insurance. Plaintiff, STATE FARM GENERAL INSURANCE
2 COMPANY, fulfilled its obligations pursuant to the insurance agreement between Plaintiff and
3 Plaintiff's insureds, for the property damage losses. Plaintiff, STATE FARM GENERAL
4 INSURANCE COMPANY, now seeks recovery, by way of a subrogation claim, for the indemnity
5 and other damages Plaintiff paid to or on behalf of its insureds in the approximate amount of
6 \$4,733.82, and pending, plus other miscellaneous damages, costs, and pre-judgment interest from
7 the date of loss, according to proof at trial.

8 **SECOND CAUSE OF ACTION FOR STRICT PRODUCTS LIABILITY**

9 [Against all Defendants]

10 16. Plaintiff incorporates by reference paragraphs 1 through 15 as though fully set forth
11 herein.

12 17. Defendants, OETIKER, INC., and DOES 1-20, inclusive, manufactured, designed,
13 distributed, inspected, supplied and/or sold the subject stainless steel clamp, and/or its
14 component parts, such that the product contained manufacturing defects, insufficient instructions
15 and/or warnings of potential safety hazards and/or design defects when the product left said
16 Defendants' possession or control.

17 18. The subject stainless steel clamp, and/or its component parts, contained a
18 manufacturing defect (a product contains a manufacturing defect if the product differs from the
19 manufacturer's design or specifications or from other typical units of the same product line) and/or
20 design defect (Consumer Expectation Test - that the subject stainless steel clamp, and/or its
21 component parts, did not perform as safely as an ordinary consumer would have expected it to
22 perform when used or misused in an intended or reasonably foreseeable way) or (Risk Benefit Test
23 – once Plaintiff proves all of the following: 1. That Defendants manufactured/distributed/sold the
24 product; 2. That Plaintiff was harmed; and 3. That the [product]'s design was a substantial factor in
25 causing harm to Plaintiff then Plaintiff prevails unless Defendants prove that the benefits of the
26 product's design outweigh the risks of the design considering (a) The gravity of the potential harm
27 resulting from the use of the product; (b) The likelihood that this harm would occur; (c) The
28

1 feasibility of an alternative safer design at the time of manufacture; (d) The cost of an alternative
2 design; and (e) The disadvantages of an alternative design; and (f) Other relevant factors) when it
3 left the possession of Defendants, OETIKER, INC., and DOES 1-20, inclusive, and failed to issue
4 adequate instructions or warnings regarding the subject stainless steel clamp and/or its component
5 parts (1. That Defendants manufactured/ distributed/ inspected/ supplied / sold the product; 2. That
6 the product had potential risks that were known or knowable in light of the scientific knowledge
7 that was generally accepted in the scientific community at the time of
8 manufacture/distribution/sale; 3. That the potential risks presented a substantial danger when the
9 product is used or misused in an intended or reasonably foreseeable way; 4. That ordinary
10 consumers would not have recognized the potential risks; 5. That Defendants failed to adequately
11 warn or instruct of the potential risks; 6. That Plaintiff was harmed; and 7. That the lack of
12 sufficient instructions or warnings was a substantial factor in causing Plaintiff's harm).

13 19. Plaintiff's insureds became the users of the defective product.

14 20. At the time of the incident described herein, the product was being used in the
15 manner intended by Defendants and/or in a reasonably foreseeable manner and/or misused in a
16 reasonably foreseeable manner.

17 21. The afore-described acts and/or omissions on the part of Defendants and each of
18 them caused water to leak and escape inside the property from the subject stainless steel clamp,
19 and/or its component parts, on or about March 12, 2019, and harmed Plaintiff's insureds and
20 Plaintiff.

21 22. The afore-described subject stainless steel clamp, and/or its component parts,
22 were the legal and proximate cause of damages to Plaintiff's insureds and to Plaintiff.

23 23. The acts and/or omissions of Defendants and each of them were a substantial factor
24 in causing harm to Plaintiff's insureds and to Plaintiff.

25 24. As a result of the manufacture, design, distribution, inspection, supply and /or
26 sale of the subject stainless steel clamp, and/or its component parts, by Defendants, OETIKER,
27 INC., and DOES 1-20, inclusive, with manufacturing, inadequate warnings, and/or design defects,
28

1 Plaintiff's insureds sustained approximately \$4,733.82, and pending, in damages for repairs,
2 restoration and/or replacement of property. Plaintiff, STATE FARM GENERAL INSURANCE
3 COMPANY, fulfilled its obligations pursuant to the insurance agreement between Plaintiff and its
4 insured and reimbursed Plaintiff's insureds for all losses. Plaintiff, STATE FARM GENERAL
5 INSURANCE COMPANY, now seeks recovery, by way of a subrogation claim, for the indemnity
6 and other damages Plaintiff paid to or on behalf of its insureds in the approximate amount of
7 \$4,733.82, and pending, plus other miscellaneous damages, costs, and pre-judgment interest from
8 the date of loss, according to proof at trial.

9 **THIRD CAUSE OF ACTION FOR BREACH OF IMPLIED WARRANTIES**

10 **[Against all Defendants]**

11 25. Plaintiff incorporates by reference paragraphs 1 through 24 as though fully set forth
12 herein.

13 26. Defendants, OETIKER, INC., and DOES 1-20, inclusive, manufactured, designed,
14 distributed, inspected, supplied and/or sold the subject stainless steel clamp, and/or its
15 component parts, such that the product contained manufacturing defects, insufficient instructions
16 and/or warnings of potential safety hazards and/or design defects when the product left said
17 Defendants' possession or control.

18 27. As a result, Defendants, OETIKER, INC., and DOES 1-20, inclusive, breached the
19 implied warranty of merchantability. The subject stainless steel clamp, and/or its component
20 parts, was installed in Plaintiff's insureds downstairs bathroom, and at the time, Defendants,
21 OETIKER, INC., and DOES 1-20, inclusive, were in the business of manufacturing, designing,
22 distributing, inspecting, supplying and/or selling these goods and/or held itself out as having
23 special knowledge or skill regarding these goods; the subject stainless steel clamp, and/or its
24 component parts, were not of the same quality as those generally acceptable in the trade; and/or
25 were not fit for the ordinary purposes for which such goods are used.

26 28. As a result, Defendants, OETIKER, INC., and DOES 1-20, inclusive, breached the
27 Implied Warranty of Fitness for a Particular purpose. The subject stainless steel clamp, and/or its
28

1 component parts, was installed in Plaintiff's insureds bathroom, and at the time, Defendants,
2 OETIKER, INC., and DOES 1-20, inclusive, knew or had reason to know that consumers intended
3 to use the subject stainless steel clamp, and/or its component parts, for a particular purpose and
4 were relying on the skill and judgment of Defendants, OETIKER, INC., and DOES 1-20,
5 inclusive, to furnish a stainless steel clamp that was suitable for the particular purpose; and
6 Plaintiff's insureds justifiably relied on Defendants, OETIKER, INC., and DOES 1-20, inclusive,
7 skill and judgment and that the subject stainless steel clamp, and/or its component parts, was not
8 suitable for its particular purpose when it failed by leaking water into Plaintiff's insureds' property.

9 29. The afore-described acts and/or omissions on the part of Defendants and each of
10 them caused water to leak and escape inside the property from the subject stainless steel clamp,
11 and/or its component parts, on or about March 12, 2019, and harmed Plaintiff's insureds and
12 Plaintiff.

13 30. The afore-described defective subject stainless steel clamp, and/or its component
14 parts, were the legal and proximate cause of damages to Plaintiff's insureds and to Plaintiff.

15 31. The acts and/or omissions of Defendants and each of them were a substantial factor
16 in causing harm to Plaintiff's insureds and to Plaintiff.

17 32. As a result of the breach of the implied warranties of merchantability and of fitness
18 for a particular purpose of the subject stainless steel clamp, and/or its component parts, by
19 Defendants, OETIKER, INC., and DOES 1-20, inclusive, Plaintiff's insureds sustained
20 approximately \$4,733.82, and pending, in damages for repairs, restoration and/or replacement of
21 property. Plaintiff, STATE FARM GENERAL INSURANCE COMPANY, fulfilled its
22 obligations pursuant to the insurance agreement between Plaintiff and its insureds and reimbursed
23 Plaintiff's insureds for all losses. Plaintiff, STATE FARM GENERAL INSURANCE
24 COMPANY, now seeks recovery, by way of a subrogation claim, for the indemnity and other
25 damages Plaintiff paid to or on behalf of its insureds in the approximate amount of \$4,733.82, and
26 pending, plus other miscellaneous damages, costs, and pre-judgment interest from the date of loss,
27 according to proof at trial.

1 **PRAYER**

2 **WHEREFORE**, Plaintiff prays for judgment against Defendants, OETIKER, INC., and
3 DOES 1-20, inclusive, and each of them, as follows:

- 4 1. All damages Plaintiff paid to or on behalf of its insureds in the amount of
5 \$4,733.82, continuing and according to proof at trial;
- 6 2. For costs of suit incurred by Plaintiff herein;
- 7 3. For pre-judgment interest according to proof at trial;
- 8 4. For any and all such relief as the court may deem just and proper.

9 DATED: December 21 2019

Respectfully Submitted,

10 WATKINS & LETOFSKY, LLP

11
12 By: 

13 JUAN SALAS
14 Attorney for Plaintiff,
15 STATE FARM GENERAL
INSURANCE COMPANY

16 STF.5059-STF v. Oetiker, Inc.\Complaint.doc