



1 a “clear and reasonable warning” before exposing individuals to chemicals known to the state to  
2 cause cancer or reproductive harm.

## 3 **II. PARTIES**

4 2. Plaintiff is a citizen of the State of California, by and through her counsel of record,  
5 Daniel N. Greenbaum, Esq.. Health and Safety Code section 25249.7(d) provides that actions to  
6 enforce Proposition 65 may be brought by “any person in the public interest.” Business and  
7 Professions Code sections 17200 *et seq.* provide that actions to enforce that statute may be brought in  
8 a private “Attorney General” action.

9 3. Defendant The Keeney Manufacturing Company (Keeney) is a business entity with  
10 ten or more employees that sells, or has, at times relevant to this complaint, authorized the  
11 manufacture, distribution, or sale of plumbing or other piping products under the brand name Keeney  
12 and other brand names, that contain lead, for sale within the State of California, without first giving  
13 clear and reasonable warning.

14 4. Defendant Lowe’s Companies, Inc. (Lowe’s) is a business entity with ten or more  
15 employees that sells, or has, at times relevant to this complaint, authorized the distribution, or sale of  
16 beverage products under the brand name Lowe’s and other brand names, that contain lead, for sale  
17 within the State of California, without first giving clear and reasonable warning.

## 18 **III. JURISDICTION AND VENUE**

19 5. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,  
20 because this case is a cause not given by statute to other trial courts.

21 6. This Court has jurisdiction over Keeney and Lowe’s, because they are business entities  
22 that do sufficient business, have sufficient minimum contacts in California, or otherwise intentionally  
23 avail themselves of the California market, through the sale, marketing, and use of its products in  
24 California, to render the exercise of jurisdiction over it by the California courts consistent with  
25 traditional notions of fair play and substantial justice.

26 7. Venue is proper in this Court because the cause, or part thereof, arises in Los Angeles  
27 County because Defendant’s products are sold and consumed in this county.  
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1  
2 **IV. STATUTORY BACKGROUND**

3 **A. Proposition 65**

4 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
5 passed as “Proposition 65” by a vote of the people in November of 1986.

6 9. The warning requirement of Proposition 65 is contained in Health and Safety Code  
7 section 25249.6, which provides:

8 No person in the course of doing business shall knowingly and intentionally  
9 expose any individual to a chemical known to the state to cause cancer or  
10 reproductive toxicity without first giving clear and reasonable warning to such  
11 individual, except as provided in Section 25249.10.

12 10. An exposure to a chemical in a consumer product is one “which results from a  
13 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a  
14 consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code Regs.,  
15 tit. 22, § 12601, subd. (b).)

16 11. Proposition 65 establishes a procedure by which the state is to develop a list of  
17 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, §  
18 25249.8.) No warning need be given concerning a listed chemical until one year after the chemical  
19 first appears on the list. (*Id.*, § 25249.10, subd. (b).)

20 12. Any person “violating or threatening to violate” the statute may be enjoined in any  
21 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To “threaten to violate” is defined  
22 to mean “to create a condition in which there is a substantial probability that a violation will occur.”  
23 (*Id.*, § 25249.11, subd. (e)) In addition, violators are liable for civil penalties of up to \$2,500 per day  
24 for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)

25 13. Actions to enforce the law “may be brought by the Attorney General in the name of  
26 the People of the State of California [or] by any district attorney [or] by any City Attorney of a City  
27 having a population in excess of 750,000 . . .” (*Id.*, § 25249.7, subd. (c).) Private parties are given  
28 authority to enforce Proposition 65 “in the public interest,” but only if the private party first provides

1 written notice of a violation to the alleged violator, the Attorney General, and every District Attorney  
2 in whose jurisdiction the alleged violation occurs. If no public prosecutors commence enforcement  
3 within sixty days, then the private party may sue. (Health & Saf. Code, § 25249.7(d).) No such  
4 governmental action has been pursued against Defendants Keeney and Lowes concerning the Notice  
5 of Violation sent by Plaintiff.

#### 6 **B. The Unfair Competition Act**

7 14. California Business and Professions Code section 17200 provides that “unfair  
8 competition shall mean and include unlawful, unfair or fraudulent business practice.” Section 17203  
9 of the Business and Professions Code provides that “(a)ny person performing or proposing to perform  
10 an act of unfair competition within this state may be enjoined in any court of competent jurisdiction.”

11 15. Unlawful acts under the statute include any act that is unlawful that is conducted as  
12 part of business activity, and therefore include violations of Proposition 65.

13 16. Business and Professions Code section 17206, subdivision (a), provides that any  
14 person violating section 17200 “shall be liable for a civil penalty not to exceed two thousand five  
15 hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action  
16 brought in the name of the people of the State of California by the Attorney General or by any district  
17 attorney . . . [or] by any city attorney of a city . . . having a population in excess of 750,000.” Under  
18 section 17205, these penalties are “cumulative to each other and to the remedies or penalties available  
19 under all other laws of this state.”

#### 20 **V. FACTS**

21 17. “Lead” was placed in the Governor's list of chemicals known to the State of California  
22 to cause reproductive toxicity on February 27, 1987. It is specifically identified under three  
23 subcategories: “developmental reproductive toxicity,” which means harm to the developing fetus,  
24 “female reproductive toxicity,” which means harm to the female reproductive system, and “male  
25 reproductive toxicity,” which means harm to the male reproductive system. (Cal. Code Regs., tit. 22,  
26 § 12000, subd. (c).)  
27  
28

1           18.     “Lead and lead compounds” were placed in the Governor's list of chemicals known to  
2 the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit. 22, § 12000, subd.  
3 (b).)

4           19.     Keeney is a manufacturer, distributor and marketer of the Triplever Linkage Assembly  
5 and other plumbing products (the “products”) for use by individuals in the home and professionals.  
6 Many of these products are sold through Lowes for use by citizens of the State of California.

7           20.     The products are then sold to consumers under the trade names owned by Keeney or  
8 Lowes for its various brands, including “Keeney” or “Lowes,” and using the associated trademarks  
9 and trade dress for those brands, including the distinctive Keeney or Lowes labels.

10          21.     The process followed in manufacturing the Keeney products for sale to the consuming  
11 public must be approved by Keeney, including the metalwork used in the products, for personal and  
12 professional use by consumers.

13          22.     Individuals who purchase, handle or consume Keeney products are exposed to lead  
14 chiefly through: (1) contact between the cylinders and the skin, (2) transfer of lead from the skin to  
15 the mouth, both by transfer of lead directly from the hand to mouth and by transfer of lead from the  
16 skin to objects that are put in the mouth, such as food and (3) through absorption of lead through the  
17 skin. Such individuals are thus exposed to the lead that is present on and in Keeney products in the  
18 course of the intended and reasonably foreseeable use of those products.

19          23.     At all times material to this complaint, Defendant Keeney has had knowledge that the  
20 products contain lead and that consumers are thereby exposed through touch to the lead.

21          24.     At all times material to this complaint, Defendants Lowes and Keeney have had  
22 knowledge that individuals within the State of California handle the products that contain lead.

23          25.     At all times material to this complaint, Defendants knew that the products were sold  
24 throughout the State of California in large numbers, and Defendants profited from such sales through,  
25 among other things, the sale of the Keeney Triplever Linkage Assembly products sold in California.

26          26.     Notwithstanding this knowledge, Defendant Keeney intentionally authorized and  
27 reauthorized the sale of Keeney products that contained lead.





**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE (NON-CLASS ACTION)**

Case Number BC 502743

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.3(c)). There is additional information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Daniel Buckley	1	534	Hon. Debre Katz Weintraub	47	507
Hon. Michael P. Linfield	10	631	Hon. Elizabeth Allen White	48	506
Hon. Barbara A. Meiers	12	636	Hon. Deirdre Hill	49	509
Hon. Terry A. Green	14	300	Hon. John L. Segal	50	508
Hon. Richard Fruin	15	307	Hon. Abraham Khan	51	511
Hon. Rita Miller	16	306	Hon. Susan Bryant-Deason	52	510
Hon. Richard E. Rico	17	309	Hon. Steven J. Kleifield	53	513
Hon. Kevin C. Brazile	20	310	Hon. Ernest M. Hiroshige	54	512
Hon. Robert L. Hess	24	314	Hon. Malcolm H. Mackey	55	515
Hon. Mary Ann Murphy	25	317	Hon. Michael Johnson	56	514
			Hon. Ralph W. Dau	57	517
Hon. Yvette M. Palazuelos	28	318	Hon. Rolf M. Treu	58	516
Hon. Barbara Scheper	30	400			
			Hon. Michael L. Stern	62	600
Hon. Mary H. Strobel	32	406	Hon. Mark Mooney	68	617
		409			
		408	Hon. Soussan G. Bruguera	71	729
"unassigned"	35	411	Hon. Ruth Ann Kwan	72	731
Hon. Gregory Alarcon	36	410	Hon. Teresa Sanchez-Gordon	74	735
			Hon. William F. Fahey	78	730
Hon. Maureen Duffy-Lewis	38	412	<b>Hon. Emilie H. Elias</b>	<b>324</b>	<b>CCW</b>
Hon. Michelle R. Rosenblatt	40	414	<b>Hon. Elihu M. Berle</b>	<b>323</b>	<b>CCW</b>
Hon. Ronald M. Sohigian	41	417	Other		
Hon. Holly E. Kendig	42	416			
Hon. Mel Red Recana	45	529			

Given to the Plaintiff/Cross-Complainant/Attorney of Record on \_\_\_\_\_ JOHN A. CLARKE, Executive Officer/Clerk

By \_\_\_\_\_, Deputy Clerk