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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY  
2014 SEP -5 AM 11:50  
CLERK OF THE SUPERIOR COURT  
M. SALCIDO, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,  
a non-profit corporation,  
  
Plaintiff,  
  
vs.  
  
PONY TOOLS INC.; THE HOME DEPOT,  
INC.; HOME DEPOT U.S.A., INC.; and DOES  
1 through 200, inclusive,  
  
Defendants.

Case No. **RG14739493**  
  
**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**  
  
Health & Safety Code § 25249.6, *et seq.*  
  
(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on  
2 information and belief and investigation of counsel, except for information based on knowledge,  
3 hereby makes the following allegations:

#### 4 INTRODUCTION

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn  
6 individuals in California that they are being exposed to lead and lead compounds (collectively,  
7 "Lead"), chemicals known to the State of California to cause cancer and birth defects and other  
8 reproductive harm. Such exposures have occurred, and continue to occur, through the  
9 manufacture, distribution, sale, and use of Defendants' bar clamps with painted handles (the  
10 "Products"). Consumers and users are exposed to Lead when they use, touch, or handle the  
11 Products.

12 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*  
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California  
14 to chemicals known to the State to cause cancer, birth defects, or other reproductive harm without  
15 providing clear and reasonable warnings to individuals prior to their exposure. Defendants  
16 introduce Products contaminated with significant quantities of Lead into the California  
17 marketplace, exposing consumers and users of their Products to Lead.

18 3. Despite the fact that Defendants expose consumers and users to Lead,  
19 Defendants provide no warnings whatsoever about the carcinogenic or reproductive hazards  
20 associated with Lead exposure. Defendants' conduct thus violates the warning provision of  
21 Proposition 65. Health & Safety Code § 25249.6.

#### 22 PARTIES

23 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-  
24 profit corporation dedicated to protecting the public from environmental health hazards and toxic  
25 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of  
26 California. CEH is a "person" within the meaning of Health & Safety Code § 25249.11(a) and  
27 brings this enforcement action in the public interest pursuant to Health & Safety Code §  
28 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has

1 prosecuted a large number of Proposition 65 cases in the public interest. These cases have  
2 resulted in significant public benefit, including the reformulation of thousands of products to  
3 remove toxic chemicals and to make them safer. CEH also provides information to Californians  
4 about the health risks associated with exposure to hazardous substances, where manufacturers and  
5 other responsible parties fail to do so.

6 5. Defendant PONY TOOLS INC. is a person in the course of doing business  
7 within the meaning of Health & Safety Code § 25249.11. PONY TOOLS INC. manufactures,  
8 distributes, and/or sells the Products for sale and use in California.

9 6. Defendant THE HOME DEPOT, INC. is a person in the course of doing  
10 business within the meaning of Health & Safety Code § 25249.11. THE HOME DEPOT, INC.  
11 manufactures, distributes, and/or sells the Products for sale and use in California.

12 7. Defendant HOME DEPOT U.S.A., INC. is a person in the course of doing  
13 business within the meaning of Health & Safety Code § 25249.11. HOME DEPOT U.S.A., INC.  
14 manufactures, distributes, and/or sells the Products for sale and use in California.

15 8. DOES 1 through 200 are each a person in the course of doing business  
16 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture,  
17 distribute, and/or sell the Products for sale or use in California.

18 9. The true names of DOES 1 through 200 are unknown to CEH at this time.  
19 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

20 10. The defendants identified in paragraphs 5 through 7 and DOES 1 through  
21 200 are collectively referred to herein as "Defendants."

## 22 JURISDICTION AND VENUE

23 11. The Court has jurisdiction over this action pursuant to Health & Safety  
24 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant  
25 to California Constitution Article VI, Section 10, because this case is a cause not given by statute  
26 to other trial courts.

27 12. This Court has jurisdiction over Defendants because each is a business  
28 entity that does sufficient business, has sufficient minimum contacts in California, or otherwise

1 intentionally avails itself of the California market through the sale, marketing, or use of the  
2 Products in California and/or by having such other contacts with California so as to render the  
3 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair  
4 play and substantial justice.

5 13. Venue is proper in the Alameda County Superior Court because one or more  
6 of the violations arise in the County of Alameda.

7 **BACKGROUND FACTS**

8 14. The People of the State of California have declared by initiative under  
9 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth  
10 defects, or other reproductive harm.” Proposition 65, § 1(b).

11 15. To effectuate this goal, Proposition 65 prohibits exposing people to  
12 chemicals listed by the State of California as known to cause cancer, birth defects, or other  
13 reproductive harm above certain levels without a “clear and reasonable warning” unless the  
14 business responsible for the exposure can prove that it fits within a statutory exemption. Health  
15 & Safety Code § 25249.6 states, in pertinent part:

16 No person in the course of doing business shall knowingly and  
17 intentionally expose any individual to a chemical known to the  
18 state to cause cancer or reproductive toxicity without first giving  
19 clear and reasonable warning to such individual . . .

20 16. On February 27, 1987, the State of California officially listed lead as a  
21 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
22 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to  
23 the developing fetus, “female reproductive toxicity,” which means harm to the female  
24 reproductive system, and “male reproductive toxicity,” which means harm to the male  
25 reproductive system. 27 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27,  
26 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead became  
27 subject to the clear and reasonable warning requirement regarding reproductive toxicants under  
28 Proposition 65. *Ibid.*; Health & Safety Code § 25249.10(b).

1           17.     On October 1, 1992, the State of California officially listed lead and lead  
2 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
3 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
4 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. §  
5 27001(c); Health & Safety Code § 25249.10(b).

6           18.     There is no safe level of exposure to Lead and even minute amounts of  
7 Lead exposure have been proven harmful to children and adults. *See, e.g.,* [http://water.epa.gov/  
8 drink/contaminants/basicinformation/lead.cfm](http://water.epa.gov/drink/contaminants/basicinformation/lead.cfm). Lead in blood, even at very low levels, has been  
9 found to be correlated with all causes of mortality, including cancer and cardiovascular disease.  
10 *See, e.g.,* Menke, A., *et al.*, “Blood Lead Below 0.48  $\mu\text{mol/L}$  (10  $\mu\text{g/dL}$ ) and Mortality Among  
11 US Adults,” *Circulation* 114:13, 2009; Schober, S., *et al.*, “Blood Lead Levels and Death from  
12 All Causes, Cardiovascular Disease, and Cancer,” *Environmental Health Perspectives* 114:10,  
13 2006; Cheung, M., “Blood Lead Concentration Correlates with All Cause, All Cancer and Lung  
14 Cancer Mortality in Adults,” *Asian Pacific Journal of Cancer Prevention* 14, 2013.

15           19.     Lead exposures for pregnant women are also of particular concern in light  
16 of evidence that even short term lead exposures in utero may have long-term harmful effects. Hu,  
17 H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental  
18 Development,” *Environmental Health Perspectives* 114:11, 2006; Schnaas, Lourdes, *et al.*,  
19 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental  
20 Health Perspectives* 114:5, 2006. In times of physiological stress, such as pregnancy, the body  
21 can mobilize accumulated stores of Lead in tissue and bone, thereby increasing the level of Lead  
22 in the blood and increasing the risk of harm to the fetus.

23           20.     Lead is found in the paint used on the handles of Products. Defendants’  
24 Products contain sufficient quantities of Lead such that consumers and users, including pregnant  
25 women, who touch or handle the Products are exposed to Lead through the average use of the  
26 Products. The routes of exposure for the violations are ingestion via hand-to-mouth contact after  
27 consumers or users touch or handle the Products, and dermal absorption directly through the skin  
28

1 when consumers or users touch or handle the Products. These exposures occur in homes,  
2 workplaces, and everywhere else throughout California where these Products are handled or used.

3 21. No clear and reasonable warning is provided with the Products regarding  
4 the carcinogenic or reproductive hazards of Lead.

5 22. Any person acting in the public interest has standing to enforce violations  
6 of Proposition 65 provided that such person has supplied the requisite public enforcers with a  
7 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
8 action within such time. Health & Safety Code § 25249.7(d).

9 23. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
10 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,  
11 the District Attorneys of every county in California, the City Attorneys of every California city  
12 with a population greater than 750,000, and to each of the named Defendants. In compliance with  
13 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
14 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
15 time period during which violations occurred; (4) specific descriptions of the violations, including  
16 (a) the routes of exposure to Lead from the Products, and (b) the specific type of Products sold  
17 and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed  
18 chemical that is the subject of the violations described in each Notice.

19 24. CEH also sent a Certificate of Merit for each Notice to the California  
20 Attorney General, the District Attorneys of every county in California, the City Attorneys of  
21 every California city with a population greater than 750,000, and to each of the named  
22 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each  
23 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with relevant  
24 and appropriate experience or expertise who reviewed facts, studies, or other data regarding the  
25 exposures to Lead alleged in each Notice; and (2) based on the information obtained through such  
26 consultations, believes that there is a reasonable and meritorious case for a citizen enforcement  
27 action based on the facts alleged in each Notice. In compliance with Health & Safety Code §  
28 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney General included

1 factual information – provided on a confidential basis – sufficient to establish the basis for the  
2 Certificate, including the identity of the person(s) consulted by CEH’s counsel and the facts,  
3 studies, or other data reviewed by such persons.

4 25. None of the public prosecutors with the authority to prosecute violations of  
5 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
6 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each  
7 of CEH’s Notices.

8 26. Defendants both know and intend that individuals, including pregnant  
9 women, will use, touch, or handle the Products, thus exposing them to Lead.

10 27. Under Proposition 65, an exposure is “knowing” where the party  
11 responsible for such exposure has:

12 knowledge of the fact that a[n] . . . exposure to a chemical listed  
13 pursuant to [Health & Safety Code § 25249.8(a)] is occurring. No  
14 knowledge that the . . . exposure is unlawful is required.

15 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
16 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §  
17 12201).

18 28. Defendants have been informed of the Lead in their Products by the 60-  
19 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

20 29. Defendants also have constructive knowledge that their Products contain  
21 Lead due to the widespread media coverage concerning the problem of Lead in consumer  
22 products in general and Lead in paint specifically.

23 30. As companies that manufacture, import, distribute, and/or sell the Products  
24 for use in the California marketplace, Defendants know or should know that the Products contain  
25 Lead and that individuals who use the Products will be exposed to Lead. The Lead exposures to  
26 consumers who use the Products are a natural and foreseeable consequence of Defendants’  
27 placing the Products into the stream of commerce.  
28





1 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

2 **PRAYER FOR RELIEF**

3 Wherefore, CEH prays for judgment against Defendants as follows:

4 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess  
5 civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation  
6 of Proposition 65 according to proof;

7 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),  
8 preliminarily and permanently enjoin Defendants from offering the Products for sale in  
9 California without providing prior clear and reasonable warnings, as CEH shall specify in further  
10 application to the Court;

11 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order  
12 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of  
13 Products sold by Defendants, as CEH shall specify in further application to the Court;

14 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other  
15 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

16 5. That the Court grant such other and further relief as may be just and proper.

17  
18 Dated: September 5, 2014

Respectfully submitted,

19 LEXINGTON LAW GROUP

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22 \_\_\_\_\_  
23 Joseph Mann  
24 Attorneys for Plaintiff  
25 CENTER FOR ENVIRONMENTAL HEALTH  
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27  
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