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ALAMEDA COUNTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

MARTHA VELARDE,

Plaintiff,

vs.

LG SOURCING INC., LOWE'S HOME
CENTER'S LLC, & LOWE'S
COMPANIES, INC.,

Defendants,

CASE NO.: **RG15767605**

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5
et seq.)

Plaintiff, Martha Velarde, by and through her attorneys, alleges the following cause of
action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

1. Plaintiff Martha Velarde ("Plaintiff" or "Velarde"), brings this representative
action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water
and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq*
("Proposition 65"), which reads, in relevant part, "[n]o person in the course of doing business
shall knowingly and intentionally expose any individual to a chemical known to the state to
cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
individual ..." Health & Safety Code § 25249.6.

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People's right to be informed of the health
3 hazards caused by exposures to di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in
4 vinyl cushioned toilet seats manufactured, sold, and/or distributed by defendants LG Sourcing
5 Inc., Lowe's Home Centers, LLC, and/or Lowe's Companies, Inc. (collectively referred to herein
6 as, "Defendants") in California.

7 3. DEHP is a harmful chemical, known to cause birth defects and developmental
8 male reproductive defects. DEHP has been listed on the Proposition 65 list of chemicals known
9 to cause cancer, birth defects, or other reproductive harm since October 24, 2004 and it has come
10 under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, §
11 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

12 4. Proposition 65 requires all businesses with ten (10) or more employees that
13 operate within California or sell products therein to comply with Proposition 65 regulations.
14 Included in such regulations is the requirement that businesses must label any Proposition 65
15 listed chemical with a "clear and reasonable" warning before knowingly or intentionally
16 exposing it to any person.

17 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
18 to be imposed upon defendants in a civil action for violations of Proposition 65. *Health & Safety*
19 *Code* § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
20 the actions of a defendant which "violate or threaten to violate" the statute. *Health & Safety*
21 *Code* § 25249.7.

22 6. Plaintiff alleges that Defendants distribute, manufacture, produce, import, sell,
23 and/or offer for sale, without the required warning, vinyl cushioned toilet seats in California
24 containing DEHP. These products include, but are not limited to, *Cushioned Vinyl Toilet Seat*,
25 *AQUASOURCE, LF, LLC, UPC#8 91347 00262 4, Item# 0570979* (the "Product").

26 7. Defendants' failure to warn consumers, workers, and other individuals in
27 California of the health hazards associated with exposure to DEHP in conjunction with the sale,
28

1 manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects
2 Defendants to the enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendants for their violations of
4 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendants to provide purchasers or users of the Product with the required warnings related to
7 the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
8 Code § 25249.7(a).

9 **PARTIES**

10 10. Plaintiff is a citizen of the State of California acting in the interest of the general
11 public to promote awareness of exposures to toxic chemicals in products sold in California and
12 to improve human health by reducing hazardous substances contained in such items. She brings
13 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

14 11. Defendant LG Sourcing Inc., doing business in California at all relevant times
15 herein, is principally located in North Carolina and, upon information and belief, is a wholly
16 owned subsidiary of Lowe's that is dedicated to the distribution of "unique and quality products"
17 throughout the world on behalf of Lowes Companies. As such LG Sourcing distributes products
18 in the State of California, either for its own purposes or for the benefit of its parent company and
19 co-defendant Lowe's Companies. LG Sourcing, Inc. can be served at P.O. Box 1535, N.
20 Wilkesboro, NC 28659. LG Sourcing, Inc. is a person in the course of doing business within the
21 meaning of Health & Safety Code sections 25249.6 and 25249.11.

22 12. Defendant Lowe's Home Centers, LLC, a North Carolina LLC, operates a chain
23 of home improvement stores, and through that business effectively manufactures, imports,
24 distributes, sells, and/or offers the Product for sale or use in California, or it implies by its
25 conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use
26 in the State of California. Lowe's Home Centers, LLC maintains a registered agent for service
27 of process at c/o Corporation Service Company, 2710 Gateway Oaks Dr., Sacramento, CA
28

1 95833, and is a person in the course of doing business within the meaning of Health & Safety
2 Code sections 25249.6 and 25249.11.

3 13. Defendant Lowe's Companies Inc. is a North Carolina Corporation that owns and
4 operates a chain of home improvement stores, and through that business effectively
5 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in California, or
6 it implies by its conduct and/or through its subsidiaries that it manufactures, imports, distributes,
7 sells, and/or offers the Product for sale or use in the State of California. Lowe's Companies, Inc.
8 can be served at, 1000 Lowe's Blvd., Mooresville, NC 28177. Lowe's Companies, Inc. is a
9 person in the course of doing business within the meaning of Health & Safety Code sections
10 25249.6 and 25249.11.

11 14. Upon information and belief, Plaintiff avers that each Defendant acted as an
12 employee, servant, or agent of each other Defendant at all times relevant to this action. Plaintiff
13 further avers that in conducting the activities alleged in this Complaint, all Defendants acted
14 within the scope of their agency or similarly situated relationship as toward one another.
15 Therefore all Defendants acted with consent, permission, and authorization of each other in
16 relation to all acts related to the scope of this Complaint.

17 15. Upon information and belief, Plaintiff avers that at all relevant times herein, each
18 Defendant was a person doing business within the meaning of Health and Safety Code §
19 25249.11(b) and that each and every Defendant had ten (10) or more employees at all relevant
20 times.

21 VENUE AND JURISDICTION

22 16. Venue is proper in the County of Alameda, because one or more of the instances
23 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
24 conducted, and continue to conduct, business in the County of Alameda with respect to the
25 Product.

26 17. This Court has jurisdiction over this action pursuant to California Constitution
27 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
28 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the

1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction, therefore,
2 this Court has jurisdiction over this lawsuit.

3 18. This Court has jurisdiction over the Defendants as each Defendant either is a
4 citizen of the State of California, has sufficient minimum contacts with the State of California, is
5 registered with the California Secretary of State as foreign corporations authorized to do business
6 in the State of California, and/or have otherwise purposefully availed themselves of the
7 California market. Such purposeful availment has rendered the exercise of jurisdiction by
8 California courts consistent and permissible with traditional notions of fair play and substantial
9 justice.

10 SATISFACTION OF NOTICE REQUIREMENTS

11 19. On January 9, 2015 Plaintiff gave notice of alleged violations of Health and
12 Safety Code § 25249.6, concerning the exposure of California citizens to DEHP without proper
13 warning, subject to a private action to the Defendants and to the California Attorney General's
14 office and the offices of the County District attorneys and City Attorneys for each city with a
15 population greater than 750,000 persons wherein the herein violations allegedly occurred.

16 20. Such notice complied with all procedural requirements of Proposition 65
17 including the attachment of a Certificate of Merit affirming that Plaintiff's counsel had
18 consulted with at least one person with relevant and appropriate expertise who reviewed relevant
19 data regarding DEHP exposure, and that counsel believed there was meritorious and reasonable
20 cause for a private action.

21 21. After receiving Plaintiff's notice, and to Plaintiff's best information and belief,
22 none of the noticed appropriate public enforcement agencies have commenced and diligently
23 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
24 violations which are the subject of Plaintiff's notice of violation.

25 22. Plaintiff is commencing this action more than sixty (60) days from the date of her
26 notice to Defendants, as required by law.

27 FIRST CAUSE OF ACTION

28 (By Plaintiff against all Defendants for the Violation of Proposition 65)

1 23. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 22 of
2 this complaint as though fully set forth herein.

3 24. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,
4 and/or retailer of the Product.

5 25. The Product contains DEHP, a hazardous chemical found on the Proposition 65
6 list of a chemical known to be hazardous to human health.

7 26. The Product does not comply with the Proposition 65 warning requirements.

8 27. Plaintiff, based on her best information and belief, avers that at all relevant times
9 hereto, and at least since November 18, 2014 continuing until the present, that Defendants have
10 continued to knowingly and intentionally expose California users and consumers of the Product
11 to DEHP without providing required warnings under Proposition 65.

12 28. The exposures that are the subject of this Complaint result from the purchase,
13 acquisition, handling and recommended use of the Product. Consequently, the primary route of
14 exposure to these chemicals is through dermal transfer of the phthalates to the user's gluteal area.
15 Additionally, some exposure through ingestion can occur by touching the product, with
16 subsequent touching of the users hand to mouth.

17 29. Plaintiff, based on her best information and belief, avers that such exposures will
18 continue every day until clear and reasonable warnings are provided to Product purchasers and
19 users or until this known toxic chemical is removed from the product.

20 30. Defendants have knowledge that the normal and reasonably foreseeable use of the
21 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
22 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
23 sale and offering of the Product to consumers in California

24 30. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
25 Complaint without success.

26 31. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
27 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per
28 violation.

1 32. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
2 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

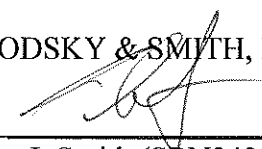
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4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff demands judgment against the Defendant and requests the
6 following relief:

- 7
8 A. That the court assess civil penalties against each and every Defendant in
9 the amount of \$2,500 per day for each violation in accordance with Health
10 and Safety Code § 25249.7(b);
- 11 B. That the court preliminarily and permanently enjoin all Defendants
12 mandating Proposition 65 compliant warnings on the Products;
- 13 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 14 D. That the court grant any further relief as may be just and proper.

15 Dated: April 23, 2015

BRODSKY & SMITH, LLC

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