

1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 **YEROUSHALMI & YEROUSHALMI**
5 An Association of Independent Law Corporations
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, California 90212
8 Telephone: 310.623.1926
9 Facsimile: 310.623.1930

10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

**ENDORSED
FILED
ALAMEDA COUNTY**

AUG 21 2015

CLERK OF THE SUPERIOR COURT
By Xian-Xii Bowie

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF ALAMEDA**

14 CONSUMER ADVOCACY GROUP, INC.,
15 in the public interest,

16 Plaintiff,

17 v.

18 IDEAL INDUSTRIES, INC., a Delaware
19 Corporation; LOWE'S COMPANIES, INC.,
20 a North Carolina Corporation; LOWE'S
21 HOME CENTERS, INC., a North Carolina
22 Corporation; and DOES 1-20;
23 Defendants.

CASE NO. **RG 15782913**

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

BY FAX

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
25 Defendants IDEAL INDUSTRIES, INC., LOWE'S COMPANIES, INC., LOWE'S HOME
26 CENTERS, INC. and DOES 1-20 as follows:

27 **THE PARTIES**

- 28
1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting

1 as a private attorney general, brings this action in the public interest as defined under
2 Health and Safety Code section 25249.7, subdivision (d).

- 3 2. Defendant IDEAL INDUSTRIES, INC. ("IDEAL") is a Delaware Corporation doing
4 business in the State of California at all relevant times herein.
- 5 3. Defendant LOWE'S COMPANIES, INC. ("LOWE'S COMPANY") is a North Carolina
6 Corporation doing business in the State of California at all relevant times herein.
- 7 4. Defendants LOWE'S HOME CENTERS, INC. ("LOWE'S HOME") is a North Carolina
8 Corporation doing business in the State of California at all relevant times herein.
- 9 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
10 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
11 complaint to allege their true names and capacities when ascertained. Plaintiff is
12 informed, believes, and thereon alleges that each fictitiously named defendant is
13 responsible in some manner for the occurrences herein alleged and the damages caused
14 thereby.
- 15 6. At all times mentioned herein, the term "Defendants" includes IDEAL, LOWE'S
16 COMPANY, LOWE'S HOME, and DOES 1-20.
- 17 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
18 times mentioned herein have conducted business within the State of California.
- 19 8. Upon information and belief, at all times relevant to this action, each of the Defendants,
20 including DOES 1-20, was an agent, servant, or employee of each of the other
21 Defendants. In conducting the activities alleged in this Complaint, each of the
22 Defendants was acting within the course and scope of this agency, service, or
23 employment, and was acting with the consent, permission, and authorization of each of
24 the other Defendants. All actions of each of the Defendants alleged in this Complaint
25 were ratified and approved by every other Defendant or their officers or managing agents.
26 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
27 wrongful conduct of each of the other Defendants.

1 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
2 Defendants was a person doing business within the meaning of Health and Safety Code
3 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
4 employees at all relevant times.

5 **JURISDICTION**

6 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
7 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
8 those given by statute to other trial courts. This Court has jurisdiction over this action
9 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
10 violations of Proposition 65 in any Court of competent jurisdiction.

11 11. This Court has jurisdiction over Defendants named herein because Defendants either
12 reside or are located in this State or are foreign corporations authorized to do business in
13 California, are registered with the California Secretary of State, or who do sufficient
14 business in California, have sufficient minimum contacts with California, or otherwise
15 intentionally avail themselves of the markets within California through their manufacture,
16 distribution, promotion, marketing, or sale of their products within California to render
17 the exercise of jurisdiction by the California courts permissible under traditional notions
18 of fair play and substantial justice.

19 12. Venue is proper in the County of Alameda because one or more of the instances of
20 wrongful conduct occurred, and continues to occur, in the County of Alameda and/or
21 because Defendants conducted, and continue to conduct, business in the County of
22 Alameda with respect to the consumer product that is the subject of this action.

23 **BACKGROUND AND PRELIMINARY FACTS**

24 13. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
28

1 Water and Toxic Enforcement Act of 1986, ~~codified at~~ Health and Safety Code sections
2 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
3 from contamination, to allow consumers to make informed choices about the products
4 they buy, and to enable persons to protect themselves from toxic chemicals as they see
5 fit.

6 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to
7 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
8 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
9 chemicals and chemical families. Proposition 65 imposes warning requirements and
10 other controls that apply to Proposition 65-listed chemicals.

11 15. All businesses with ten (10) or more employees that operate or sell products in California
12 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
13 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
14 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
15 reasonable" warnings before exposing a person, knowingly and intentionally, to a
16 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

17 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
18 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
19 "Threaten to violate" means "to create a condition in which there is a substantial
20 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
21 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
22 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

23 17. Plaintiff identified certain practices of manufacturers and distributors of Di Isononyl
24 Phthalate ("DINP")-bearing products of exposing, knowingly and intentionally, persons
25 in California to the Proposition 65-listed chemicals of such products without first
26 providing clear and reasonable warnings of such to the exposed persons prior to the time
27 of exposure. Plaintiff later discerned that Defendants engaged in such practice.
28

1 18. On December 20, 2013, the Governor of California added DINP to the list of chemicals
2 known to the State to cause cancer. Pursuant to Health and Safety Code section
3 25249.10, twenty (12) months after addition of DINP to the list of chemicals known to
4 the State to cause cancer, DINP became fully subject to Proposition 65 warning
5 requirements.

6 **SATISFACTION OF PRIOR NOTICE**

7 19. On or about May 7, 2015, Plaintiff gave notice of alleged violations of Health and Safety
8 Code section 25249.6, concerning consumer products exposures, subject to a private
9 action to IDEAL, LOWE'S COMPANY, LOWE'S HOME and to the California
10 Attorney General, County District Attorneys, and City Attorneys for each city containing
11 a population of at least 750,000 people in whose jurisdictions the violations allegedly
12 occurred, concerning the product Hand Tool containing DINP.

13 20. Before sending the notice of alleged violations, Plaintiff investigated the consumer
14 products involved, the likelihood that such products would cause users to suffer
15 significant exposures to DINP and the corporate structure of each of the Defendants.

16 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
17 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
18 Plaintiff who executed the certificate had consulted with at least one person with relevant
19 and appropriate expertise who reviewed data regarding the exposures to DINP, the
20 subject Proposition 65-listed chemicals of this action. Based on that information, the
21 attorney for Plaintiff who executed the Certificate of Merit believed there was a
22 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
23 to the Certificate of Merit served on the Attorney General the confidential factual
24 information sufficient to establish the basis of the Certificate of Merit.

25 22. Plaintiff's notices of alleged violations also included a Certificate of Service and a
26 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
27 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).
28

1 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
2 gave notices of the alleged violation to IDEAL, LOWE'S COMPANY, LOWE'S HOME
3 and the public prosecutors referenced in Paragraph 19.

4 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
5 any applicable district attorney or city attorney has commenced and is diligently
6 prosecuting an action against the Defendants.

7
8 **FIRST CAUSE OF ACTION**

9 **(By CONSUMER ADVOCACY GROUP, INC. and against IDEAL, LOWE'S COMPANY,
10 LOWE'S HOME and DOES 1-20 for Violations of Proposition 65, The Safe Drinking
11 Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

12 **Cable Strippers**

13 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
14 reference paragraphs 1 through 24 of this complaint as though fully set forth herein. Each
15 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
16 promoter, or retailer of Coax Cable Strippers, which includes but is not limited to,
17 "IDEAL Stripmaster® Coax Cable Stripper; 'RG-6', '45-262'; Made in U.S.A of US and
18 Global Components; 'Diagram 1-3'; '1 4PCZ3'; 'IDEAL INDUSTRIES, INC. Sycamore,
19 IL 60178, U.S.A.'; www.idealindustries.com; 'ND 7903-1'; UPC # 7 83250 45262 0"
20 ("CABLE STRIPPERS").

21 26. CABLE STRIPPERS contains DINP.

22 27. Defendants knew or should have known that DINP has been identified by the State of
23 California as a chemical known to cause cancer and therefore was subject to Proposition
24 65 warning requirements. Defendants were also informed of the presence of DINP in
25 CABLE STRIPPERS within Plaintiff's notice of alleged violations further discussed
26 above at Paragraph 19.

27 28. Plaintiff's allegations regarding CABLE STRIPPERS concerns "[c]onsumer products
28 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,

1 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
2 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
3 *25602(b)*. CABLE STRIPPERS is a consumer product, and, as mentioned herein,
4 exposures to DINP took place as a result of such normal and foreseeable use.

5 29. Plaintiff is informed, believes, and thereon alleges that between May 7, 2012 and the
6 present, each of the Defendants knowingly and intentionally exposed their California
7 consumers and users of CABLE STRIPPERS, which Defendants manufactured,
8 distributed, or sold as mentioned above, to DINP, without first providing any type of
9 clear and reasonable warning of such to the exposed persons before the time of exposure.
10 Defendants have distributed and sold CABLE STRIPPERS in California. Defendants
11 know and intend that California consumers will use CABLE STRIPPERS, thereby
12 exposing them to DINP. Defendants thereby violated Proposition 65.

13 30. The principal routes of exposure are through dermal contact and inhalation. Persons
14 sustain exposures by handling CABLE STRIPPERS without wearing gloves or any other
15 personal protective equipment, or by touching bare skin or mucous membranes with
16 gloves after handling CABLE STRIPPERS, as well as through direct and indirect hand to
17 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
18 from CABLE STRIPPERS.

19 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of
20 Proposition 65 as to CABLE STRIPPERS have been ongoing and continuous to the date
21 of the signing of this complaint, as Defendants engaged and continue to engage in
22 conduct which violates Health and Safety Code section 25249.6, including the
23 manufacture, distribution, promotion, and sale of CABLE STRIPPERS, so that a separate
24 and distinct violation of Proposition 65 occurred each and every time a person was
25 exposed to DINP by CABLE STRIPPERS as mentioned herein.

1 32. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 33. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DINP from CABLE STRIPPERS, pursuant
6 to Health and Safety Code section 25249.7(b).

7 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

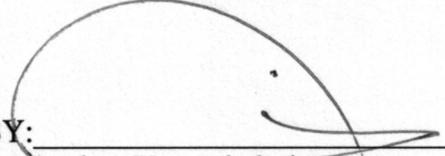
9 **PRAYER FOR RELIEF**

10 Plaintiff demands against each of the Defendants as follows:

- 11 1. A permanent injunction mandating Proposition 65-compliant warnings;
12 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
13 3. Costs of suit;
14 4. Reasonable attorney fees and costs; and
15 5. Any further relief that the court may deem just and equitable.

16
17
18 Dated: August 21, 2015

YEROUSHALMI & YEROUSHLAMI

19
20
21 BY: 

Reuben Yeroushalmi
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.