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ENDORSED  
FILED  
ALAMEDA COUNTY

APR - 5 2016

CLERK OF THE SUPERIOR COURT

By \_\_\_\_\_ Deputy

S. IYAMU

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

13 **COUNTY OF ALAMEDA**

14 **RG 16810210**

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

17 Plaintiff,

18 v.

19 DOWIN ENTERPRISES (USA), INC., a  
20 Illinois Corporation; DOWIN  
21 ENTERPRISES, INC., a business entity from  
22 unknown; DOWIN PLASTIC  
23 PRODUCTION CO., LTD., a business entity  
24 from unknown; SUPER 99 CENT  
25 DISCOUNT, INC., a California Corporation;  
26 and DOES 1-20;

27 Defendants.

CASE NO.

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.*)

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

BY FAX

28 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
29 Defendant DOWIN ENTERPRISES (USA), INC., DOWIN ENTERPRISES, INC., DOWIN  
30 PLASTIC PRODUCTION CO., LTD., SUPER 99 CENT DISCOUNT INC., and DOES 1-20 as  
31 follows:

///

- 1 2. Defendant LOWE’S HOME CENTERS (“LOWE’S”) is a North Carolina limited liability  
2 company, doing business in the State of California at all relevant times herein.
- 3 3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
4 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
5 complaint to allege their true names and capacities when ascertained. Plaintiff is  
6 informed, believes, and thereon alleges that each fictitiously named defendant is  
7 responsible in some manner for the occurrences herein alleged and the damages caused  
8 thereby.
- 9 4. At all times mentioned herein, the term “Defendants” includes, LOWE’S and DOES 1-  
10 20.
- 11 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
12 times mentioned herein have conducted business within the State of California.
- 13 6. Upon information and belief, at all times relevant to this action, each of the Defendants,  
14 including DOES 1-20, was an agent, servant, or employee of each of the other  
15 Defendants. In conducting the activities alleged in this Complaint, each of the  
16 Defendants was acting within the course and scope of this agency, service, or  
17 employment, and was acting with the consent, permission, and authorization of each of  
18 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
19 were ratified and approved by every other Defendant or their officers or managing agents.  
20 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
21 wrongful conduct of each of the other Defendants.
- 22 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
23 Defendants was a person doing business within the meaning of Health and Safety Code  
24 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
25 employees at all relevant times.

26 **JURISDICTION**

- 27 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
28 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except

1 those given by statute to other trial courts. This Court has jurisdiction over this action  
2 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
3 violations of Proposition 65 in any Court of competent jurisdiction.

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

12 10. Venue is proper in the County of Los Angeles because one or more of the instances of  
13 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
14 because Defendants conducted, and continue to conduct, business in the County of Los  
15 Angeles with respect to the consumer product that is the subject of this action.

### 16 **BACKGROUND AND PRELIMINARY FACTS**

17  
18 11. In 1986, California voters approved an initiative to address growing concerns about  
19 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
20 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
21 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
22 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
23 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
24 from contamination, to allow consumers to make informed choices about the products  
25 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
26 fit.

27 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
28 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*

1 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
2 chemicals and chemical families. Proposition 65 imposes warning requirements and  
3 other controls that apply to Proposition 65-listed chemicals.

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

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

16 15. Plaintiff identified certain practices of manufacturers and distributors of Di isononyl  
17 phthalate (“DINP”)-bearing products of exposing, knowingly and intentionally, persons  
18 in California to the Proposition 65-listed chemicals of such products without first  
19 providing clear and reasonable warnings of such to the exposed persons prior to the time  
20 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

21 16. On December 20, 2013, the Governor of California added DINP to the list of chemicals  
22 known to the State to cause cancer. Pursuant to Health and Safety Code sections 25249.9  
23 and 25249.10, twenty (20) months after addition of DINP to the list of chemicals known  
24 to the State to cause cancer, DINP became fully subject to Proposition 65 warning  
25 requirements and discharge prohibitions.

26 **SATISFACTION OF PRIOR NOTICE**

27 17. On or about May 7, 2015, Plaintiff gave notice of alleged violations of Health and Safety  
28 Code section 25249.6, concerning consumer products, subject to a private action to

1           LOWE’S, and to the California Attorney General, County District Attorneys, and City  
2           Attorneys for each city containing a population of at least 750,000 people in whose  
3           jurisdictions the violations allegedly occurred, concerning the product hand tools  
4           containing DINP.

5           18. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
6           products involved, the likelihood that such products would cause users to suffer  
7           significant exposures to DINP, and the corporate structure of each of the Defendants.

8           19. Plaintiff’s notices of alleged violation included a Certificate of Merit executed by the  
9           attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
10          Plaintiff who executed the certificate had consulted with at least one person with relevant  
11          and appropriate expertise who reviewed data regarding the exposures to DINP, the  
12          subject Proposition 65-listed chemical of this action. Based on that information, the  
13          attorney for Plaintiff who executed the Certificate of Merit believed there was a  
14          reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
15          to the Certificate of Merit served on the Attorney General the confidential factual  
16          information sufficient to establish the basis of the Certificate of Merit.

17          20. Plaintiff’s notices of alleged violations also included a Certificate of Service and a  
18          document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
19          (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

20          21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
21          gave notices of the alleged violations to LOWE’S, and the public prosecutors referenced  
22          in Paragraph 17.

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

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against LOWE’S, and DOES 1-  
3 20 for Violations of Proposition 65, The Safe Drinking Water and Toxic  
4 Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

5 **Ring Removal Tools**

6 23. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
7 reference paragraphs 1 through 22 of this complaint as though fully set forth herein.

8 24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of ring removal tools, which includes but is not limited  
10 to “PEX Ring Removal Tool, Model: 69PTKD009, UPC # 6 70750 19312 9”  
11 (“REMOVAL TOOLS”).

12 25. REMOVAL TOOLS contains DINP.

13 26. Defendants knew or should have known that DINP has been identified by the State of  
14 California as a chemical known to cause cancer and therefore was subject to Proposition  
15 65 warning requirements. Defendants were also informed of the presence of DINP in  
16 REMOVAL TOOLS within Plaintiff’s notice of alleged violations further discussed  
17 above at Paragraph 17.

18 27. Plaintiff’s allegations regarding REMOVAL TOOLS concern “[c]onsumer products  
19 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
20 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
21 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §  
22 25602(b). REMOVAL TOOLS are consumer products, and, as mentioned herein,  
23 exposures to DINP took place as a result of such normal and foreseeable consumption  
24 and use.

25 28. Plaintiff is informed, believes, and thereon alleges that between May 6, 2012 and the  
26 present, each of the Defendants knowingly and intentionally exposed California  
27 consumers and users of REMOVAL TOOLS, which Defendants manufactured,  
28 distributed, or sold as mentioned above, to DINP, without first providing any type of  
clear and reasonable warning of such to the exposed persons before the time of exposure.

1 Defendants have distributed and sold REMOVAL TOOLS in California. Defendants  
2 know and intend that California consumers will use and consume REMOVAL TOOLS,  
3 thereby exposing them to DINP. Defendants thereby violated Proposition 65.

4 29. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
5 Persons sustain exposures by handling REMOVAL TOOLS without wearing gloves or  
6 any other personal protective equipment, or by touching bare skin or mucous membranes  
7 with gloves after handling REMOVAL TOOLS, as well as through direct and indirect  
8 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter  
9 dispersed from REMOVAL TOOLS.

10 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
11 Proposition 65 as to REMOVAL TOOLS have been ongoing and continuous to the date  
12 of the signing of this complaint, as Defendants engaged and continue to engage in  
13 conduct which violates Health and Safety Code section 25249.6, including the  
14 manufacture, distribution, promotion, and sale of REMOVAL TOOLS, so that a separate  
15 and distinct violation of Proposition 65 occurred each and every time a person was  
16 exposed to DINP by REMOVAL TOOLS as mentioned herein.

17 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
18 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
19 violations alleged herein will continue to occur into the future.

20 32. Based on the allegations herein, Defendants are liable for civil penalties of up to  
21 \$2,500.00 per day per individual exposure to DINP from REMOVAL TOOLS, pursuant  
22 to Health and Safety Code section 25249.7(b).

23 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
24 filing this Complaint.

25  
26 **PRAYER FOR RELIEF**

27 Plaintiff demands against each of the Defendants as follows:

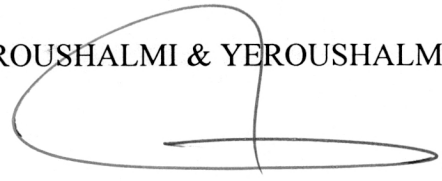
28 1. A permanent injunction mandating Proposition 65-compliant warnings;

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- 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 3. Costs of suit;
- 4. Reasonable attorney fees and costs; and
- 5. Any further relief that the court may deem just and equitable.

Dated: April 6, 2016

YEROUSHALMI & YEROUSHALMI



BY: \_\_\_\_\_  
Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.