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ENDORSED
FILED
ALAMEDA COUNTY

OCT 15 2015

CLERK OF THE SUPERIOR COURT
By Xian-Xii Bowie

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 GABRIEL ESPINOSA,
13 Plaintiff,
14 vs.
15 KOHLER CO.,
16 Defendant.

CASE NO.: RG 15789602

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

BY FAX

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19 Plaintiff Gabriel Espinosa ("Plaintiff" or "Espinosa"), by and through his attorneys,
20 alleges the following cause of action in the public interest of the citizens of the State of
21 California.

22 **BACKGROUND OF THE CASE**

23 1. Plaintiff brings this representative action on behalf of all California citizens to
24 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
25 at the Health and Safety Code § 25249.5 *et seq.* ("Proposition 65"), which reads, in relevant part,
26 "[n]o person in the course of doing business shall knowingly and intentionally expose any
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
28 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 exposure to the chemicals Diisononyl phthalate (DINP) and Di-isodecyl
4 phthalate (DIDP) that are found in faucet hoses sold and/or distributed by defendant Kohler Co.
5 (“Kohler” or “Defendant”) in California.

6 3. DIDP is a harmful chemical known to the State of California to cause
7 reproductive toxicity. On April 20, 2007, the State of California listed DIDP as a chemical
8 known to the State to cause reproductive toxicity and it has come under the purview of
9 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety
10 Code §§ 25249.8 & 25249.10(b).

11 4. DINP is a harmful chemical known to the State of California to cause cancer. On
12 December 20, 2013, the State of California listed DINP as a chemical known to cause cancer and
13 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
14 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

15 5. Proposition 65 requires all businesses with ten (10) or more employees that
16 operate within California or sell products therein to comply with Proposition 65 regulations.
17 Included in such regulations is the requirement that businesses must label any product containing
18 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
19 intentionally” exposing any person to it.

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

25 7. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
26 and/or offers for sale, without the required warning, faucet hoses in California containing DIDP
27 and DINP. These products include, but are not limited to, *Kohler hose kit (faucet)*, UPC# 6
28 *50531 63074 2*, *GP 78825-CP*, *KGP 78825-CP* (the “Product”).

1 **FIRST CAUSE OF ACTION**

2 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

3 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
4 this complaint as though fully set forth herein.

5 21. Defendant has, at all times mentioned herein, acted as a manufacturer, distributor,
6 and/or retailer of the Product.

7 22. The Product contains DIDP and DINP, hazardous chemicals found on the
8 Proposition 65 list of a chemical known to be hazardous to human health.

9 23. The Product does not comply with the Proposition 65 warning requirements.

10 24. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at least since May 12, 2015, continuing until the present, that Defendant has
12 continued to knowingly and intentionally expose California users and consumers of the Product
13 to DIDP and DINP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the product. Consequently, the primary route of
16 exposure to these chemicals is through dermal absorption of water containing DINP and DIDP
17 that has leached from the hose, and ingestion of DINP and DIDP due to the discharged water
18 from the sink sprayer. Direct dermal exposure through the user's hands is not likely to occur as
19 the plastic interior hose is contained within the flexible exterior braided stainless steel hose.
20 However a possible route of dermal exposure is through DINP and DIDP that has leached into
21 the water passing through the interior plastic hose. This water containing DINP and DIDP is
22 discharged from the spray head and can be absorbed through the surface area of the user's
23 exposed skin that comes into contact with the water. If water is held static inside the pressurized
24 sink hose, levels of DINP and DIDP will continue to increase in the water contained within the
25 hose. Finally, while mouthing of the product does not seem likely, some amount of exposure
26 through ingestion can occur by handling the product with subsequent touching of the users hand
27 to mouth.

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