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ENDORSED
FILED
ALAMEDA COUNTY
AUG 17 2015
CLERK OF THE SUPERIOR COURT
By *[Signature]*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 MARTHA VELARDE,
11 Plaintiff,
12 vs.
13 LOWE'S HOME CENTERS LLC,
14 LOWE'S COMPANIES, INC., and EZ-
15 FLO INTERNATIONAL, INC.
16 Defendants.

CASE NO.:
JUDGE
DEPT.: RG 15 782161
COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELEIF
(Violation of Health & Safety Code §25249.5
et seq.)

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

21 BACKGROUND OF THE CASE

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

BY FAX

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 icemaker and/or dishwasher connector tubing manufactured, sold, and/or distributed by
5 defendants Lowe’s Home Centers, LLC, Lowe’s Companies, Inc., and/or EZ-FLO International,
6 Inc. (collectively referred to herein 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, icemaker and/or dishwasher connector tubing
24 in California containing DEHP. These products include, but are not limited to, (1) *Eastman 10ft.*
25 *Icemaker Connector, ¼” comp. x ¼” comp x 120” length, Color: blue, UPC# 0 91712 98513 6,*
26 *Eastman Part# 98513; and (2) Eastman 5ft. PVC Dishwasher Connector, Color: Red, UPC# 0*
27 *91712 98529 7* (the “Products”).

28

1 Companies, Inc. can be served at, 1000 Lowe's Blvd., Mooresville, NC 28177. Lowe's
2 Companies, Inc. is a person in the course of doing business within the meaning of Health &
3 Safety Code sections 25249.6 and 25249.11.

4 13. Defendant EZ-FLO International, Inc. is a company with its headquarters in
5 California that manufactures and distributes plumbing products to customers in the united states,
6 and through that business effectively manufactures, imports, distributes, sells, and/or offers the
7 Products for sale or use in California, or it implies by its conduct and/or through its subsidiaries
8 that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the
9 State of California. EZ-FLO International, Inc. can be served care of Saleem Lahlouh at 2750 E.
10 Mission Blvd., Ontario, CA 91761. EZ-FLO International, Inc. is a person in the course of doing
11 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

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

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

22 VENUE AND JURISDICTION

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

27 17. This Court has jurisdiction over this action pursuant to California Constitution
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction, therefore,
3 this Court has jurisdiction over this lawsuit.

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

11 **SATISFACTION OF NOTICE REQUIREMENTS**

12 19. On April 21, 2015, Plaintiff gave notice of alleged violations of Health and Safety
13 Code § 25249.6, concerning the exposure of California citizens to DEHP without proper
14 warning, subject to a private action to the Defendants and to the California Attorney General's
15 office and the offices of the County District attorneys and City Attorneys for each city with a
16 population greater than 750,000 persons wherein the herein violations allegedly occurred.

17 20. On June 2, 2015 Plaintiff served an amended notice of alleged violations of
18 Health and Safety Code § 25249.6, concerning the exposure of California citizens to DEHP
19 without proper warning, subject to a private action to the Defendants and to the California
20 Attorney General's office and the offices of the County District attorneys and City Attorneys for
21 each city with a population greater than 750,000 persons wherein the herein violations allegedly
22 occurred.

23 21. Such notices complied with all procedural requirements of Proposition 65
24 including the attachment of a Certificates of Merit affirming that Plaintiff's counsel had
25 consulted with at least one person with relevant and appropriate expertise who reviewed relevant
26 data regarding DEHP exposure, and that counsel believed there was meritorious and reasonable
27 cause for a private action.

28

1 31. Defendants have knowledge that the normal and reasonably foreseeable use of the
2 Products exposes individuals to DEHP, and Defendants intend that exposures to DEHP will
3 occur by their deliberate, non-accidental participation in the manufacture, importation,
4 distribution, sale and offering of the Products to consumers in California

5 32. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
6 Complaint without success.

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

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

12 **PRAYER FOR RELIEF**

13
14 WHEREFORE, Plaintiff demands judgment against the Defendants and requests the
15 following relief:

- 16
17 A. That the court assess civil penalties against each and every Defendant in
18 the amount of \$2,500 per day for each violation in accordance with Health
19 and Safety Code § 25249.7(b);
20 B. That the court preliminarily and permanently enjoin all Defendants
21 mandating Proposition 65 compliant warnings on the Products;
22 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
23 D. That the court grant any further relief as may be just and proper.

24 Dated: August 17, 2015

BRODSKY & SMITH, LLC

25 By: 

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