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ENDORSED
FILED
ALAMEDA COUNTY

MAR 24 2016

CLERK OF THE SUPERIOR COURT
By: D. OLIVER, Deputy

8 *Attorneys for Plaintiff*

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

11 HECTOR VELARDE,
12 Plaintiff,
13 vs.
14 LDR GLOBAL INDUSTRIES, LLC and
15 KMART CORPORATION.,
16 Defendants.

CASE NO.: *RG-16809037*

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

BY FAX

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18
19 Plaintiff Hector Velarde, by and through his 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 1. Plaintiff Hector 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.

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 Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
4 faucet supply lines sold and/or distributed by defendants LDR Global Industries, LLC (“LDR”)
5 and Kmart Corporation, Inc. (“Kmart”) (collectively, “Defendants”) in California.

6 3. DEHP is a harmful chemical known to the State of California to cause cancer and
7 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
8 known to cause cancer and it has come under the purview of Proposition 65 regulations since
9 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
10 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical known to
11 cause reproductive toxicity.

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 product containing
15 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
16 intentionally” exposing any person to it.

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 produce, manufacture, distribute, import, sell,
23 and/or offer for sale, without the required warning, *Nylon Reinforced - Faucet Supply Lines*,
24 *UPC No. 0 19442 10581 5* in California containing DEHP (the “Product”).

25 7. Defendants’ failure to warn consumers, and other individuals in California of the
26 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,
27 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendants to the
28 enjoyment and civil penalties described herein.

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

5 19. Plaintiff is commencing this action more than sixty (60) days from the date of his
6 notice to Defendants, as required by law.

7 **FIRST CAUSE OF ACTION**

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

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

11 21. Defendants have, at all times mentioned herein, acted as manufacturer, distributor,
12 and/or retailer of the Product.

13 22. The Product contains DEHP, a hazardous chemical found on the Proposition 65
14 list of a chemical known to be hazardous to human health.

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

16 24. Plaintiff, based on his best information and belief, avers that at all relevant times
17 herein, and at least since June 28, 2015 continuing until the present, that Defendants have
18 continued to knowingly and intentionally expose California users and consumers of the Product
19 to DEHP without providing required warnings under Proposition 65.

20 25. The exposures that are the subject of this notice result from the purchase,
21 acquisition, handling and recommended use of the product. Consequently, the primary route of
22 exposure to these chemicals is through direct dermal exposure during installation of the faucet
23 supply line. Indirect exposure to DEHP is possible through DEHP leaching into the water
24 passing through the supply line tubing. Upon exiting the faucet, this DEHP containing water can
25 come into contact with bare skin. Should water containing DEHP come into contact with the
26 user, aqueous DEHP skin permeation rates may be faster than neat DEHP permeation. The
27 concentration of DEHP leaching into the water from the faucet supply line is dependent upon the
28 flow rate of water through the hose and the temperature of the water. Elevated water

1 temperatures may be expected that will lead to increased kinetics of DEHP leaching from the
2 supply line tubing into the water. If water is held static inside the pressurized supply line tubing,
3 levels of DEHP will continue to increase in the water contained within the hose. Ingestion of
4 DEHP containing water is possible should DEHP leach from the faucet supply line and be
5 directly ingested or used in activities such as brushing teeth. Water containing DEHP can leave
6 DEHP residues on items that are washed with the water. User contact with the wet or dry items
7 contaminated with DEHP can indirectly lead to dermal absorption through the skin. Should
8 washed items include tableware, flatware, or glassware, when these items are used, ingestion of
9 DEHP residues is possible.

10 26. Plaintiff, based on his best information and belief, avers that such exposures will
11 continue every day until clear and reasonable warnings are provided to Product purchasers and
12 users or until this known toxic chemical is removed from the Product.

13 27. Defendants have knowledge that the normal and reasonably foreseeable use of the
14 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
15 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
16 sale and offering of the Product to consumers in California

17 28. Despite Plaintiff's willingness to do so, Defendants have not engaged in good
18 faith efforts to resolve the herein claims prior to this Complaint.

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

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

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25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff demands judgment against Defendants and requests the
27 following relief:
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- A. That the court assess civil penalties against Defendants in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendants mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: March 24, 2016

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