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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
9	COUNTY OF ALAMEDA	
10	HECTOR VELARDE,	CASE NO.: 16802957
11	Plaintiff,	JUDGE
12	VS.	DEPT.:
13	HOMER TLC, INC. T/A CE TECH,	CONTRACTOR CANAL DENIAL TYPE
14	Defendant.	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELEIF
15		(Violation of Health & Safety Code §25249.5
16		et seq.) BY FAX
17		
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.	

- 2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to Diisononyl phthalate ("DINP"), a toxic chemical found in charging cables, sold, and/or distributed by defendant Homer TLC, Inc. t/a CE TECH. ("Home Depot" or "Defendant") in California.
- 3. DINP is a harmful chemical, known to cause cancer. DINP has been listed on the Proposition 65 list of chemicals since December 20, 2013 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
- 4. Proposition 65 requires all businesses with ten (10) or more employees that operate within California or sell products therein to comply with Proposition 65 regulations. Included in such regulations is the requirement that businesses must label any product containing a Proposition 65-listed chemical with a "clear and reasonable" warning before knowingly or intentionally exposing any person to it.
- 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation to be imposed upon defendants in a civil action for violations of Proposition 65. *Health & Safety Code* § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the actions of a defendant which "violate or threaten to violate" the statute. *Health & Safety Code* § 25249.7.
- 6. Plaintiff alleges that Defendant distributes, manufactures, produces, imports, sells, and/or offers for sale, without the required warning, charging cables in California containing DINP. These products include, but are not limited to, the *CE TECH Charging Cable USB To Lightning, UPC No. 887429000299, SKU No. 1000001705, Model No. SMDP50NH0016* (the "Product").
- 7. Defendant's failure to warn consumers, and other individuals in California of the health hazards associated with exposure to DINP in conjunction with the sale, manufacture, and/or distribution of the Product is a violation of Proposition 65 and subjects Defendant to the enjoinment and civil penalties described herein.

- 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65 in accordance with Health and Safety Code § 25249.7(b).
- 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendant to provide purchasers or users of the Product with the required warnings related to the dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code § 25249.7(a).

PARTIES

- 10. Plaintiff is a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items. He brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).
- 11. Defendant Home Depot, a Delaware Corporation with its headquarters located in Atlanta, Georgia, operates a chain of retail stores, and through that business effectively manufactures, imports, distributes, sells, and/or offers the Product for sale or use in California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of California.
- 12. Home Depot can be served at c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808. Home Depot is a person in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.
- 13. Upon information and belief, Plaintiff avers that at all relevant times herein, each Defendant was a person doing business within the meaning of Health and Safety Code § 25249.11(b) and that each and every Defendant had ten (10) or more employees at all relevant times.

VENUE AND JURISDICTION

14. Venue is proper in the County of Alameda, because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because Defendant conducted, and continues to conduct, business in the County of Alameda with respect to the Product.

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

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

SATISFACTION OF NOTICE REQUIREMNTS

- 17. On November 21, 2015, Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to DINP contained in the Product without proper warning, subject to a private action to Defendant and to the California Attorney General's office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.
- 18. The Notice complied with all procedural requirements of Proposition 65 including the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at least one person with relevant and appropriate expertise who reviewed relevant data regarding DINP exposure, and that counsel believed there was meritorious and reasonable cause for a private action.
- 19. After receiving the Notice, and to Plaintiff's best information and belief, none of the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a cause of action against Defendant under Proposition 65 to enforce the alleged violations which are the subject of Plaintiff's notice of violation.

20. Plaintiff is commencing this action more than sixty (60) days from the date of his amended notice to Defendant, as required by law.

FIRST CAUSE OF ACTION

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

- 21. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 20 of this complaint as though fully set forth herein.
- 22. Defendant has, at all times mentioned herein, acted as manufacturer, distributer, and/or retailer of the Product.
- 23. The Product contains DINP, a hazardous chemical found on the Proposition 65 list of a chemical known to be hazardous to human health.
 - 24. The Product does not comply with the Proposition 65 warning requirements.
- 25. Plaintiff, based on his best information and belief, avers that at all relevant times hereto, and at least since June 28, 2015 continuing until the present, that Defendant has continued to knowingly and intentionally expose California users and consumers of the Product to DINP without providing required warnings under Proposition 65.
- 26. The exposures that are the subject of this Complaint result from the purchase, acquisition, handling and recommended use of the Product. Consequently, the primary route of exposure to these chemicals is through dermal absorption through direct skin contact with the cord during routine use when the cord is manipulated with bare hands. The product can be expected to emit gas-phase DINP into the air over the lifetime of the product. This gas-phase DINP can potentially be inhaled or can be absorbed to dust that can be resuspended and potentially ingested. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by touching the product with subsequent touching of the users hand to mouth.
- 27. Plaintiff, based on his best information and belief, avers that such exposures will continue every day until clear and reasonable warnings are provided to Product purchasers and users or until this known toxic chemical is removed from the product.