

ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 17 2015

CLERK OF THE SUPERIOR COURT

By

Xian-Xii Bowie

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY & SMITH, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

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

11 HECTOR VELARDE,

12 Plaintiff,

13 vs.

14 HOMER TLC, INC. T/A CE TECH and  
15 HOME DEPOT U.S.A., INC.,

16 Defendants.

Case No.: RG16802957

**AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

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

BY FAX

17 Plaintiff Hector Velarde, by and through his attorneys, alleges the following cause of  
18 action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

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

27 2. This complaint is a representative action brought by Plaintiff in the public interest  
28 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

- 1 -

1 charging cables, sold, and/or distributed by defendants Homer TLC, Inc. t/a CE TECH and  
2 Home Depot U.S.A., Inc. (“Home Depot” or “Defendants”) in California.

3 3. DINP is a harmful chemical, known to cause cancer. DINP has been listed on the  
4 Proposition 65 list of chemicals since December 20, 2013 and it has come under the purview of  
5 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety  
6 Code §§ 25249.8 & 25249.10(b).

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

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
13 to be imposed upon defendants in a civil action for violations of Proposition 65. *Health & Safety*  
14 *Code* § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
15 the actions of a defendant which “violate or threaten to violate” the statute. *Health & Safety*  
16 *Code* § 25249.7.

17 6. Plaintiff alleges that Defendants distribute, manufacture, produce, import, sell,  
18 and/or offer for sale, without the required warning, charging cables in California containing  
19 DINP. These products include, but are not limited to, the *CE TECH Charging Cable USB To*  
20 *Lightning*, UPC No. 887429000299, SKU No. 1000001705, Model No. SMDP50NH0016 (the  
21 “Product”).

22 7. Defendants’ failure to warn consumers, and other individuals in California of the  
23 health hazards associated with exposure to DINP in conjunction with the sale, manufacture,  
24 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendants to the  
25 enjoinder and civil penalties described herein.

26 8. Plaintiff seeks civil penalties against Defendants for their violations of  
27 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

28









1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Evan J. Smith, Esquire, declare:

I am over the age of 18 years and not a party to this action; my business address is 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212 and 333 E. City Avenue, Suite 510, Bala Cynwyd, PA 19004.

On August 19, 2016, I served the following document:

**PLAINTIFF'S AMENDED COMPLAINT**

by serving a true copy of the above-described document in the following manner:

**BY ELECTRONIC MAIL & FEDERAL EXPRESS OVERNIGHT DELIVERY**

---

The above-described documents were transmitted via electronic mail and federal express overnight delivery to the following parties on August 19, 2016:

**Lauren Shoor** | Associate  
Norton Rose Fulbright US LLP  
555 South Flower Street, Forty-First Floor, Los Angeles, California 90071, United States  
Tel +1 213 892 9225 | Fax +1 213 892 9494  
[lauren.shoor@nortonrosefulbright.com](mailto:lauren.shoor@nortonrosefulbright.com)

*Attorney for Defendants*

I declare under penalty of perjury under the laws of California and of the United States of America that the above is true and correct.

Executed on August 19, 2016, at Bala Cynwyd, Pennsylvania.



---

Evan J. Smith.