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ENDORSED
FILED
San Francisco County Superior Court

AUG 09 2017

CLERK OF THE COURT
BY: KALENE APOLONIO
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

KIM EMBRY, an individual

Plaintiff,

v.

LOWE'S HOME CENTER, LLC, a North
Carolina limited liability corporation, and
DOES 1 through 100, inclusive,

Defendants.

Case No.: **CGC-17-560641**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

BY FAX
ONE LEGAL LLC

I.
INTRODUCTION

1
2 1. This Complaint is a representative action brought by Plaintiff in the public interest of
3 the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the
4 presence of di(2-ethylhexyl) phthalate (“DEHP”) (“Listed Chemical”) found in 36-in Gray Extruded
5 Vinyl Runner (“Product”) manufactured, imported, sold, or distributed for sale in California by
6 LOWE’S HOME CENTER, LLC (“Lowe’s” or “Defendant”).

7 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
8 Health & Safety Code Section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
9 business shall knowingly and intentionally expose any individual to a chemical known to the state to
10 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
11 individual. . . .” (Cal. Health & Safety Code § 25249.6.)

12 3. California identified and listed DEHP as a chemical known to cause birth defects or
13 other reproductive harm as well as cancer as early as January 1, 1988.

14 4. Product manufactured, imported, sold, or distributed in California contains prohibited
15 levels of DEHP (“Products”).

16 5. Defendant failed to sufficiently warn consumers and individuals in California about
17 potential exposure to DEHP in connection with Defendant’s manufacture, import, sale, or distribution
18 of Product. This is a violation of Proposition 65.

19 6. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in
20 California before exposing them to DEHP in Product or other products containing DEHP pursuant to
21 Proposition 65 and related Regulations. (Cal. Health & Safety Code § 25249.7(a).) Plaintiff also seeks
22 civil penalties against Defendant for its violations of Proposition 65 as well as attorney fees and costs.
23 (Cal. Health & Safety Code § 25249.7(b).)

II.
PARTIES

24
25 7. Plaintiff is a citizen of the State of California dedicated to protecting the health of
26 California citizens through the elimination or reduction of toxic exposure from consumer products. She
27 brings this action in the public interest pursuant to Cal. Health & Safety Code § 25249.7.

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8. Defendant Lowe's is a corporation organized and existing under the laws of North Carolina. Lowe's is registered to do and does business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San Francisco County.

10. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff. Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

11. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers, joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants, and each of them.

III. VENUE AND JURISDICTION

12. California Constitution Article VI, Section 10 grants the Superior Court original jurisdiction in all cases except those given by statute to other trial courts. The Health & Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.

13. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil Procedure Sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendants conducted and continue to conduct business in this County as it relates to Products.

14. Defendant has sufficient minimum contacts in the State of California or otherwise purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be consistent with traditional notions of fair play and substantial justice.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Violation of Proposition 65 – Against all Defendants)

15. Plaintiff incorporates by reference each and every allegation contained above.

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1 16. Proposition 65 mandates that citizens be informed about exposures to chemicals that
2 cause cancer, birth defects, and other reproductive harm.

3 17. Defendant manufactured, imported, sold, and/or distributed Product containing Listed
4 Chemical in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is informed
5 and believes such violations have continued after receipt of the Notice (defined *infra*) and will continue
6 to occur into the future.

7 18. In manufacturing, importing, selling, and/or distributing Product, Defendant failed to
8 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
9 to the Listed Chemical through reasonably foreseeable use of the Product.

10 19. The presence of Listed Chemical in Product exposes individuals to the Listed Chemicals
11 through dermal absorption and ingestion.

12 20. Defendant knew or should have known that the Product contained Listed Chemical and
13 exposed individuals to Listed Chemical in the ways provided above. The Notice informed Defendant
14 of the presence of Listed Chemical in the Product. Likewise, media coverage concerning Listed
15 Chemical and related chemicals in consumer products, including Vinyl Runner products provided
16 constructive notice to Defendant. By manufacturing, importing, distributing, and/or selling Product in
17 California, Defendant should know that the Product contain Listed Chemical and that individuals who
18 come into contact with Product will be exposed to Listed Chemicals.

19 21. Defendant's actions in this regard were deliberate and not accidental.

20 22. On February 7, 2017, Plaintiff provided Defendant a 60-Day Notice of Violation
21 ("Notice") as required by and in compliance with Proposition 65. The Notice was provided to the
22 various required public enforcement agencies and contained a certificate of merit. The Notice alleged
23 that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the
24 health hazards associated with exposures to Listed Chemical contained in the Product.

25 23. The appropriate public enforcement agencies provided with the Notice failed to
26 commence and diligently prosecute a cause of action against Defendant.

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24. Individuals exposed to Listed Chemicals contained in the Product through dermal absorption and ingestion resulting from reasonably foreseeable use of the Product have suffered and continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

25. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to Health & Safety Code Section 252497(b). Injunctive relief is also appropriate pursuant to Health & Safety Code Section 25249.7(a).

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendant as follows:

1. Civil penalties in the amount of \$2,500 per day for each violation;
2. A preliminary and permanent injunction against Defendant from manufacturing, importing, selling, and/or distributing Product in California without providing a clear and reasonable warning as required by Proposition 65 and related Regulations;
3. Reasonable attorney fees and costs of suit; and
4. Such other and further relief as may be just and proper.

Dated: August 9, 2017

GLICK LAW GROUP, PC

By:



Noam Glick
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Attorneys for Plaintiff