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ENFORCED
FILED
ALAMEDA COUNTY

NOV 21 2017

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ANTHONY FERREIRO,

Plaintiff,

v.

BUILDERDEPOT, INC.,

Defendant.

RG17883584

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

16 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the
17 following cause of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People's right to be informed of the health
27 hazards caused by exposure to lead, a toxic chemical found in brass twin elbow valves
28

1 manufactured, sold and/or distributed in California by defendant BuilderDepot, Inc.
2 (“BuilderDepot” or “Defendant”) in California.

3 3. Lead is a harmful chemical known to the State of California to cause cancer and
4 birth defects or other reproductive harm. On February 27, 1987, the State of California listed
5 lead as a chemical known to cause adverse developmental and reproductive effects in both males
6 and females. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
7 25249.10(b). On October 1, 1992, the state of California listed lead as a chemical known to cause
8 cancer.

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

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

19 6. Plaintiff alleges that Defendant manufactures, distributes, imports, sells, and/or
20 offers for sale in California, without the required Proposition 65 exposure warning, brass elbow
21 valves for bathtubs and showers (“Product” or “Products”), that contain lead.

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

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

28

1 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
2 Defendant to provide purchasers or users of the Product with the required warnings related to the
3 dangers and health hazards associated with exposure to lead pursuant to Health and Safety Code
4 § 25249.7(a).

5 **PARTIES**

6 10. Plaintiff is a citizen of the State of California acting in the interest of the general
7 public to promote awareness of exposures to toxic chemicals in products sold in California and
8 to improve human health by reducing hazardous substances contained in such items. He brings
9 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

10 11. Defendant effectively manufactures, imports, distributes, sells, and/or offers the
11 Products for sale or use in the State of California, or it implies by its conduct that it
12 manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of
13 California.

14 12. Defendant BuilderDepot is a “person” in the course of doing business within the
15 meaning of Health & Safety Code sections 25249.6 and 25249.11.

16 **VENUE AND JURISDICTION**

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

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

26 15. This Court has jurisdiction over Defendant because it is either a citizen of the
27 State of California, has sufficient minimum contacts with the State of California, is registered
28 with the California Secretary of State as foreign corporations authorized to do business in the

1 State of California, and/or has otherwise purposefully availed itself of the California market.
2 Such purposeful availment has rendered the exercise of jurisdiction by California courts
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 16. On March 27, 2017, Plaintiff gave notice of alleged violation of Health and Safety
6 Code § 25249.6 (the "Notice") to BuilderDepot concerning the exposure of California citizens to
7 lead contained in the Product without proper warning, subject to a private action to BuilderDepot
8 and to the California Attorney General's office and the offices of the County District attorneys
9 and City Attorneys for each city with a population greater than 750,000 persons wherein the
10 herein violations allegedly occurred.

11 17. The Notice complied with all procedural requirements of Proposition 65 including
12 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
13 least one person with relevant and appropriate expertise who reviewed relevant data regarding
14 lead exposure, and that counsel believed there was meritorious and reasonable cause for a private
15 action.

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

20 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
21 Notice to BuilderDepot, as required by law.

22 **FIRST CAUSE OF ACTION**

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

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

26 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
27 and/or retailer of the Product.

28

1 22. The Product contains lead, a hazardous chemical found on the Proposition 65 list
2 of chemicals known to be hazardous to human health.

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

4 24. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since September 2, 2016, continuing until the present, that BuilderDepot has
6 continued to knowingly and intentionally expose California users and consumers of the Product
7 to lead without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of the Notice result from the purchase,
9 acquisition, handling and recommended use of the product. Consequently, the primary route of
10 exposure to these chemicals is through ingestion. Lead can leach into drinking water. The
11 amount of lead in drinking water can be elevated with higher water temperatures and if the water
12 chemistry of the plumbing in the residence is conducive to brass corrosion that will enhance lead
13 leaching from the brass elbow. If water is held static inside the plumbing line or for several
14 hours between water discharges, levels of lead in the water contained within the plumbing line
15 containing the brass elbow will continue to increase. If low volumes of water are discharged
16 from the plumbing line, without allowing the line to sufficiently discharge and flush the lead
17 from the line, levels of lead can be above 15ug/L in the drinking water. If drinking water is
18 intermittently discharged throughout the day, lead buildup in the plumbing line containing the
19 brass elbow and subsequent ingestion of the lead containing water may occur multiple times
20 throughout the day. As such, cumulative lead levels may exceed the 0.5 ug lead/day MADL for
21 reproductive toxicity and the 16 ug lead/day NSRL for carcinogenic toxicity.

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

25 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
26 Product exposes individuals to lead, and Defendant intends that exposures to lead will occur by
27 their deliberate, non-accidental participation in the manufacture, importation, distribution, sale
28 and offering of the Product to consumers in California

1 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
2 Complaint.

3 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
4 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

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

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
10 following relief:

- 11 A. That the court assess civil penalties against Defendant in the amount of
12 \$2,500 per day for each violation in accordance with Health and Safety
13 Code § 25249.7(b);
- 14 B. That the court preliminarily and permanently enjoin Defendant mandating
15 Proposition 65 compliant warnings on the Product;
- 16 C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit.
- 17 D. That the court grant any further relief as may be just and proper.

18
19 Dated: November 21, 2017

BRODSKY & SMITH, LLC

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