

1 **GLICK LAW GROUP, PC**
2 Noam Glick (SBN 251582)
3 Kelsey McCarthy (SBN 305372)
4 225 Broadway, Suite 2100
5 San Diego, California 92101
6 Telephone: (619) 382-3400
7 Facsimile: (619) 615-2193
8 Email: noam@glicklawgroup.com
9 Email: kelsey@glicklawgroup.com

**ENDORSED
FILED**
San Francisco County Superior Court

SEP 25 2017

CLERK OF THE COURT
SANDRA L. SCHIRO
BY: _____ Deputy Clerk

6 **NICHOLAS & TOMASEVIC, LLP**
7 Craig M. Nicholas (SBN 178444)
8 Alex M. Tomasevic (SBN 245598)
9 225 Broadway, 19th Floor
10 San Diego, California 92101
11 Tel: (619) 325-0492
12 Fax: (619) 325-0496

13 Attorneys for Plaintiff
14 Kim Embry

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

17 KIM EMBRY, an individual

18 Plaintiff,

19 v.

20 BONIDE PRODUCTS, INC., a New York
21 corporation, AMAZON.COM, INC., a
22 Delaware corporation, CONTROL
23 SOLUTIONS INC., a California corporation,
24 SOLUTIONS PEST & LAWN a Texas
25 corporation, PBI-GORDON
26 CORPORATION, a Missouri corporation,
27 TRACTOR SUPPLY COMPANY., a
28 Delaware corporation, DOES 1 through 100,
inclusive,

Defendants.

Case No.:

CGC-17-561521

**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 Malathion, (“Listed Chemical”) found in Martin’s Malathion 57%, Bonide Malathion
5 Insect Control Concentrate and Gordon’s Malathion 50% Spray. All manufactured, imported, sold, or
6 distributed for sale in California by Defendants.

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 Malathion as a chemical known to cause cancer as early
13 as May 20, 2016.

14 4. Bonide Malathion Insect Control Concentrate, Martin’s Malathion 57%, and Gordon’s
15 Malathion 50% Spray are manufactured, imported, sold, or distributed in California contains prohibited
16 levels of Malathion (“Products”).

17 5. Defendants failed to sufficiently warn consumers and individuals in California about
18 potential exposure to Malathion in connection with Defendants’ manufacture, import, sale, or
19 distribution of Products. This is a violation of Proposition 65.

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

II.
PARTIES

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

1 8. Defendant BONIDE PRODUCTS, INC., (“Bonide Products” or “Defendant”) is a
2 corporation organized and existing under the laws of New York. Defendant is registered to do and does
3 business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code §
4 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San
5 Francisco County.

6 9. Defendant PBI-GORDON CORPORATION, (“PBI- Gordon” or “Defendant”) is a
7 corporation organized and existing under the laws of Missouri. Defendant is registered to do and does
8 business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code §
9 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San
10 Francisco County.

11 10. Defendant CONTROL SOLUTIONS INC. (“PBI- Gordon” or “Defendant”) is a
12 corporation organized and existing under the laws of Missouri. Defendant is registered to do and does
13 business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code §
14 25249.11. Defendant manufactures, imports, sells, or distributes Products in California and San
15 Francisco County.

16 11. Defendant AMAZON.COM, INC. (“Amazon”) is a corporation organized and existing
17 under the laws of the State of Delaware. Amazon does business in California, County of San Francisco,
18 within the meaning of Cal. Health & Safety Code § 25249.11. Amazon manufactures, imports, sells,
19 or distributes Products in California and San Francisco County.

20 12. Defendant TRACTOR SUPPLY COMPANY. (“Tractor Supply”) is a corporation
21 organized and existing under the laws of the State of Delaware. Tractor Supply does business in
22 California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11.
23 Tractor Supply manufactures, imports, sells, or distributes Products in California and San Francisco
24 County.

25 13. Defendant SOLUTIONS PEST & LAWN. (“Solution Pest”) is a corporation organized
26 and existing under the laws of the State of Texas. Solution Pest does business in California, County of
27 San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11. Solution Pest
28 manufactures, imports, sells, or distributes Products in California and San Francisco County.

1 and believes such violations have continued after receipt of the Notice (defined *infra*) and will continue
2 to occur into the future.

3 22. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
4 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
5 to the Listed Chemical through reasonably foreseeable use of the Products.

6 23. The presence of Listed Chemical in Products exposes individuals to the Listed
7 Chemicals through dermal absorption, ingestion, and inhalation by consumers.

8 24. Defendants knew or should have known that the Products contained Listed Chemical
9 and exposed individuals to Listed Chemical in the ways provided above. The Notice informed
10 Defendants of the presence of Listed Chemical in the Products. Likewise, media coverage concerning
11 Listed Chemical and related chemicals in consumer products, provided constructive notice to
12 Defendants. By manufacturing, importing, distributing, and/or selling Products in California,
13 Defendants should know that the Products contain Listed Chemical and that individuals who come into
14 contact with Products will be exposed to Listed Chemicals.

15 25. Defendants' actions in this regard were deliberate and not accidental.

16 26. On September 19, 2017, Plaintiff provided Defendants a 60-Day Notice of Violation
17 ("Notice") as required by and in compliance with Proposition 65. The Notice was provided to the
18 various required public enforcement agencies and contained a certificate of merit. The Notice alleged
19 that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the
20 health hazards associated with exposures to Listed Chemical contained in the Products.

21 27. The appropriate public enforcement agencies provided with the Notice failed to
22 commence and diligently prosecute a cause of action against Defendants.

23 28. Individuals exposed to Listed Chemicals contained in the Products through dermal
24 absorption, ingestion, and inhalation resulting from reasonably foreseeable use of the Products have
25 suffered and continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy
26 at law.
27
28

