

OCT 17 2023

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10 Attorneys for Plaintiffs
11 TERRY WOLCOTT

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF VENTURA**

14 TERRY WOLCOTT,) Case No.: _____
15)
16 Plaintiff,)
17)
18 v.) COMPLAINT FOR PERSONAL INJURIES
19) AND DEMAND FOR JURY TRIAL
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29 Comes now plaintiff, TERRY WOLCOTT, and for cause of action for damages due
30 to negligence against the defendants, LOWE'S COMPANIES INC., MICHAEL FISHMAN,
31 BRETT GENTRY, and DOES 1-20, inclusive, and each of them, complains and alleges as
32 follows:

- 33 1. Plaintiff TERRY WOLCOTT is now and has been at all times relevant herein
34 a resident of the State of California, County of Ventura, City of Simi Valley.
- 35 2. At all times relevant to this action, defendants LOWE'S COMPANIES INC.,
36 MICHAEL FISHMAN, BRETT GENTRY, and DOES 1-20, inclusive, and each of them, were
37 and are now, individual persons, corporations, associations, or other forms of business

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1 entity, who were at all times relevant to this action residing and/or doing business in the
2 State of California, including but not limited to the County of Ventura. The said
3 defendants were, and are, the persons or entities who at all times relevant herein
4 operated, owned, leased, occupied controlled, managed, maintained, supervised,
5 inspected, cleaned, and serviced as necessary, the Lowe's Home Improvement Store
6 #1971 located at 1275 Simi Town Center Way, Simi Valley, CA 93065 (hereinafter
7 referred to as "the subject premises" or "the subject location"), including without
8 limiting the generality of the foregoing, the ground area where plaintiff fell at or near the
9 Garden Center.

10 3. The true names, capacities, and defendantship of defendants designated
11 herein as DOES 1-20, inclusive, and each of them, are unknown to plaintiff, who
12 therefore sues these defendants by such fictitious names, and will ask leave of this court
13 pursuant to the California Code of Civil Procedure to amend this Complaint when such
14 names, capacities, and defendantship have been ascertained. Plaintiff is informed and
15 believes, and thereupon alleges, that each defendant designated herein as a "DOE", was
16 responsible, negligently or in some other legally actionable manner, for the events which
17 caused injury and damage to plaintiff under legal theories which include, but are not
18 necessarily limited to, absolute liability, product liability, strict liability in tort, breach of
19 expressed and/or implied warranties of merchantability and/or fitness, recklessness,
20 wantonness and willfulness, fraud and deceit. Although the identities of said DOE
21 defendants may be known to plaintiff at the time of the filing of this Complaint, plaintiff
22 is ignorant of the facts constituting a cause of action against the said DOE defendants.

23 4. Plaintiff alleges upon information and belief that at all times relevant herein,
24 defendants, and each of them, were the agents, servants, employees, assistants,
25 consultants, and the like of their co-defendants, and were, as such, acting within the
26 course and scope of said agency, service and employment, at all times relevant herein;
27 and, that each and every defendant was negligent in the selecting, hiring, monitoring,
28

1 supervising, and continued employing of each and every other defendant as an agent,
2 servant, employee, assistant and consultant.

3 5. On or about July 28, 2023 at around 12:35 PM, and prior thereto,
4 defendants LOWE'S COMPANIES INC., MICHAEL FISHMAN, BRETT GENTRY, and DOES 1-
5 20, inclusive, and each of them owed a duty to plaintiff to exercise reasonable care in
6 how they operated, owned, leased, occupied controlled, managed, maintained,
7 supervised, inspected, cleaned, and serviced as necessary the subject premises.

8 6. At all times relevant to this action, defendants LOWE'S COMPANIES INC.,
9 MICHAEL FISHMAN, BRETT GENTRY, and DOES 1-20, inclusive, and each of them, owed
10 a duty to plaintiff under Code of Civ. Proc., § 1714(a) which provides, in part: "Everyone
11 is responsible. . . for an injury occasioned to another by his or her want of ordinary care
12 or skill in the management of his or her property or person, except so far as the latter
13 has, willfully or by want of ordinary care, brought the injury upon himself or herself."
14 This statute is the foundation of negligence law in the State of California.

15 7. On or about July 28, 2023 at around 12:35 PM, defendants LOWE'S
16 COMPANIES INC., MICHAEL FISHMAN, BRETT GENTRY, and DOES 1-20, inclusive, and
17 each of them, negligently, carelessly and recklessly operated, owned, leased, occupied
18 controlled, managed, maintained, supervised, inspected, cleaned, and serviced as
19 necessary, the subject premises so as to create or allow to exist an unreasonable risk of
20 harm to customers and others lawfully on the subject premises like plaintiff TERRY
21 WOLCOTT.

22 8. Plaintiff contends based upon information and belief that the dangerous and
23 unsafe condition that caused him to slip was liquid (possibly varnish or lacquer) on the
24 floor of the subject premises. The slip and fall occurred in relative close proximity to
25 defendants and their employees who were near the area of the liquid and did not take
26 any reasonable steps to identify, eliminate, or warn against the hazard that it
27 presented. Plaintiff was walking through the area when he slipped, thereby suffering
28 serious personal injuries. Defendants and each of them negligently failed to eliminate or

1 otherwise mitigate the danger that the slippery ground presented, and negligently failed
2 to warn people of the hazard. Defendants had actual and constructive notice of the
3 dangerous condition that caused plaintiff to slip.

4 9. As a result of the negligence, carelessness and recklessness of the
5 defendants named herein, as alleged herein above, plaintiff TERRY WOLCOTT was
6 caused to slip and be injured on the aforesaid date, without any negligence, carelessness
7 or recklessness of the plaintiff contributing thereto. Plaintiff suffered severe personal
8 injuries and has suffered and will continue to suffer serious and possibly permanent
9 pain, suffering, anxiety, disability, mental and emotional distress, all to his general non-
10 economic damage in amounts according to proof at the time of trial, which amounts are
11 within the unlimited jurisdiction of this court.

12 10. As a further result of the negligence, carelessness and recklessness of the
13 defendants named in this Complaint, and/or other tortious wrongdoing of the
14 defendants, and each of them, plaintiff has required the services of physicians, surgeons,
15 hospitals, and other practitioners and institutions to examine, treat and care for him, and
16 has incurred and will continue to incur for an indeterminate period in the future,
17 medical, hospital, incidental and related expenses, the exact amount of which is
18 unknown to plaintiff at this time, and will be the subject of proof herein at the time of
19 trial.

20 11. As a further result of the negligence, carelessness and recklessness of the
21 defendants, and each of them, and/or other tortious wrongdoing of the defendants, and
22 each of them, plaintiff has incurred a loss of earnings and/or earning capacity, and will in
23 the future suffer such loss, the exact amount of which is unknown to plaintiff at this time
24 and will be the subject of proof herein at the time of trial.

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26 **WHEREFORE**, plaintiff TERRY WOLCOTT prays for judgment herein against
27 defendants, and each of them, as follows:
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1. General, non-economic damages for pain, suffering, anxiety, disability, mental and emotional distress, in an amount within the unlimited jurisdiction of this court, according to proof at the time of trial;

2. Special, economic damages for medical, hospital, incidental and related expenses, incurred to date and reasonably certain to be incurred in the future, according to proof at the time of trial;

3. Special, economic damages for loss of earnings and earning capacity, past and future, in amounts according to proof at the time of trial;

4. Costs of suit incurred herein; and,

5. Such other and further relief as this court may deem just and proper under the laws applicable to this action.

DATED: October 16, 2023

YUHL CARR LLP

By *Tyler J. Barnett*
JAMES P. CARR
TYLER J. BARNETT
Attorneys for Plaintiff
TERRY WOLCOTT

REQUEST FOR JURY TRIAL

Plaintiff TERRY WOLCOTT requests trial by jury as to all issues herein.

DATED: October 16, 2023

YUHL CARR LLP

By *Tyler J. Barnett*
JAMES P. CARR
TYLER J. BARNETT
Attorneys for Plaintiff
TERRY WOLCOTT