

1 Brian Gaffney, Esq. (CBN 168778)
2 Celeste Langille, Esq. (CBN 185302)
3 LAW OFFICES OF BRIAN GAFFNEY
4 605 Market Street, Suite 505
5 San Francisco, CA 94105
6 Telephone: (415) 442-0711
7 Facsimile: (415) 442-0713

8 Attorney for Plaintiff
9 AS YOU SOW

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
(Unlimited Jurisdiction)

AS YOU SOW,
Plaintiff,

v.

SHEFFIELD BRONZE PAINT CORPORATION;
TRUE VALUE COMPANY; and DOES 1
through 100 INCLUSIVE,

Defendants.

CASE NO.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND CIVIL
PENALTIES

TOXIC TORT/ENVIRONMENTAL

AS YOU SOW alleges as follows:

INTRODUCTION

1. This Complaint seeks civil penalties and an injunction to remedy the continuing failure of Defendants to give clear and reasonable warnings to residents of California, who apply, use, pour, handle, touch, ingest and/or inhale Deep Gold Leaf Finishes 2 oz., Pale Gold Leaf Finishes 2 oz., and Rich Gold Leaf Finishes 2 oz. (“paints” or “products”) that are manufactured, distributed, marketed and/or sold by Defendants and which contain Ethylbenzene at levels above the stated Proposition 65 limits.

2. The application, handling, pouring, touching, and/or other use of Defendants’ products causes residents of California and the County of Alameda to be exposed to Ethylbenzene, which has been listed under Proposition 65 since June 11, 2004 as a chemical known to the State of California to cause cancer.

1 to Defendants SHEFFIELD BRONZE PAINT CORPORATION and TRUE VALUE COMPANY,
2 to California's Attorney General, to every District Attorney in the State, and to the City Attorneys
3 of every California city with a population greater than 750,000.

4 17. The 60-Day Notice of Proposition 65 violations was issued pursuant to, and in
5 compliance with, the requirements of Health & Safety Code section 25249.7(d) and the statute's
6 implementing regulations regarding the notice of the violations to be given to certain public
7 enforcement agencies and to the violator. Attached to each 60-Day Notice Letters sent to each
8 Defendant was a summary of Proposition 65 that was prepared by California's Office of
9 Environmental Health Hazard Assessment. Each 60-Day Notice Letter was accompanied by a
10 Certificate of Service and a Certificate of Merit. In addition, the 60-Day Notice Letter which
11 Plaintiff sent to California's Attorney General dated April 24, 2008 was accompanied by the
12 information required by California Code of Regulations, title 11, section 3102.

13 18. On the date this Complaint is filed, over 70 days have elapsed since April 24, 2008
14 in compliance with Health & Safety Code section 25249.7(d)(1).

15 VENUE

16 19. Venue is proper in the Northern Division of the Alameda Superior Court because the
17 products at issue were purchased in the cities of Oakland and Berkeley in Alameda County. Venue
18 is also proper in this Court because Defendants manufacture, market, sell and/or distribute their
19 products in and around Alameda County, have violated one or more of the California laws specified
20 herein in Alameda County, and have caused people to be exposed to Ethylbenzene while those
21 people are physically present in Alameda County. Liability for Plaintiff's causes of action, or some
22 parts thereof, has accordingly arisen in Alameda County during the times relevant to this Complaint.

23 FIRST CAUSE OF ACTION 24 (Claim for Injunctive Relief)

25 20. Plaintiff realleges and incorporates by reference the allegations contained in the
26 preceding paragraphs.

27 21. The People of the State of California have declared by referendum under Proposition
28 65 their right "[t]o be informed about exposures to chemicals that cause cancer."

1 28. Plaintiff realleges and incorporates by reference the allegations contained in the
2 preceding paragraphs.

3 29. By the above described acts, each Defendant is liable and should be liable,
4 pursuant to Health & Safety Code section 25249.7(b), for a civil penalty of \$2,500.00 per day for
5 each individual exposed without proper warning to Ethylbenzene from applying, using, handling,
6 pouring, touching, inhaling, and/or ingesting Defendants' Paints.

7
8 THIRD CAUSE OF ACTION
9 Declaratory Relief Regarding Actual and Present Controversy over
10 Defendant's Compliance with Proposition 65
11 (Code of Civil Procedure section 1060)

12 30. Plaintiff hereby realleges and incorporates by reference the allegations contained
13 in the preceding paragraphs.

14 31. An actual and present controversy exists between Plaintiff and Defendants as to
15 whether Defendants are fully complying with Proposition 65.

16 32. Plaintiff contends that Defendants have failed to fully comply with Proposition 65
17 as alleged in this Complaint.

18 33. Defendants deny each of Plaintiff's contentions.

19 34. Plaintiff seeks a judicial determination and declaration that Defendants have an
20 obligation to fully comply with Proposition 65.

21 35. Such a declaration is necessary and appropriate at this time in order that Plaintiff
22 may ascertain the right to have Defendants act in accordance with the obligations under
23 Proposition 65.

24 36. Unless restrained by this Court, Defendants will continue to violate Proposition
25 65.

26 37. Said course of conduct by Defendants irreparably harms and will continue to
27 irreparably harm the people of California in whose interest this suit is filed - in that Defendants'
28 actions knowingly and intentionally expose individuals to chemicals known to the State of
California to cause cancer without first providing a clear and reasonable warning to such
individuals prior to the exposure.

