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ENDORSED
FILED
ALAMEDA COUNTY

DEC 21 2012

CLERK OF THE SUPERIOR COURT

Anita Dhir

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF ALAMEDA

9
10 AS YOU SOW,)

11 Plaintiff,)

12 v.)

13 BASALITE CONCRETE PRODUCTS, LLC;)
BONSAL AMERICAN, INC.; OLDCASTLE, INC.;)
14 PACIFIC COAST BUILDING PRODUCTS, INC; and)
DOES 1-10,)

15 Defendants.)
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Case No. **RG12661017**

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

Complex Civil Case

1 INTRODUCTION

2 1. California’s Safe Drinking Water and Toxic Enforcement Act (“Proposition 65” or “the
3 Act”), Health & Safety Code §25249.5 *et seq.*, prohibits any person in the course of doing business from
4 knowingly and intentionally exposing any individual to a chemical known to the State of California to
5 cause cancer or reproductive toxicity, without first giving clear and reasonable warning of such
6 exposure. Health & Safety Code §25249.6. This prohibition applies with equal force against business
7 entities that manufacture, distribute, or sell consumer products, where the reasonable intended use of
8 such products would result in an exposure to a known carcinogen.

9 2. The State of California listed arsenic (inorganic compounds, including inorganic oxides)
10 (hereinafter, “arsenic”) as a chemical known to the State to cause cancer on February 27, 1987, and
11 listed it as a chemical known to the State to cause reproductive toxicity on May 1, 1997.

12 3. The State of California listed chromium (hexavalent compounds) (hereinafter,
13 “chromium”) as a chemical known to the State to cause cancer on February 27, 1987, and listed it as a
14 chemical known to the State to cause reproductive toxicity on December 19, 2008.

15 4. Defendants Basalite Concrete Products, LLC, Bonsal American, Inc., Oldcastle, Inc., and
16 Pacific Coast Building Products, Inc. (collectively, “Defendants”), on information and belief,
17 manufacture, distribute, sell and/or exercise control or could exercise control in the course of doing
18 business over the packaging of and any warnings provided on ready-mix dry cement products, including
19 Sakrete® High Strength Concrete Mix and Sakrete® Crack Resistant Concrete Mix (hereinafter “Sakrete
20 Concrete Mixes”), in California.

21 5. Both arsenic and chromium are present in Defendants’ Sakrete Concrete Mixes. Humans
22 are exposed to these compounds through a variety of means, including inhalation when consumers
23 breathe near the products, including when the products are transferred from their packaging into
24 containers and then mixed with water, and when the products are used by persons indoors and/or
25 outdoors; dermal absorption during use of the products; and ingestion, including as a result of hand-to-
26 mouth contact following dermal contact. These exposures to hazardous arsenic and chromium result
27 from the reasonably foreseeable use of Defendants’ Sakrete Concrete Mixes.
28

1 Sakrete Concrete Mixes manufactured, distributed, and/or sold for sale or use in California.

2 12. Plaintiff As You Sow does not know the true names and capacities of Doe Defendants 1-
3 10 and therefore sues said defendants by such fictitious names. As You Sow will amend this Complaint
4 to show the Doe Defendants' true names and capacities when they have been ascertained. Plaintiff is
5 informed and believes, and on the basis of that belief alleges, that each of these Doe Defendants is in
6 some manner legally responsible for the violations of Health & Safety Code §25249.6 alleged herein.

7 JURISDICTION AND VENUE

8 13. This Court has jurisdiction over this action pursuant to Article VI, §10 of the California
9 Constitution because this case is not a cause given by statute to other courts.

10 14. This Court has jurisdiction over each Defendant named above because each is a business
11 entity that conducts sufficient business, has sufficient minimum contacts in, or otherwise intentionally
12 avails itself of the market in California.

13 15. Venue is proper in this Court because the obligation or liability arises, at least in part, in
14 the County of Alameda.

15 STATUTORY BACKGROUND

16 16. In 1986, the voters of California overwhelmingly enacted Proposition 65.

17 17. Among other requirements, Proposition 65 provides that “[n]o person in the course of
18 doing business shall knowingly and intentionally expose any individual to a chemical known to the state
19 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
20 individual, except as provided in Section 25249.10.” Health & Safety Code §25249.6.

21 18. An exposure to a chemical in a consumer product is one that “results from a person’s
22 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or
23 any exposure that results from receiving a consumer service.” Code Regs., tit. 27, §25602(b).

24 19. An exposure is knowing if the person or entity responsible for the exposure had or has
25 “knowledge of the fact that . . . exposure to the chemical listed pursuant to Section 24249.8(a) of the Act
26 is occurring.” Code Regs., tit. 27, §25102(n).

27 20. “Whenever a clear and reasonable warning is required under Section 25249.6 of the Act,
28 the method employed to transmit the warning must be reasonably calculated, considering the alternative

1 methods available under the circumstances, to make the warning message available to the individual
2 prior to exposure.” Code Regs., tit. 27, §25601.

3 21. Pursuant to Health & Safety Code §25249.7, this Court has authority to enjoin “[a]ny
4 person that violates or threatens to violate [§25249.6]” and to impose civil penalties “not to exceed two
5 thousand five hundred dollars (\$2500) per day for each violation in addition to any other penalty
6 established by law.”

7 22. Private parties are entitled to bring an action to enforce the Act under Health and Safety
8 Code §25249.7(d).

9 **FACTS**

10 23. Pursuant to their authority under Health & Safety Code §25249.8 and Code of
11 Regulations, tit. 27, §§25302 and 25305, the Science Advisory Board placed arsenic on the list of
12 chemicals known to cause cancer on February 27, 1987, and the Developmental and Reproductive
13 Toxicant Identification Committee placed arsenic on the list of chemicals known to cause reproductive
14 toxicity on May 1, 1997.

15 24. Pursuant to their authority under Health & Safety Code §25249.8 and Code of
16 Regulations, tit. 27, §§25302 and 25305, the Science Advisory Board placed chromium on the list of
17 chemicals known to cause cancer on February 27, 1987, and the Developmental and Reproductive
18 Toxicant Identification Committee placed chromium on the list of chemicals known to cause
19 reproductive toxicity on December 19, 2008.

20 25. Defendants Basalite Concrete Products, LLC and Pacific Coast Building Products, Inc.
21 manufacture, distribute and/or sell Sakrete Concrete Mixes, containing arsenic and chromium, without
22 clear and reasonable warnings that the intended and reasonably foreseeable use of the products will
23 result in exposure to arsenic and chromium known to the State of California to cause cancer and
24 reproductive toxicity.

25 26. Defendants Bonsal American, Inc. and Oldcastle, Inc., on information and belief, exercise
26 control or could exercise control in the course of doing business over the packaging of and any warnings
27 provided on Sakrete Concrete Mixes, including but not limited to whether to provide clear and
28 reasonable warnings that the intended and reasonably foreseeable use of the products will result in

1 exposure to arsenic and chromium known to the State of California to cause cancer and reproductive
2 toxicity.

3 27. On information and belief, Defendants have manufactured, distributed, and/or sold for
4 sale or use, or have exercised control or could have exercised control over packaging and warnings, of
5 their Sakrete Concrete Mixes within the State of California, without adequate and reasonable warnings
6 as required by Proposition 65 since at least September 12, 2011, as well as every day since the products
7 were introduced in the California marketplace and following the one-year anniversary dates of the
8 listings at issue, and continuing through the present.

9 28. Humans are exposed to arsenic and chromium when using Defendants' products through
10 a variety of means, including: inhalation when consumers breathe near the product, including when the
11 products are transferred from their packaging into containers and then mixed with water, and when the
12 products are used by persons indoors and/or outdoors; dermal absorption during use of the products; and
13 ingestion, including as a result of hand-to-mouth contact following dermal contact. These exposures to
14 hazardous arsenic and chromium result from the reasonably foreseeable use of Defendants' Sakrete
15 Concrete Mixes.

16 29. Each Defendant has had knowledge that the Sakrete Concrete Mixes they manufacture,
17 distribute and/or sell, or for which they exercise control or could exercise control over packaging and
18 warnings, contain arsenic and chromium.

19 30. Each Defendant has intended that consumers use the Sakrete Concrete Mixes in a manner
20 consistent with the instructions printed on the product packaging.

21 31. Each Defendant knowingly and intentionally has exposed consumers to arsenic and
22 chromium. The exposure is knowing and intentional in part because it results from Defendants'
23 manufacture, distribution, sale, and/or exercise of control or failure to exercise control over packaging
24 and warnings of Sakrete Concrete Mixes that contain arsenic and chromium, with knowledge that
25 reasonably foreseeable use of these products will result in consumers' exposure to arsenic and
26 chromium.

1 A. Grant civil penalties to be paid by each Defendant for each violation of Health &
2 Safety Code §25249.6 occurring within the year prior to the date of the filing of this action;

3 B. Pursuant to Health and Safety Code §25249.7, enter such injunctions or other
4 orders as are necessary to prevent Defendants from exposing persons within the State of California to
5 known reproductive toxins and cancer-causing chemicals resulting from the reasonably foreseeable use
6 of Defendants' products without providing clear and reasonable warnings calculated to ensure that the
7 warning message is available to individuals prior to exposure;

8 C. Award Plaintiff reasonable attorneys' fees and costs; and

9 D. Grant such other and further relief as the Court deems just and proper.

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11 Dated: December 21, 2012

Respectfully submitted,

12 BARBARA J. CHISHOLM
13 ANNE ARKUSH
14 Altshuler Berzon LLP

15
16 By:  _____
17 Barbara J. Chisholm