

ENDORSED
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 RG13669447

13 AS YOU SOW,)

Case No. _____

14 Plaintiff,)

COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF

15 v.)

Complex Civil Case

16 E-Z MIX INC.; ANGELUS BLOCK CO., INC.;)
17 BASALITE CONCRETE PRODUCTS, LLC; PACIFIC)
18 COAST BUILDING PRODUCTS, INC.; BONSAL)
19 AMERICAN, INC.; OLDCASTLE, INC.; and DOES 1-)
20 10,)

21 Defendants.)

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 or reproductive toxin.

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 E-Z Mix Inc., Angelus Block Co., Inc., Basalite Concrete Products, LLC,
16 Pacific Coast Building Products, Inc., Bonsal American, Inc., and Oldecastle, Inc., on information and
17 belief, manufacture, distribute, sell and/or exercise control or could exercise control in the course of
18 doing business over the packaging of and any warnings provided on ready-mix dry cement products,
19 including Sakrete® Surface Bonding Cement, Sakrete® Fast Setting Ultra-High Strength Concrete Mix,
20 Sakrete® 5000 Plus High Strength Concrete Mix, Sakrete® Maximizer Multi-Project Concrete Mix,
21 Sakrete® One-Coat Fibered Stucco Mix, Sakrete® Type S Masonry Mortar, Sakrete® Fence Post
22 Concrete, Sakrete® Top ‘n Bond Concrete Patcher, Sakrete® High Strength Concrete Mix, and
23 Sakrete® Crack Resistant Concrete Mix (hereinafter “Sakrete Concrete Mixes”), in California.

24 5. Defendants Basalite Concrete Products, LLC and Pacific Coast Building Products, Inc.,
25 on information and belief, manufacture, distribute, sell and/or exercise control or could exercise control
26 in the course of doing business over the packaging of and any warnings provided on ready-mix dry
27 cement products, including Basalite® Plastic Cement, Basalite® Concrete Mix, and Basalite® Portland
28 Cement (hereinafter “Basalite Concrete Mixes”), in California.

1 exercises control or could exercise control, in the course of doing business, over the packaging of and
2 any warnings provided on, Sakrete Concrete Mixes that contain chromium or contain both arsenic and
3 chromium.

4 11. Defendant BASALITE CONCRETE PRODUCTS, LLC is a business entity with ten or
5 more employees that has manufactured, distributed, and/or sold for sale or use in California Sakrete
6 Concrete Mixes and Basalite Concrete Mixes that contain chromium or contain both arsenic and
7 chromium.

8 12. Defendant PACIFIC COAST BUILDING PRODUCTS, INC. is a business entity with ten
9 or more employees that has manufactured, distributed, and/or sold for sale or use in California, and/or
10 which exercises control or could exercise control, in the course of doing business, over the packaging of
11 and any warnings provided on, Sakrete Concrete Mixes and Basalite Concrete Mixes that contain
12 chromium or contain both arsenic and chromium.

13 13. Defendant BONSALE AMERICAN, INC. is a business entity with ten or more employees
14 that, on information and belief, exercises control over the Sakrete brand name and exercises control or
15 could exercise control, in the course of doing business, over the packaging of and any warnings provided
16 on Sakrete Concrete Mixes manufactured, distributed, and/or sold for sale or use in California, which
17 contain chromium or contain both arsenic and chromium.

18 14. Defendant OLDCASTLE, INC. is a business entity with ten or more employees that, on
19 information and belief, exercises control over the Sakrete brand name and exercises control or could
20 exercise control, in the course of doing business, over the packaging of and any warnings provided on
21 Sakrete Concrete Mixes manufactured, distributed, and/or sold for sale or use in California, which
22 contain chromium or contain both arsenic and chromium.

23 15. Plaintiff As You Sow does not know the true names and capacities of Doe Defendants 1-
24 10 and therefore sues said defendants by such fictitious names. As You Sow will amend this Complaint
25 to show the Doe Defendants' true names and capacities when they have been ascertained. Plaintiff is
26 informed and believes, and on the basis of that belief alleges, that each of these Doe Defendants is in
27 some manner legally responsible for the violations of Health & Safety Code §25249.6 alleged herein.
28

1 thousand five hundred dollars (\$2500) per day for each violation in addition to any other penalty
2 established by law.”

3 25. Private parties are entitled to bring an action to enforce the Act under Health & Safety
4 Code §25249.7(d).

5 **FACTS**

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

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

16 28. Each Defendant has manufactured, distributed, sold, and/or exercised or failed to exercise
17 control over packaging or warnings for cement products for sale or use within the State of California
18 without clear and reasonable warnings that the intended and reasonably foreseeable use of the products
19 will result in exposure to chemicals known to the State of California to cause cancer and reproductive
20 toxicity (“Proposition 65 warning”). Specifically, on information and belief:

21 a. Defendants E-Z Mix Inc. and Angelus Block Co. have manufactured, distributed and/or
22 sold for use or sale in California the following products containing chromium without
23 adequate Proposition 65 warnings: Sakrete® Surface Bonding Cement, Sakrete® One-
24 Coat Fibered Stucco Mix, and Sakrete® Type S Masonry Mortar.

25 b. Defendants E-Z Mix Inc. and Angelus Block Co. have manufactured, distributed and/or
26 sold for use or sale in California the following products containing chromium and arsenic
27 without adequate Proposition 65 warnings: Sakrete® Fast Setting Ultra-High Strength
28 Concrete Mix, Sakrete® 5000 Plus High Strength Concrete Mix, Sakrete® Maximizer

1 Multi-Project Concrete Mix, Sakrete® Fence Post Concrete, Sakrete® Top 'n Bond
2 Concrete Patcher, Sakrete® High Strength Concrete Mix, and Sakrete® Crack Resistant
3 Concrete Mix.

4 c. Defendants Basalite Concrete Products, LLC and Pacific Coast Building Products, Inc.
5 have manufactured, distributed and/or sold for use or sale in California the following
6 products containing chromium without adequate Proposition 65 warnings: Sakrete®
7 Surface Bonding Cement, Sakrete® One-Coat Fibered Stucco Mix, Sakrete® Type S
8 Masonry Mortar, Basalite® Plastic Cement, and Basalite® Concrete Mix.

9 d. Defendants Basalite Concrete Products, LLC and Pacific Coast Building Products, Inc.
10 have manufactured, distributed and/or sold for use or sale in California the following
11 products containing chromium and arsenic without adequate Proposition 65 warnings:
12 Sakrete® Fast Setting Ultra-High Strength Concrete Mix, Sakrete® 5000 Plus High
13 Strength Concrete Mix, Sakrete® Maximizer Multi-Project Concrete Mix, Sakrete®
14 Fence Post Concrete, Sakrete® Top 'n Bond Concrete Patcher, and Basalite® Portland
15 Cement.

16 e. Defendants Bonsal American, Inc., and Oldcastle, Inc. have exercised or failed to exercise
17 control over packaging or warnings for Sakrete® Surface Bonding Cement, Sakrete®
18 Fast Setting Ultra-High Strength Concrete Mix, Sakrete® 5000 Plus High Strength
19 Concrete Mix, Sakrete® Maximizer Multi-Project Concrete Mix, Sakrete® One-Coat
20 Fibered Stucco Mix, Sakrete® Type S Masonry Mortar, Sakrete® Fence Post Concrete,
21 Sakrete® Top 'n Bond Concrete Patcher for sale or use in California without adequate
22 Proposition 65 warnings; and have exercised or failed to exercise control over packaging
23 or warnings for Sakrete® High Strength Concrete Mix and Sakrete® Crack Resistant
24 Concrete Mix that is manufactured, distributed and/or sold by E-Z Mix Inc. and/or
25 Angelus Block Co. in California without adequate Proposition 65 warnings.

26 29. On information and belief, all Defendants have manufactured, distributed, and/or sold for
27 sale or use, or have exercised control or could have exercised control over packaging and warnings, of
28 the Sakrete Concrete Mixes within the State of California, without adequate and reasonable warnings as

1 required by Proposition 65 since at least November 5, 2011, as well as every day since the products were
2 introduced in the California marketplace and following the one-year anniversary dates of the listings at
3 issue, and continuing through the present.

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

11 31. Each Defendant has had knowledge that the Sakrete Concrete Mixes they manufacture,
12 distribute and/or sell, or for which they exercise control or could exercise control over packaging and
13 warnings, contain chromium or contain chromium and arsenic.

14 32. Defendants Basalite Concrete Products, LLC and Pacific Coast Building Products, Inc.
15 each have had knowledge that the Basalite Concrete Mixes they manufacture, distribute and/or sell, or
16 for which they exercise control or could exercise control over packaging and warnings, contain
17 chromium or contain chromium and arsenic.

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

20 34. Defendants Basalite Concrete Products, LLC and Pacific Coast Building Products, Inc.
21 each have intended that consumers use the Basalite Concrete Mixes in a manner consistent with the
22 instructions printed on the product packaging.

23 35. Each Defendant knowingly and intentionally exposed and continues to expose consumers
24 to chromium or to chromium and arsenic. The exposure is knowing and intentional because it results
25 from Defendants' manufacture, distribution, sale, and/or exercise of control or failure to exercise control
26 over packaging and warnings of Sakrete Concrete Mixes and/or Basalite Concrete Mixes that contain
27 chromium or contain chromium and arsenic, with knowledge that reasonably foreseeable use of the
28

1 products will result in consumers' exposure to chemicals known to the State of California to cause
2 cancer and reproductive toxicity.

3 36. All Defendants have received written notices of violations stating that they have violated
4 Proposition 65 by exposing individuals to chromium or to chromium and arsenic in their Sakrete
5 Concrete Mixes without providing a clear and reasonable warning.

6 37. Defendants Basalite Concrete Products, LLC and Pacific Coast Building Products, Inc.
7 have received written notices of violations stating that they have violated Proposition 65 by exposing
8 individuals to chromium or to chromium and arsenic in their Basalite Concrete Mixes without providing
9 a clear and reasonable warning.

10 38. In accordance with Health & Safety Code §25249.7(d), this action is being commenced
11 more than 60 days from the date that As You Sow provided notices of the violations of Health & Safety
12 Code §25249.6 alleged herein to the Attorney General and the district attorneys and city attorneys in
13 whose jurisdiction the violations are alleged to have occurred, and to Defendants. The notices provided
14 to Defendants included certificates of merits that complied with the requirements of Health & Safety
15 Code §25249.7(d)(1). Factual information sufficient to establish the basis of the certificates of merits
16 was attached to the certificates of merits served on the Attorney General.

17 39. Neither the Attorney General, any district attorney, any city attorney, nor any other public
18 prosecutor has commenced and is diligently prosecuting an action against the violations alleged herein.

19 **FIRST CAUSE OF ACTION**

20 **(Against Each Defendant For Violation Of Proposition 65)**

21 40. Paragraphs 1 through 39 are realleged as if fully set forth herein.

22 41. By committing the acts alleged above, each Defendant has, since at least November 5,
23 2011, in the course of doing business, knowingly and intentionally exposed individuals to chemicals
24 known to the State of California to cause birth defects and other reproductive harm without first giving
25 clear and reasonable warning to such individuals.

26 42. By committing the acts alleged above, each Defendant has, since at least November 5,
27 2011, in the course of doing business, knowingly and intentionally exposed individuals to chemicals
28

1 known to the State of California to cause cancer without first giving clear and reasonable warning to
2 such individuals.

3 43. These actions violate Health & Safety Code §25249.6. These violations render each
4 Defendant liable for civil penalties up to \$2,500 per day for each violation occurring within the year
5 prior to the date of the filing of this action, as well as other remedies.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays that the Court:

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

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

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

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

17
18 Dated: March 1, 2013

Respectfully submitted,

19 BARBARA J. CHISHOLM
20 ANNE ARKUSH
21 Altshuler Berzon LLP

22
23 By: 
24 Barbara J. Chisholm