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**ENDORSED  
FILED  
ALAMEDA COUNTY**  
NOV 26 2013

CLERK OF THE SUPERIOR COURT  
By MARGARET J. DOWNII  
Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA**

AS YOU SOW,

Plaintiff,

v.

CTS CEMENT MANUFACTURING  
CORPORATION,

Defendant.

) Case No. **RG13704793**  
)  
) **COMPLAINT FOR DAMAGES**  
) **AND INJUNCTIVE RELIEF**  
)  
) Civil Case  
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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 use of such products would  
8 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. Defendant CTS Cement Manufacturing Corporation, on information and belief,  
16 manufactures, distributes, and/or sells ready-mix dry cement products, including Rapid Set® Concrete  
17 Mix (Very Rapid Hardening Concrete), Rapid Set® Cement All, and Rapid Set® Stucco Mix  
18 (collectively, hereinafter “Rapid Set Concrete Mixes”), in California.

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

26 6. Defendant has failed to provide a clear and reasonable warning that the use of the Rapid  
27 Set Concrete Mixes it has manufactured, distributed, and/or sold will result in exposure to chromium or  
28 to chromium and arsenic, chemicals known to the State of California to cause cancer and reproductive

1 toxicity. Accordingly, Plaintiff As You Sow seeks an order requiring that Defendant either discontinues  
2 any manufacture, distribution, and/or sale of the Rapid Set Concrete Mixes, or provides a clear and  
3 reasonable warning that use of these products will result in exposure to chemicals known to the State of  
4 California to cause cancer and reproductive toxicity, and/or civil penalties as provided for under the Act.

5 **PARTIES**

6 7. Plaintiff AS YOU SOW (“Plaintiff”) is an Oakland-based non-profit corporation  
7 dedicated to, among other causes, the protection of the environment, toxics reduction, the promotion of  
8 and improvement of human health, the improvement of worker and consumer rights, environmental  
9 education, and corporate accountability. As You Sow brings this action on its own behalf pursuant to  
10 Health and Safety Code §25249.7(d).

11 8. Defendant CTS CEMENT MANUFACTURING CORPORATION is a business entity  
12 with ten or more employees that has manufactured, distributed, and/or sold for sale or use in California  
13 Rapid Set Concrete Mixes that contain chromium or contain both arsenic and chromium.

14 **JURISDICTION AND VENUE**

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

17 10. This Court has jurisdiction over Defendant because it is a business entity that conducts  
18 sufficient business, has sufficient minimum contacts in, or otherwise intentionally avails itself of the  
19 market in California.

20 11. Venue is proper in this Court because the obligation or liability arises, at least in part, in  
21 the County of Alameda.

22 **STATUTORY BACKGROUND**

23 12. In 1986, the voters of California overwhelmingly enacted Proposition 65 to protect  
24 California citizens and the State’s drinking water sources from chemicals known to cause cancer and/or  
25 birth defects or other reproductive harm, and to inform citizens about exposures to such chemicals.

26 13. Among other requirements, Proposition 65 provides that “[n]o person in the course of  
27 doing business shall knowingly and intentionally expose any individual to a chemical known to the state  
28

1 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
2 individual, except as provided in Section 25249.10.” Health & Safety Code §25249.6.

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

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

9 16. “Whenever a clear and reasonable warning is required under Section 25249.6 of the Act,  
10 the method employed to transmit the warning must be reasonably calculated, considering the alternative  
11 methods available under the circumstances, to make the warning message available to the individual  
12 prior to exposure.” Code Regs., tit. 27, §25601.

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

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

### 19 **FACTS**

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

25 20. Pursuant to their authority under Health & Safety Code §25249.8 and Code of  
26 Regulations, tit. 27, §§25302 and 25305, the Science Advisory Board placed chromium on the list of  
27 chemicals known to cause cancer on February 27, 1987, and the Developmental and Reproductive  
28

1 Toxicant Identification Committee placed chromium on the list of chemicals known to cause  
2 reproductive toxicity on December 19, 2008.

3 21. Defendant has manufactured, distributed, and/or sold cement products for sale or use  
4 within the State of California without clear and reasonable warnings that the intended and reasonably  
5 foreseeable use of the products will result in exposure to chemicals known to the State of California to  
6 cause cancer and reproductive toxicity ("Proposition 65 warning"). Specifically, on information and  
7 belief:

8 a. Defendant has manufactured, distributed and/or sold for use or sale in California the  
9 following products containing chromium without adequate Proposition 65 warnings:  
10 Rapid Set® Concrete Mix (Very Rapid Hardening Concrete) and Rapid Set® Cement  
11 All.

12 b. Defendant has manufactured, distributed and/or sold for use or sale in California the  
13 following product containing chromium and arsenic without adequate Proposition 65  
14 warnings: Rapid Set® Stucco Mix.

15 22. On information and belief, Defendant has manufactured, distributed, and/or sold for sale  
16 or use the Rapid Set Concrete Mixes within the State of California, without adequate and reasonable  
17 warnings as required by Proposition 65 since at least December 21, 2011, as well as every day since the  
18 products were introduced in the California marketplace and following the one-year anniversary dates of  
19 the listings at issue, and continuing through at least February 1, 2013, if not beyond.

20 23. Humans are exposed to chromium, or to chromium and arsenic, when using the Rapid Set  
21 Concrete Mixes through a variety of means, including: inhalation when consumers breathe near the  
22 product, including when the products are transferred from their packaging into containers and then  
23 mixed with water, and when the products are used by persons indoors and/or outdoors; dermal  
24 absorption during use of the products; and ingestion, including as a result of hand-to-mouth contact  
25 following dermal contact. These exposures to hazardous chromium or to chromium and arsenic result  
26 from the reasonably foreseeable use of the Rapid Set Concrete Mixes.

27 24. Defendant has had knowledge that the Rapid Set Concrete Mixes it manufactures,  
28 distributes and/or sells contain chromium or contain chromium and arsenic.



