

|  |  |  |
|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)<br>Stephen Ure (CSB#188244)<br>Law Offices of Stephen Ure, PC<br>1518 Sixth Avenue, San Diego, CA 92101<br><br>TELEPHONE NO: (619) 235-5400 FAX NO: (619) 235-5404<br>ATTORNEY FOR (Name) Plaintiff, Maureen Parker |  | FOR COURT USE ONLY<br><br><div style="border: 1px solid black; padding: 5px; display: inline-block;">           FILED<br/>           CIVIL BUSINESS OFFICE 9<br/>           CENTRAL DIVISION         </div><br><br><div style="font-size: 1.2em; font-weight: bold;">2013 MAY 14 A 11: 21</div><br><br><div style="border: 1px solid black; padding: 5px; display: inline-block;">           CLERK-SUPERIOR COURT<br/>           SAN DIEGO COUNTY, CA         </div> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego<br>STREET ADDRESS: 330 West Broadway<br>MAILING ADDRESS: Same<br>CITY AND ZIP CODE: San Diego, CA 92101-3827<br>BRANCH NAME: Hall of Justice   |  |  |
| CASE NAME: MAUREEN PARKER v. ACE HARDWARE CORPORATION AND DOES 1 - 25 INCLUSIVE  |  |  |
| <b>CIVIL CASE COVER SHEET</b><br><input checked="" type="checkbox"/> <b>Unlimited</b><br>(Amount demanded exceeds \$25,000)  | <input type="checkbox"/> <b>Limited</b><br>(Amount demanded is \$25,000 or less) |  |
|  |  | CASE NUMBER:<br><div style="font-weight: bold; font-size: 1.1em;">37-2013-00048582-CU-NP-CTL</div><br><br>JUDGE:<br><br>DEPT:  |

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

|   |  |   |
|---|--|---|
| <b>Auto Tort</b><br><input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46)<br><br><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b><br><input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23)<br><br><b>Non-PI/PD/WD (Other) Tort</b><br><input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35)<br><br><b>Employment</b><br><input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <b>Contract</b><br><input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37)<br><br><b>Real Property</b><br><input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26)<br><br><b>Unlawful Detainer</b><br><input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38)<br><br><b>Judicial Review</b><br><input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <b>Provisionally Complex Civil Litigation</b><br>(Cal. Rules of Court, rules 3.400-3.403)<br><input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)<br><br><b>Enforcement of Judgment</b><br><input type="checkbox"/> Enforcement of judgment (20)<br><br><b>Miscellaneous Civil Complaint</b><br><input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42)<br><br><b>Miscellaneous Civil Petition</b><br><input type="checkbox"/> Partnership and corporate governance (21)<br><input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☒ punitive
4. Number of causes of action (specify): One (1)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 5/14/2013

Stephen Ure, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

4

FILED  
CIVIL BUSINESS OFFICE 9  
CENTRAL DIVISION

2013 MAY 14 A 11: 24

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

Stephen Ure, Esq., (CSB# 188244)  
**LAW OFFICES OF STEPHEN URE, PC**  
1518 Sixth Avenue  
San Diego, CA 92101  
Telephone: 619-235-5400  
Facsimile: 619-235-5404

*Attorneys for Plaintiff, Maureen Parker*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN DIEGO**

**UNLIMITED CIVIL JURISDICTION**

**MAUREEN PARKER,**

**Plaintiff,**

**and**

**ACE HARDWARE CORPORATION**

**AND DOES 1 -25 INCLUSIVE**

**Defendant.**

**CASE NO.37-2013-00048582-CU-NP-CTL**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

*(Cal. Health & Safety Code § 25249.6 et seq.)*

**NATURE OF THE ACTION**

1. This Complaint is a representative action brought by plaintiff Maureen Parker, in the public interest of the citizens of the State of California, to enforce the people's right to be informed of the presence of lead, a toxic chemical found in ACE Faucet Spray Hose (UPC #082901256502) sold in California.

2. By this Complaint, plaintiff seeks to remedy DEFENDANT's continuing failures to warn California citizens about their exposure to lead present in or on certain faucet spray hose

1 that DEFENDANT manufacture, distribute and/or offer for sale to consumers throughout the  
2 State of California.

3 3. High levels of lead are commonly found in ACE Faucet Spray Hose (UPC  
4 #082901256502) that DEFENDANT manufactures, distributes and/or offers for sale to  
5 consumers throughout the State of California.

6 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
7 California Health & Safety Code § 25249.6 et seq. (Proposition 65), "No person in the course of  
8 doing business shall knowingly and intentionally expose any individual to a chemical known to  
9 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
10 warning to such individual..." (*Cal. Health & Safety Code § 25249.6.*)

11 5. California identified and listed Lead as a chemical known to cause birth defects  
12 and other reproductive harm. Lead became subject to the warning requirements of Proposition 65  
13 for developmental toxicity beginning on February 27, 1987 and for cancer toxicity on October 1,  
14 1992. (*27 CCR § 27002; Cal. Health & Safety Code § 25249.6.*)

15 6. Lead shall hereinafter be referred to as the "LISTED CHEMICAL."

16 7. Defendant manufactures, distributes and/or sells faucet spray hose containing  
17 excessive levels of the LISTED CHEMICAL including, but not limited to ACE Faucet Spray  
18 Hose (UPC #082901256502). All such faucet spray hose containing the LISTED CHEMICAL  
19 shall hereinafter be referred to as the "PRODUCTS."

20 8. DEFENDANT's failures to warn consumers and/or other individuals in the State  
21 of California about their exposure to the LISTED CHEMICAL in conjunction with defendant's  
22 sale of the PRODUCTS is a violation of Proposition 65 and subjects DEFENDANT to  
23 enjoinder of such conduct as well as civil penalties for each such violation.

24 9. For DEFENDANT's violations of Proposition 65, plaintiff seeks preliminary  
25 injunctive and permanent injunctive relief to compel DEFENDANT to provide purchasers or  
26 users of the PRODUCTS with the required warning regarding the health hazards of the LISTED  
27 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)  
28



10. Plaintiff also seeks civil penalties against DEFENDANT for their violations of Proposition 65, as provides for by California Health & Safety Code § 25249.7(b).

## PARTIES

11. Plaintiff Maureen Parker is a citizen of the City of Oceanside, County of San Diego, in the State of California, who is dedicated to protecting the health of California citizens through the elimination o reduction of toxic exposures from consumer products, and brings this action in the public interest pursuant to California Health & Safety Code § 25249.7.

12. Defendant ACE HARDWARE CORPORATION ("ACE" or "DEFENDANT") is a person doing business within the meaning of California Health & Safety Code § 25249.11.

13. Defendant ACE manufactures, distributes, and/or offers the PRODUCTS for sales or use in the State of California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

14. shall, where appropriate, be referred to hereinafter as “DEFENDANT.”

## VENUE AND JURISDICTION

15. Venue is proper in the San Diego County Superior Court, pursuant to Code of Civil Procedure § § 394, 495, 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continues to occur, in the County of San Diego and/or because DEFENDANT conducted, and continue to conduct, business in this County with respect to the PRODUCTS.

16. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

17. The California Superior Court has jurisdiction over DEFENDANT based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that either are citizens of the State of California, have sufficient minimum contacts in the State of California, or otherwise purposefully avail themselves of the California market.

1 DEFENDANT's purposeful availment renders the exercise of personal jurisdiction by California  
2 courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 – Against Defendant)**

5 18. Plaintiff realleges and incorporates by reference, as if full reference, as if full set  
6 forth herein, Paragraphs 1 through 24, inclusive.

7 19. The citizens of the State of California have expressly stated in the Safe Drinking  
8 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.  
9 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
10 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

11 20. Proposition 65 states, “No person in the course of doing business shall knowingly  
12 and intentionally expose any individual to a chemical known to the state to cause cancer or  
13 productive toxicity without first giving clear and reasonable warning to such individual (*Id.*)”

14 21. On January 4, 2013, a sixty-day notice violation, together with the requisite  
15 certificate of merit, was provided to ACE, and various public enforcement agencies stating that  
16 as a result of the DEFENDANT's sales of the PRODUCTS, purchasers and users in the State of  
17 California were being exposed to the LISTED CHEMICAL resulting from the reasonably  
18 foreseeable users of the PRODUCTS, without the individual purchasers and users first having  
19 been provided with a “clear and reasonable warning” regarding such toxic exposures.

20 22. DEFENDANT has engaged in the manufacture, distribution and/or offering of the  
21 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
22 DEFENDANT's

23 23. manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
24 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
25 DEFENDANT's receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
26 believes that such violations will continue to occur into the future.

1           24. After receipt of the claims asserted in the sixty-day notices of violation, the  
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
3 cause of action against DEFENDANT under Proposition 65.

4           25. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
5 California by DEFENDANT contained the LISTED CHEMICAL above the allowable state  
6 limits.

7           26. DEFENDANT knew or should have known that the PRODUCTS manufactured,  
8 distributed, and/or for sale or use by DEFENDANT in California contained the LISTED  
9 CHEMICAL.

10          27. The LISTED CHEMICAL was present in or on the PRODUCTS in such away as  
11 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
12 during the reasonably foreseeable use of the PRODUCTS.

13          28. The normal and reasonably foreseeable use of he PRODUCTS has caused and  
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure s defined  
15 by 27 CCR§ 25602(b).

16          29. DEFENDANT had knowledge that the normal and reasonably foreseeable use of  
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
18 and/or ingestion.

19          30. DEFENDANT intended that such exposures to the LISTED CHEMICAL from  
20 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
21 accidental participation in the manufacture, distribution and/or offer for sale or use of  
22 PRODUCTS to individuals in the State of California.

23          31. DEFENDANT failed to provide a “clear and reasonable warning” to those  
24 consumers and/or other individuals in the State of California who were or who could become  
25 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
26 reasonably foreseeable use of the PRODUCTS.

27          32. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal



1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
2 by DEFENDANT without a "clear and reasonable warning," have suffered, and continue to  
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

4 33. As a consequence of the above-described acts, each DEFENDANT is liable for a  
5 maximum civil penal of \$2,500 per day for each violation pursuant to California Health & Safety  
6 Code § 25249.7(b).

7 34. As a consequence of the above-described acts, California Health & Safety Code §  
8 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANT.

9 35. Wherefore, plaintiff prays for judgment against DEFENDANT as set forth  
10 hereinafter.

11 **PRAYER FOR RELIEF**

12 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

13 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
14 civil penalties against DEFENDANT, in the amount of \$2,500 per day for each violation alleged  
15 herein,, pursuant to

16 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
17 preliminarily and permanently enjoin DEFENDANT from manufacturing, distributing or  
18 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable  
19 warnings" as detailed by 27 CCR § 25601, as to the harms associated with exposures to the  
20 LISTED CHEMICAL;

21 3. That the Court grant plaintiff his reasonable attorneys' fees and cost of suit; and

22 4. That the Court grant such other and further relief as may be just and proper.  
23

24 Respectfully Submitted,

25 Law Offices of Stephen Ure, PC.

26 Dated: 5/14/2013

27 By: 

28 Stephen Ure, Esq.  
Attorney for Plaintiff