

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Stephen Ure (CSB#188244)
Law Offices of Stephen Ure, PC.

FOR COURT USE ONLY

FILED
CIVIL BUSINESS OFFICE 9

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CENTRAL DIVISION

2013 MAY 14 A 11: 22

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Law Offices of Stephen Ure, PC.
1518 Sixth Avenue, San Diego, CA 92101

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ATTORNEY FOR (Name): Plaintiff, Evelyn Wimberley

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego

STREET ADDRESS: 330 West Broadway

MAILING ADDRESS: Same

CITY AND ZIP CODE: San Diego, CA 92101-3827

BRANCH NAME: Hall of Justice

CASE NAME: EVELYN WIMBERLEY v. PENTAIR, LTD, THE HOME DEPOT
DOES 1 - 25 INCLUSIVE

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

Complex Case Designation

Counter Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.400)

Items 1-6 below must be completed (see instructions)

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

Auto Tort

Auto (22) Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04) Product liability (24) Medical malpractice (45) Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07) Civil rights (08) Defamation (13) Fraud (16) Intellectual property (19) Professional negligence (25) Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36) Other employment (15)

Contract

Breach of contract/warranty (06) Rule 3.740 collections (09) Other collections (09) Insurance coverage (18) Other contract (37)

Real Property

Eminent domain/Inverse condemnation (14) Wrongful eviction (33) Other real property (26)

Unlawful Detainer

Commercial (31) Residential (32) Drugs (38)

Judicial Review

Asset forfeiture (05) Petition re: arbitration award (11) Writ of mandate (02) Other judicial review (39)

2. This case is is not complex under rule 3.400 of the California Rules of Court, if the case involves factors requiring exceptional judicial management:

- a. Large number of separately represented parties d. Large number of parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination of cases in other courts
- c. Substantial amount of documentary evidence f. Substantial amount of discovery

3. Remedies sought (check all that apply): a. monetary b. nonmonetary

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. (Yes/No)

Date: 5/14/2013

Stephen Ure, Esq.

(TYPE OR PRINT NAME)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.400.)
- 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.

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

- Antitrust/Trade regulation (03)
- Construction defect (10)
- Mass tort (40)
- Securities litigation (28)
- Environmental/Toxic tort (30)
- Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27) Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21) Other petition (not specified above) (43)

Rules of Court. If the case is complex, mark the

number of witnesses

in connection with related actions pending in one or more courts in this county, other counties, states, or countries, or in a federal court, and requiring postjudgment judicial supervision

relief sought: a. declaratory or injunctive relief b. punitive

You may use form CM-015.)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

Failure to file may result in sanctions. (Cal. Rules of Court, rule 3.220.)

You must serve a copy of this cover sheet on all other parties to the action or proceeding.

This cover sheet will be used for statistical purposes only.

2013 MAY 14 A 11: 23

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SAN DIEGO COUNTY, CA

1 Stephen Ure, Esq., (CSB# 188244)
2 **LAW OFFICES OF STEPHEN URE, PC**
3 1518 Sixth Avenue
4 San Diego, CA 92101
5 Telephone: 619-235-5400
6 Facsimile: 619-235-5404

7 *Attorneys for Plaintiff, Evelyn Wimberley*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10 **UNLIMITED CIVIL JURISDICTION**

13 **EVELYN WIMBERLEY,**)

14 **Plaintiff,**)

15 **and**)

16 **PENTAIR, LTD.**)
17 **THE HOME DEPOT**)
18 **AND DOES 1 -25 INCLUSIVE**)

19 **Defendant.**)
20)

CASE NO.: 37-2013-00048571-CU-NP-CTL

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

21 **NATURE OF THE ACTION**

22 1. This Complaint is a representative action brought by plaintiff Evelyn Wimberley,
23 in the public interest of the citizens of the State of California, to enforce the people's right to be
24 informed of the presence of lead, a toxic chemical found in Parts 2 O Brass Check Valve
25 TC2505LF (UPC #022315344167) sold in California.

26 2. By this Complaint, plaintiff seeks to remedy DEFENDANT's continuing failures
27 to warn California citizens about their exposure to lead present in or on certain check valve that
28

1 DEFENDANT manufactures, distributes and/or offers for sale to consumers throughout the
2 State of California.

3 3. High levels of lead are commonly found in Parts 2 O Check Valve TC2505LF
4 (UPC #022315344167) 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 check valve containing excessive
17 levels of the LISTED CHEMICAL including, but not limited to Parts 2 O Brass Check Valve TC
18 2505 LF (UPC 022315344167). All such check valves 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).*)

1 all causes except those given by statute to other trial courts.” The statute under which this action
2 is brought does not specify any other basis of subject matter jurisdiction.

3 20. The California Superior Court has jurisdiction over DEFENDANT based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
5 association that either are citizens of the State of California, have sufficient minimum contacts in
6 the State of California, or otherwise purposefully avail themselves of the California market.
7 DEFENDANT’S purposeful availment renders the exercise of personal jurisdiction by California
8 courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

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

11 21. Plaintiff realleges and incorporates by reference, as if full reference, as if full set
12 forth herein, Paragraphs 1 through 24, inclusive.

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

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

20 24. On January 25, 2013, a sixty-day notice violation, together with the requisite
21 certificate of merit, was provided to Pentair, Home Depot and various public enforcement
22 agencies stating that as a result of the DEFENDANT’S sales of the PRODUCTS, purchasers and
23 users in the State of California were being exposed to the LISTED CHEMICAL resulting from
24 the reasonably foreseeable users of the PRODUCTS, without the individual purchasers and users
25 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

26 25. DEFENDANT has engaged in the manufacture, distribution and/or offering of the
27 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
28

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

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

8 28. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
9 California by DEFENDANT contained the LISTED CHEMICAL above the allowable state
10 limits.

11 29. DEFENDANT knew or should have known that the PRODUCTS manufactured,
12 distributed, and/or for sale or use by DEFENDANT in California contained the LISTED
13 CHEMICAL.

14 30. The LISTED CHEMICAL was present in or on the PRODUCTS in such away as
15 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
16 during the reasonably foreseeable use of the PRODUCTS.

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

20 32. DEFENDANT had knowledge that the normal and reasonably foreseeable use of
21 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
22 and/or ingestion.

23 33. DEFENDANT intended that such exposures to the LISTED CHEMICAL from the
24 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
25 participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to
26 individuals in the State of California.

27 34. DEFENDANT failed to provide a "clear and reasonable warning" to those
28 consumers and/or other individuals in the State of California who were or who could become

1 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
2 reasonably foreseeable use of the PRODUCTS.

3 35. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
4 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
5 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold
6 by DEFENDENT without a “clear and reasonable warning,” have suffered, and continue to
7 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

11 37. As a consequence of the above-described acts, California Health & Safety Code §
12 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 38. Wherefore, plaintiff prays for judgment against DEFENDANT as set forth
15 hereinafter.

16 **PRAYER FOR RELIEF**

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

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

21 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
22 preliminarily and permanently enjoin DEFENDANT from manufacturing, distributing or
23 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
24 warnings” as detailed by 27 CCR § 25601, as to the harms associated with exposures to the
25 LISTED CHEMICAL;

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

27 4. That the Court grant such other and further relief as may be just and proper.
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Dated: 5/4/2013

Respectfully Submitted,
Law Offices of Stephen Ure, PC.

By: 

Stephen Ure, Esq.
Attorney for Plaintiff