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ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

JAN 08 2014

CLERK OF THE COURT  
BY: MEREDITH GRIER  
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

11 As You Sow, a California Non-Profit Public  
Benefit Corporation,  
12 Plaintiff,  
13  
14 v.  
15 House of Cheatham, Inc., and DOES 1  
through 10, inclusive,  
16 Defendants.

CGC-14-536649  
Case No.

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

California Health and Safety Code § 25249.5  
et seq.

1 Plaintiff AS YOU SOW alleges as follows:

2 **I. INTRODUCTION**

3 1. This complaint seeks an injunction and civil penalties to remedy the continuing  
4 failure of House of Cheatham, Inc. (“Defendant”) to give clear and reasonable warnings to  
5 residents of California prior to exposing those residents to products containing formaldehyde,  
6 which is a chemical known to the State of California to cause cancer. Under the Safe Drinking  
7 Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also  
8 known as “Proposition 65,” businesses must provide persons with a “clear and reasonable  
9 warning” before exposing them to such chemicals.

10 **II. PARTIES**

11 2. Plaintiff, As You Sow, is a 501(c)(3) nonprofit organization based in San  
12 Francisco, California, and incorporated under the laws of the State of California. As You Sow is  
13 dedicated to, among other causes, the protection of the environment, the promotion of human  
14 health, the improvement of worker and consumer safety, and environmental education. As You  
15 Sow is a “person” pursuant to Health and Safety Code section 25249.11(a). As You Sow brings  
16 this action in the interest of the general public pursuant to Health and Safety Code section  
17 25249.7.

18 3. Defendant House of Cheatham Inc. is a business entity that manufactures,  
19 distributes, markets, and/or sells hair products, including Africa’s Best No-Lye Relaxer System,  
20 which contains formaldehyde, to consumers within the State of California.

21 4. The true names and capacities of Defendants sued herein as Does 1 through 10 are  
22 unknown to plaintiff, who therefore sues them by fictitious names. Plaintiff will amend this  
23 complaint to allege the true names and capacities of these Defendants when they have been  
24 determined. Each of the fictitiously named Defendants is responsible for the manufacture,  
25 distribution, marketing, and/or sale of products containing formaldehyde to consumers in  
26 California.

27 5. Wherever reference is made to “Defendant” in this complaint, such reference  
28 includes the Defendant named in Paragraph 3 and Does 1 through 10, inclusive.

1 **III. JURISDICTION AND VENUE**

2 6. This court has jurisdiction pursuant to California Constitution Article VI, Section  
3 10, because this case is a cause not given by statute to other trial courts.

4 7. This court has jurisdiction over Defendant named above because it does sufficient  
5 business in California, has sufficient minimum contacts in California, or otherwise intentionally  
6 avails itself of the California market, through the manufacture, distribution, sale, marketing,  
7 and/or use of its products in California, to render the exercise of jurisdiction over Defendant by  
8 the California courts consistent with traditional notions of fair play and substantial justice.

9 8. Venue is proper in this Court because Defendant's manufacturing, distributing,  
10 marketing, and/or sales of products containing formaldehyde has occurred in the County of  
11 Alameda and/or to people who live in the County of San Francisco, which causes people to be  
12 exposed to formaldehyde while they are physically present in San Francisco County.

13 9. On June 12, 2013, Plaintiff provided a Notice of Violation of Proposition 65 to the  
14 California Attorney General, the District Attorney of each county in California, the City  
15 Attorney of each California city with a population over 750,000 persons, and Defendant,  
16 pursuant to Health and Safety Code section 25249.7(d). This Notice of Violation included the  
17 following product manufactured, distributed, marketed, and/or sold by Defendant: Africa's Best  
18 No-Lye Relaxer System.

19 10. The Notice of Violation included a Certificate of Merit that Plaintiff's attorneys  
20 had consulted with one or more persons with relevant and appropriate experience or expertise  
21 who has reviewed facts, studies, or other data regarding exposure to formaldehyde from the  
22 product manufactured, distributed, marketed, and/or sold by Defendant and that, based on that  
23 information, such attorneys believe that there is a reasonable and meritorious case for this  
24 private action. The Notice of Violation also included a Certificate of Service. The Notices of  
25 Violation mailed to Defendant included a document entitled "The Safe Drinking Water and  
26 Toxic Enforcement Act of 1986: A Summary." In compliance with Health and Safety Code  
27 section 25249.7(d) and title 11, section 3102 of the California Code of Regulations, the Attorney  
28 General was served with Notices of Violation and Certificates of Merit that included

1 confidential factual information sufficient to establish the basis of the Certificates of Merit,  
2 including the identify of individual(s) with whom Plaintiff consulted and the facts, studies, or  
3 other data that was reviewed by such person(s).

4 11. None of the public prosecutors that received the Notices of Violation has  
5 commenced and is diligently prosecuting an action against the named Defendant for the  
6 violations alleged in this complaint, although the notice period established in Health and Safety  
7 Code section 25249.7(d) has elapsed since the Notices of Violation were served by mail.

8 12. Because As You Sow has fully complied with the requirements of Health & Safety  
9 Code section 25249.7(d), and neither the Attorney General, nor any District Attorney, City  
10 Attorney, or prosecutor has commenced and is diligently pursuing an action against the  
11 violations alleged herein, Plaintiff has standing to bring this Complaint.

#### 12 IV. STATUTORY BACKGROUND

##### 13 **Proposition 65**

14 13. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative  
15 statute passed as "Proposition 65" by a vote of the people in November of 1986.

16 14. The warning requirement of Proposition 65 is contained in Health and Safety Code  
17 section 25249.6, which provides:

18 No person in the course of doing business shall knowingly and intentionally  
19 expose any individual to a chemical known to the state to cause cancer or  
20 reproductive toxicity without first giving clear and reasonable warning to such  
21 individual, except as provided in Health and Safety Code section 25249.10.

22 15. Regulations promulgated to implement Proposition 65 provide that the warning  
23 method "must be reasonably calculated, considering the alternative methods available under the  
24 circumstances, to make the warning message available to the individual prior to exposure." 27  
25 Cal. Code Regs. § 25601(a).

26 17. Proposition 65 also establishes a procedure by which the state is to develop a list  
27 of chemicals "known to the State to cause cancer or reproductive toxicity." Health & Saf. Code  
28 § 25249.8. No warning need be given concerning a listed chemical until one year after the  
chemical first appears on the list.

1 18. Proposition 65 provides that any person “violating or threatening to violate” the  
2 statute may be enjoined in any court of competent jurisdiction. Health & Saf. Code § 25249.7.  
3 To “threaten to violate” is defined to mean “to create a condition in which there is a substantial  
4 probability that a violation will occur.” Health & Saf. Code § 25249.11(e). In addition,  
5 violators are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a  
6 civil action. Health & Saf. Code § 25249.7(b).

7 19. Private actions to enforce Proposition 65 “may be brought by any person in the  
8 public interest” if the action is commenced more than sixty days from the date that the person  
9 has given notice of an alleged violation of Health and Safety Code sections 25249.5 or 25249.6  
10 to the Attorney General, and the District Attorney, City Attorney, or prosecutor in whose  
11 jurisdiction the violation occurred and to the alleged violator. A certificate of merit shall be  
12 included with the notification to the Attorney General, District Attorney, City Attorney, or  
13 prosecutor in each jurisdiction where the violation occurred. If no public prosecutors commence  
14 enforcement within sixty days, then the person giving notice may sue.

## 15 V. FACTS

16 20. Formaldehyde is listed under Proposition 65 as a chemical known to the State of  
17 California to cause cancer.

18 21. Defendant manufactures, distributes, markets, and/or sells products that contain  
19 formaldehyde for sale or use in the State of California. Specifically, Defendant sold to  
20 consumers in the State of California the following products containing formaldehyde: Africa’s  
21 Best No-Lye Relaxer System (or “product”).

22 22. Use of the product identified in Paragraph 21, above, results in human exposure to  
23 formaldehyde through inhalation when consumers breathe near the products, as well as during  
24 mixing, application, and rinsing of the products.

25 23. Defendant knew or reasonably should have known that the product that it  
26 manufactured, distributed, marketed, and/or sold contained formaldehyde. Defendant has  
27 intended that individuals use and handle this product. Defendant has had knowledge that  
28 individuals use the product that Defendant has manufactured, distributed, marketed, and/or sold.

1 Defendant has knowingly and intentionally exposed individuals to formaldehyde through its  
2 deliberate act(s) of manufacturing, distributing, marketing, and/or selling the product.

3 24. The product described in this complaint was tested in a certified laboratory, and  
4 found to contain sufficiently high levels of formaldehyde to necessitate clear and reasonable  
5 warnings, under Proposition 65, that use of the product results in exposure to a chemical known  
6 to the State of California to cause cancer.

7 25. Defendant has failed to provide clear and reasonable warnings that the use of the  
8 product described above results in exposure to a chemical known to the State of California to  
9 cause cancer, and no such warning was provided to consumers using those products.

#### 10 VI. FIRST CAUSE OF ACTION

11 26. Paragraphs 1 through 25 are realleged as if fully set forth herein.

12 27. Plaintiff is informed and believes, and based on such information and belief,  
13 alleges that Defendant employs ten or more persons.

14 28. By committing the acts alleged above, Defendant has, within the previous twelve  
15 months and in the course of doing business, knowingly and intentionally exposed individuals in  
16 the State of California to formaldehyde, a chemical known to the State of California to cause  
17 cancer, without first giving clear and reasonable warning to such individuals within the meaning  
18 of Health and Safety Code section 25249.6.

19 29. Said violations render Defendant liable to Plaintiff for civil penalties of up to  
20 \$2,500 per day for each violation, as well as other remedies.

#### 21 PRAYER FOR RELIEF

22 WHEREFORE, plaintiff prays that the Court:

23 1. Pursuant to the First Cause of Action, assess civil penalties against Defendant in  
24 the amount of up to \$2,500 per day for each violation of Proposition 65, according to proof;

25 2. Pursuant to Health and Safety Code section 25249.7, enter such temporary  
26 restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting  
27 Defendant from exposing persons within the State of California to formaldehyde by use of their  
28

1 product without providing clear and reasonable warnings, as Plaintiff shall specify in further  
2 application to the court;

3 3. Award plaintiff its costs of suit;

4 4. Pursuant to section 1021.5 of the Code of Civil Procedure and any other applicable  
5 provision of law, order Defendant to pay Plaintiff such attorney's fees and costs as Plaintiff  
6 incurs in bringing this enforcement action; and

7 5. Grant such other and further relief as the court deems just and proper.

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DATED: January 6, 2014

SHUTE, MIHALY & WEINBERGER LLP

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