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CIVIL BUSINESS OFFICE 11  
CENTRAL DIVISION

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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

13 **KING PUN CHENG,** )  
14 )  
15 **Plaintiff,** )  
16 **and** )  
17 **THE TRUE VALUE COMPANY,** )  
18 **BELWITH PRODUCTS, L.L.C.** )  
19 **AND DOES 1 -25 INCLUSIVE** )  
20 **Defendant.** )  
21 \_\_\_\_\_ )

**CASE NO.: 37-2014-00006285-CU-NP-CTL**  
**COMPLAINT FOR CIVIL PENALTIES**  
**AND INJUNCTIVE RELIEF**  
*(Cal. Health & Safety Code § 25249.6 et seq.)*

22 **NATURE OF THE ACTION**

23 1. This Complaint is a representative action brought by plaintiff King Pun Cheng, in  
24 the public interest of the citizens of the State of California, to enforce the people's right to be  
25 informed of the presence of lead and lead compounds, a toxic chemical found in First Watch  
26 Interlocking Dead Bolt (UPC078555011253) sold in California.  
27  
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1           2. By this Complaint, plaintiff seeks to remedy DEFENDANTS continuing failures to  
2 warn California citizens about their exposure to the toxic chemical in or on certain products that  
3 DEFENDANTS manufacture, distribute and/or offer for sale to consumers throughout the State  
4 of California.

5           3. High levels of lead and/or lead compounds are commonly found in First Watch  
6 Interlocking Dead Bolt (UPC 078555011253) that DEFENDANTS manufacture, distribute  
7 and/or offer for sale to consumers throughout the State of California.

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

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

17           6. Lead and lead compounds shall hereinafter be referred to as the "LISTED  
18 CHEMICAL."

19           7. Defendants manufacture, distribute and/or sell products containing excessive levels  
20 of the LISTED CHEMICAL including, but not limited to First Watch Interlocking Dead Bolt  
21 (UPC078555011253). All such products containing the LISTED CHEMICAL shall hereinafter  
22 be referred to as the "PRODUCTS."

23           8. DEFENDANTS' failures to warn consumers and/or other individuals in the State  
24 of California about their exposure to the LISTED CHEMICAL in conjunction with defendants'  
25 sale of the PRODUCTS is a violation of Proposition 65 and subjects DEFENDANTS to  
26 enjoinder of such conduct as well as civil penalties for each such violation.

27           9. For DEFENDANTS' violations of Proposition 65, plaintiff seeks preliminary  
28 injunctive and permanent injunctive relief to compel DEFENDANTS to provide purchasers or

1 users of the PRODUCTS with the required warning regarding the health hazards of the LISTED  
2 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

5 **PARTIES**

6 11. Plaintiff King Pun Cheng is a citizen of the City of Carlsbad, County of San Diego,  
7 in the State of California, who is dedicated to protecting the health of California citizens through  
8 the elimination or reduction of toxic exposures from consumer products, and brings this action in  
9 the public interest pursuant to California Health & Safety Code § 25249.7.

10 12. Defendant The True Value Company ("DEFENDANT") is a person doing business  
11 within the meaning of California Health & Safety Code § 25249.11.

12 13. Defendant The True Value Company manufacture, distribute, and/or offer the  
13 PRODUCTS for sales or use in the State of California or implies by their conduct that it  
14 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

15 14. Defendant Belwith Products, L.L.C. ("DEFENDANT") is a person doing business  
16 within the meaning of California Health & Safety Code § 25249.11.

17 15. Defendant Belwith Products, L.L.C. manufacture, distribute, and/or offer the  
18 PRODUCTS for sales or use in the State of California or implies by their conduct  
19 that it manufactures, distributes and/or offers the PRODUCTS for sale or use in the  
20 State of California.

21 16. shall, where appropriate, be referred to hereinafter as "DEFENDANTS."

22 **VENUE AND JURISDICTION**

23 17. Venue is proper in the San Diego County Superior Court, pursuant to Code of  
24 Civil Procedure § § 394, 495, 395.5, because this Court is a court of competent jurisdiction,  
25 because one or more instances of wrongful conduct occurred, and continues to occur, in the  
26 County of San Diego and/or because DEFENDANTS conducted, and continue to conduct,  
27 business in this County with respect to the PRODUCTS.  
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1 18. The California Superior Court has jurisdiction over this action pursuant to  
2 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in  
3 all causes except those given by statute to other trial courts.” The statute under which this action  
4 is brought does not specify any other basis of subject matter jurisdiction.

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

11 **FIRST CAUSE OF ACTION**

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

13 20. Plaintiff alleges and incorporates by reference, as if full reference, as if full set  
14 forth herein, Paragraphs 1 through 24, inclusive.

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

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

22 23. On November 26, 2013, a sixty-day notice violation, together with the requisite  
23 certificate of merit, was provided to DEFENDANTS, other potential violators and various public  
24 enforcement agencies including the California Attorney General’s Office that as a result of the  
25 DEFENDANTS’ sale of the PRODUCTS, purchasers and users in the State of California were  
26 being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable users of  
27 the PRODUCTS, without the individual purchasers and users first having been provided with a  
28 “clear and reasonable warning” regarding such toxic exposures.

1           24. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
2 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
3 DEFENDANTS'

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

8           26. After receipt of the claims asserted in the sixty-day notices of violation, the  
9 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
10 cause of action against DEFENDANTS under Proposition 65.

11           27. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
12 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
13 limits.

14           28. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
15 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED  
16 CHEMICAL.

17           29. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
18 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
19 during the reasonably foreseeable use of the PRODUCTS.

20           30. The normal and reasonably foreseeable use of the PRODUCTS have caused and  
21 continue to cause consumer exposure to the LISTED CHEMICAL, as such exposure is defined  
22 by 27 CCR§ 25602(b).

23           31. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
24 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
25 and/or ingestion.

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

3 33. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and/or other individuals in the State of California who were or who could become  
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
6 reasonably foreseeable use of the PRODUCTS.

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

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

15 36. As a consequence of the above-described acts, California Health & Safety Code §  
16 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
17 DEFENDANTS.

18 37. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth  
19 hereinafter.

20 **PRAYER FOR RELIEF**

21 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

25 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
26 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or  
27 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
28

1 warnings” as detailed by 27 CCR § 25601, as to the harms associated with exposures to the  
2 LISTED CHEMICAL;


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

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

5 Respectfully Submitted,

6 Parker A. Smith, Attorney at Law

7 Dated: 3/11/14

8 By:   
9 Parker Smith, Esq.  
10 Attorney for Plaintiff