

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Parker A. Smith (CSB#290311), Attorney at Law
2173 Salk Avenue, Suite #250
Carlsbad, CA 92008
 TELEPHONE NO: (760) 579-7600 FAX NO: N/A
 ATTORNEY FOR (Name): **Plaintiff, King Pun Cheng**

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
 STREET ADDRESS: **330 West Broadway**
 MAILING ADDRESS:
 CITY AND ZIP CODE: **San Diego, CA 92101**
 BRANCH NAME: **Hall of Justice**

CASE NAME:
KING PUN CHENG v. HOME DEPOT, et al.

CIVIL CASE COVER SHEET

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

Counter **Joinder**

Complex Case Designation
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **37-2014-00043779-CU-NP-CTL**

JUDGE
 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:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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 | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | 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 |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | 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):
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: 12/30/2014

Parker A. Smith, 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.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

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

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease
- Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

HOME DEPOT, INC., THE AGENCY, INC., KTC SLAMS, INC.,
AND DOES 1 - 25 INCLUSIVE

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

King Pun Cheng

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California.

County of San Diego, Hall of Justice
330 West Broadway, San Diego, CA 92101

CASE NUMBER
(Número del Caso)

37-2014-00043779-CU-NP-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

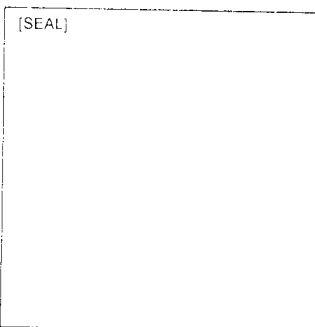
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Parker A. Smith, Attorney at Law, 2173 Salk Avenue, Suite #250, Carlsbad, CA 92008

DATE: **DEC 31 2014**
(Fecha)

Clerk, by **B. Chandler**
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 Parker Smith, Esq., (CSB# 290311)
2 **Parker A. Smith, Attorney at Law**
2173 Salk Ave., Suite 250
3 Carlsbad, CA 92008
4 Telephone: (760) 579-7600

5 *Attorney for Plaintiff, Kingpun Cheng*

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

13 KINGPUN CHENG,)	CASE NO.: 37-2014-00043779-CU-NP-CTL
)	
14 Plaintiff,)	COMPLAINT FOR CIVIL PENALTIES
)	AND INJUNCTIVE RELIEF
15 and)	
)	<i>(Cal. Health & Safety Code § 25249.6 et seq.)</i>
16)	
17 HOME DEPOT, INC.,)	
)	
18 THE AGNECY, INC.,)	
)	
19 KTC SLAMS, INC.,)	
)	
20 AND DOES 1 -25 INCLUSIVE)	
)	
21 Defendant.)	

22
23 **NATURE OF THE ACTION**

24 1. This Complaint is a representative action brought by plaintiff Kingpun Cheng, in
25 the public interest of the citizens of the State of California, to enforce the people's right to be
26 informed of the presence of lead and lead compounds, a toxic chemical found in The Agency's
27 Cold Stem for American Standard 58019 (UPC013964580198) sold in California.

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 The Agency's
6 Cold Stem for American Standard 58019 (UPC013964580198) that DEFENDANTS
7 manufacture, distribute 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
20 levels of the LISTED CHEMICAL including, but not limited to The Agency's Cold Stem for
21 American Standard 58019 (UPC013964580198). All such products containing the LISTED
22 CHEMICAL shall hereinafter 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 Kingpun 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, represented by and
9 through its counsel of record, Parker A. Smith, Attorney at Law. Plaintiff brings this action in
10 the public interest pursuant to California Health & Safety Code § 25249.7.

11 12. Defendant Home Depot, Inc. ("DEFENDANT") is a person doing business within
12 the meaning of California Health & Safety Code § 25249.11.

13 13. Defendant Home Depot, Inc. manufacture, distribute, and/or offer the PRODUCTS
14 for sales or use in the State of California or implies by their conduct that it manufactures,
15 distributes and/or offers the PRODUCTS for sale or use in the State of California.

16 14. Defendant The Agency, Inc. ("DEFENDANT") is a person doing business
17 within the meaning of California Health & Safety Code § 25249.11.

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

21 16. Defendant KTC Slams, Inc. ("DEFENDANT") is a person doing business
22 within the meaning of California Health & Safety Code § 25249.11.

23 17. Defendant KTC Slams, Inc. manufacture, distribute, and/or offer the
24 PRODUCTS for sales or use in the State of California or implies by their conduct that it
25 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

26 18. Defendants named in paragraphs 12, 14, and 16 are hereinafter referred to
27 collectively as "Defendants".
28

1 19. The identities of DOES 1-25 are unknown to Plaintiff at this time. Plaintiff
2 suspects that they are business entities with at least ten or more employees that have sold,
3 authorized the distribution, or sale of the said products under the name "The Agency, Inc." and
4 other brand names, that contain and/or produce lead, for sale within the State of California,
5 without giving clear and reasonable warning.

6 20. Defendants named in paragraphs 12, 14, 16, and 19 have at all times relevant
7 hereto authorized the manufacture, distribution, or sale of the products under the brand name
8 "The Agency, Inc." and other brand names, that contains and/or yields lead, for sale within the
9 State of California.

10 **VENUE AND JURISDICTION**

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

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

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

26 **FIRST CAUSE OF ACTION**

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

1 24. Plaintiff alleges and incorporates by reference, as if full reference, as if full set
2 forth herein, Paragraphs 1 through 23, inclusive.

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

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

10 27. On January 27, 2014 a sixty-day notice violation, together with the requisite
11 certificate of merit, was provided to DEFENDANTS, other potential violators and various public
12 enforcement agencies, including the California Attorney General’s Office, stating that as a result
13 of the DEFENDANTS' sale of the PRODUCTS, purchasers and users in the State of California
14 were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable users
15 of the PRODUCTS, without the individual purchasers and users first having been provided with
16 a “clear and reasonable warning” regarding such toxic exposures.

17 28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
18 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
19 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
20 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
21 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
22 believes that such violations will continue to occur into the future.

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

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

1 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
2 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED
3 CHEMICAL.

4 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
5 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
6 during the reasonably foreseeable use of the PRODUCTS.

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

10 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
11 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
12 and/or ingestion.

13 35. DEFENDANT intended that such exposures to the LISTED CHEMICAL from the
14 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
15 participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to
16 individuals in the State of California.

17 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
18 consumers and/or other individuals in the State of California who were or who could become
19 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
20 reasonably foreseeable use of the PRODUCTS.

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

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

1 39. As a consequence of the above-described acts, California Health & Safety Code §
2 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
3 DEFENDANTS.

4 40. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
5 hereinafter.

6 **PRAYER FOR RELIEF**

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

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

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

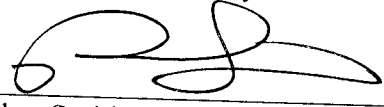
16 3. That the Court grant plaintiff his reasonable attorneys' fees and cost of suit; and

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

18
19
20 Dated: 7/30/2014

Respectfully Submitted,

Parker A. Smith, Attorney at Law

By: 

Parker Smith, Esq.
Attorney for Plaintiff