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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**  
10 **UNLIMITED CIVIL JURISDICTION**  
11

13 <b>KINGPUN CHENG,</b>	)	<b>CASE NO.: 37-2015-00035432-CU-NP-CTL</b>
	)	
14 <b>Plaintiff,</b>	)	<b>FIRST AMENDED COMPLAINT FOR</b>
	)	<b>CIVIL PENALTIES</b>
15	)	<b>AND INJUNCTIVE RELIEF</b>
16 <b>and</b>	)	
	)	<i>(Cal. Health &amp; Safety Code § 25249.6 et seq.)</i>
17 <b>DORMAN PRODUCTS, INC.,</b>	)	
18 <b>AND DOES 1 -25</b>	)	
19 <b>INCLUSIVE,</b>	)	
	)	
20 <b>Defendant.</b>	)	
	)	

21  
22 **NATURE OF THE ACTION**

23  
24 1. This Amended Complaint (hereinafter "Complaint") is a representative action  
25 brought by plaintiff Kingpun Cheng, in the public interest of the citizens of the State of  
26 California, to enforce the people's right to be informed of the presence of lead and lead  
27 compounds and/or phthalate compounds, including without limitation di(2-ethylhexyl) phthalate  
28 ("DEHP") and diisononyl phthalate ("DINP"), chemicals found in (a) automotive products and

1 components, (b) household electrical products and components, and (c) hardware tools and  
2 components sold in the state of California.

3 2. By this Complaint, plaintiff seeks to remedy DEFENDANT'S continuing failures  
4 to warn California citizens about their exposure to the toxic chemical in or on certain products  
5 that DEFENDANT manufactures, distributes and/or offers for sale to consumers throughout the  
6 State of California.

7 3. Detectable levels of lead and/or lead compounds, and/or phthalate compounds,  
8 including without limitation di(2-ethylhexyl) phthalate ("DEHP") and diisononyl phthalate  
9 ("DINP") found in (a) automotive products and components, (b) household electrical products  
10 and components, and (c) hardware tools and components that DEFENDANT manufactures,  
11 distributes and/or offers for sale to consumers throughout the State of California.

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

17 5. California identified and listed lead and lead compounds, phthalate compounds,  
18 including without limitation di(2-ethylhexyl) phthalate ("DEHP") and diisononyl phthalate  
19 ("DINP") as chemicals known to cause birth defects and other reproductive harm.

20 6. Lead and lead compounds and phthalate compounds, including without limitation  
21 di(2-ethylhexyl) phthalate ("DEHP") and diisononyl phthalate ("DINP") shall hereinafter be  
22 referred to as the "LISTED CHEMICALS."

23 7. DEFENDANT manufactures, distribute and/or sells products containing excessive  
24 levels of the LISTED CHEMICALS including, but not limited 3/8 In. Black Vinyl Vacuum Cap,  
25 #650-015; 3/16 In. ID x 5/16 In. OD Vinyl Grommet, #650-101; Heavy Duty Cutter/Crimper,  
26 #86263; Emergency Door Lock Opener, Unlock-Foldin Tool, #75490; Fuel Hose Fitting – Brass  
27 Tee Connector 5/16 In., #43071; Fuel Line Compression Unions, #800-145; Pipe Fitting – Brass  
28 Bushing 1/8 In. FNPT x ¼ In. MNPT, #43100; Expansion Plug – Brass Cub Expansion Plug 1-

1 1/4 In., #565-023; Starter Switch – Push Button Brass, #86915; and Symmetry Brass-Plated Coat  
2 Hooks, #4-1753. All such products containing the LISTED CHEMICALS shall hereinafter be  
3 referred to as the “PRODUCTS.”

4 8. DEFENDANT’S failure to warn consumers and/or other individuals in the State  
5 of California about their exposure to the LISTED CHEMICAL in conjunction with  
6 DEFENDANT’S sale of the PRODUCTS is a violation of Proposition 65 and subjects  
7 DEFENDANT to enjoinder of such conduct as well as civil penalties for each such violation.

8 9. For DEFENDANT’S violations of Proposition 65, plaintiff seeks preliminary  
9 injunctive and permanent injunctive relief to compel DEFENDANT to provide purchasers or  
10 users of the PRODUCTS with the required warning regarding the health hazards of the LISTED  
11 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

14 **PARTIES**

15 11. Plaintiff Kingpun Cheng is a citizen of the City of Carlsbad, County of San Diego,  
16 in the State of California, who is dedicated to protecting the health of California citizens through  
17 the elimination or reduction of toxic exposures from consumer products, represented by and  
18 through its counsel of record, Parker A. Smith, Attorney at Law. Plaintiff brings this action in  
19 the public interest pursuant to California Health & Safety Code § 25249.7.

20 12. Defendant Dorman Products, Inc. (“DEFENDANT”) is a person doing business  
21 within the meaning of California Health & Safety Code § 25249.11.

22 13. Defendant Dorman Products, Inc. manufactures, distributes, and/or offers the  
23 PRODUCTS for sales or use in the State of California or implies by its conduct that it  
24 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

25 14. The identities of DOES 1-25 are unknown to Plaintiff at this time. Plaintiff  
26 suspects that they are business entities with at least ten or more employees that have sold,  
27 authorized the distribution, or sale of the said products under the name “Dorman Products” and  
28

1 other brand names, that contain and/or produce lead, for sale within the State of California,  
2 without giving clear and reasonable warning.

3 15. DEFENDANT has at all times relevant hereto authorized the manufacture,  
4 distribution, or sale of the products under the brand name "Dorman Products" and other brand  
5 names, that contains and/or yields lead and/or phthalate compounds for sale within the State of  
6 California.

7 **VENUE AND JURISDICTION**

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

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

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

23 **FIRST CAUSE OF ACTION**

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

25 19. Plaintiff alleges and incorporates by reference, as if full reference, as if full set  
26 forth herein, Paragraphs 1 through 22, inclusive.

27 20. The citizens of the State of California have expressly stated in the Safe Drinking  
28 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.

1 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
2 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

6 22. On March 13, 2014, two sixty-day notice of violations, together with the requisite  
7 certificate of merit, was provided to DEFENDANT, other potential violators and various public  
8 enforcement agencies, including the California Attorney General’s Office, stating that as a result  
9 of the DEFENDANT’S sale of the PRODUCTS, purchasers and users in the State of California  
10 were being exposed to the LISTED CHEMICALS resulting from the reasonably foreseeable  
11 users of the PRODUCTS, without the individual purchasers and users first having been provided  
12 with a “clear and reasonable warning” regarding such toxic exposures.

13 23. On December 4, 2015, a Supplemental sixty-day notice of violations, together  
14 with the requisite certificate of merit, was provided to DEFENDANT, other potential violators  
15 and various public enforcement agencies, including the California Attorney General’s Office,  
16 stating that as a result of the DEFENDANT’S sale of the PRODUCTS, purchasers and users in  
17 the State of California were being exposed to the LISTED CHEMICALS resulting from the  
18 reasonably foreseeable users of the PRODUCTS, without the individual purchasers and users  
19 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

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

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

1           26. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
2 California by DEFENDANT contained the LISTED CHEMICALS above the allowable state  
3 limits.

4           27. DEFENDANT knew or should have known that the PRODUCTS manufactured,  
5 distributed, and/or for sale or use by DEFENDANT in California contained the LISTED  
6 CHEMICALS .

7           28. The LISTED CHEMICALS were present in or on the PRODUCTS in such a way  
8 as to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion  
9 during the reasonably foreseeable use of the PRODUCTS.

10           29. The normal and reasonably foreseeable use of the PRODUCTS have caused and  
11 continue to cause consumer exposure to the LISTED CHEMICALS, as such exposure is defined  
12 by 27 CCR§ 25602(b).

13           30. DEFENDANT had knowledge that the normal and reasonably foreseeable use of  
14 the PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal contact  
15 and/or ingestion.

16           31. DEFENDANT intended that such exposures to the LISTED CHEMICALS from  
17 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
18 accidental participation in the manufacture, distribution and/or offer for sale or use of  
19 PRODUCTS to individuals in the State of California.

20           32. DEFENDANT failed to provide a “clear and reasonable warning” to those  
21 consumers and/or other individuals in the State of California who were or who could become  
22 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the  
23 reasonably foreseeable use of the PRODUCTS.

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

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

4 35. As a consequence of the above-described acts, California Health & Safety Code §  
5 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANT.

6 36. Wherefore, plaintiff prays for judgment against DEFENDANT as set forth  
7 hereinafter.

8 **PRAYER FOR RELIEF**

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

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

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

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

19 4. That the Court grant such other and further relief as may be just and proper.  
20

21 Respectfully Submitted,

22 SY AND SMITH, PC

23  
24 By: 

25 Parker Smith

26 Attorney for Plaintiff

27 2602701.1  
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