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CIVIL BUSINESS OFFICE 2  
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 **Plaintiff,**

15 **and**

17 **MUELLER STREAMLINE CO.,**  
18 **HOME DEPOT INC., AND**  
19 **DOES 1 -25 INCLUSIVE**

20 **Defendant.**

) **CASE NO.: 37-2015-00009004-CU-NP-CTL**

) **FIRST AMENDED COMPLAINT FOR**  
) **CIVIL PENALTIES AND INJUNCTIVE**  
) **RELIEF**

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

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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 Mueller  
26 Streamline's Hot and Cold Stem for Price Pfister PP-45CD-NL (UPC 013964580716) sold in  
27 California.

28 **FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF**

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 Mueller  
6 Streamline's Hot and Cold Stem for Price Pfister PP-45CD-NL (UPC 013964580716) that  
7 DEFENDANTS manufacture, distribute and/or offer for sale to consumers throughout the State  
8 of California.

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

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

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

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

24           8. DEFENDANTS' failures to warn consumers and/or other individuals in the State  
25 of California about their exposure to the LISTED CHEMICAL in conjunction with defendants'  
26 sale of the PRODUCTS is a violation of Proposition 65 and subjects DEFENDANTS to  
27 enjoinder of such conduct as well as civil penalties for each such violation.  
28





1 18. Defendants named in paragraphs 12, 14, and 17 have at all times relevant hereto  
2 authorized the manufacture, distribution, or sale of the products under the brand name "Mueller  
3 Streamline Co." that contains and/or yields lead, for sale within the State of California.

4 **VENUE AND JURISDICTION**

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

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

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

20 **FIRST CAUSE OF ACTION**

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

22 22. Plaintiff alleges and incorporates by reference, as if full reference, as if full set  
23 forth herein, Paragraphs 1 through 21, inclusive.

24 23. The citizens of the State of California have expressly stated in the Safe Drinking  
25 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.  
26 (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer,  
27 birth defects and order reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)  
28



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

4           25. On March 18, 2014, a sixty-day notice violation, together with the requisite  
5 certificate of merit, was provided to DEFENDANTS, other potential violators and various public  
6 enforcement agencies including the California Attorney General’s Office that as a result of the  
7 DEFENDANTS’ sale of the PRODUCTS, purchasers and users in the State of California were  
8 being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable users of  
9 the PRODUCTS, without the individual purchasers and users first having been provided with a  
10 “clear and reasonable warning” regarding such toxic exposures.

11           26. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
12 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
13 DEFENDANTS’ manufacturing, distributing and/or offering of the PRODUCTS for sale or use  
14 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
15 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and  
16 believes that such violations will continue to occur into the future.

17           27. After receipt of the claims asserted in the sixty-day notice of violation, the  
18 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
19 cause of action against DEFENDANTS under Proposition 65.

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

23           29. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
24 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED  
25 CHEMICAL.

26           30. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
27 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
28 during the reasonably foreseeable use of the PRODUCTS.

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

4           32. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
5 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
6 and/or ingestion.

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

11           34. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
12 consumers and/or other individuals in the State of California who were or who could become  
13 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
14 reasonably foreseeable use of the PRODUCTS.

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

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

23           37. As a consequence of the above-described acts, California Health & Safety Code §  
24 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
25 DEFENDANTS.

26           38. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth  
27 hereinafter.

28  
**PRAYER FOR RELIEF**



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

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

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

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

11 4. That the Court grant such other and further relief as may be just and proper.  
12

13 Dated: 6/9/15

Respectfully Submitted,

Parker A. Smith, Attorney at Law

14  
15 By: 

Parker Smith, Esq.

Attorney for Plaintiff  
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