



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2014-00036774-CU-PO-CTL CASE TITLE:

Cheng vs. The Dixieline Lumber Company

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	<i>FOR COURT USE ONLY</i>
PLAINTIFF(S): Kingpun Cheng	
DEFENDANT(S): The Dixieline Lumber Company et.al.	
SHORT TITLE: CHENG VS. THE DIXIELINE LUMBER COMPANY	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2014-00036774-CU-PO-CTL

Judge: Ronald S. Prager

Department: C-71

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 10/29/2014

JUDGE OF THE SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Parker A. Smith, Attorney at Law (#290311)
 2173 Salk Avenue, Suite #250
 Carlsbad, CA 92008

TELEPHONE NO.: (619)335-5697 FAX NO.:
 ATTORNEY FOR (Name): Plaintiff, King Pun Cheng

FOR COURT USE ONLY

FILED
 Clerk of the Superior Court

OCT 28 2014

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

CASE NAME:
KINGPUN CHENG v. THE DIXIELINE LUMBER COMPANY, et al.

CIVIL CASE COVER SHEET

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

Complex Case Designation

Counter **Joinder**

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

CASE NUMBER:
37-2014-00036774-CU-PO-CTL

JUDGE:
 DEPT:

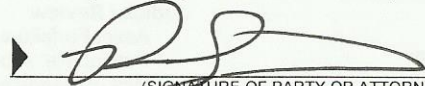
Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input type="checkbox"/> Other employment (15)</p>	<p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p>
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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): One (1)
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: 10/28/2014
 Parker A. Smith, Esq.


 (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

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)**

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

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

THE DIXIELINE LUMBER COMPANY, LINCOLN PRODUCTS,
AND DOES 1 - 25 INCLUSIVE

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

KINGPUN CHENG

OCT 28 14 PM 12:13

F I L E D
Clerk of the Superior Court

OCT 28 2014

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):
37-2014-00036774-CU-PO-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: **OCT 29 2014** Clerk, by **L. Pineda**, Deputy
(Fecha) (Secretario) (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)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- 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):
- by personal delivery on (date):

1 Parker Smith, Esq., (CSB# 290311)
2 **Parker A. Smith, Attorney at Law**
3 2173 Salk Ave., Suite 250
4 Carlsbad, CA 92008
Telephone: 619-335-5697

5 *Attorney for Plaintiff, Kingpun Cheng*

OCT 28 '14 PM 12:13

F I L E D
Clerk of the Superior Court

OCT 28 2014

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 **UNLIMITED CIVIL JURISDICTION**

13 **KINGPUN CHENG,**)

14 **Plaintiff,**)

15 **and**)

16 **THE DIXIELINE LUMBER COMPANY,**)

17 **LINCOLN PRODUCTS,**)

18 **AND DOES 1 -25 INCLUSIVE**)

19)
20 **Defendant.**)
21)

CASE NO.: 37-2014-00036774-CU-PO-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 Kingpun 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 Lincoln
26 Product's Shower Drain 113056 (UPC054374142774) sold in California.
27
28

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 Lincoln
6 Product's Shower Drain 113056 (UPC054374142774) that DEFENDANTS manufacture,
7 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 Lincoln Product's Shower Drain
21 113056 (UPC054374142774). All such products containing the LISTED CHEMICAL shall
22 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 Dixieline Lumber Company ("DEFENDANT") is a person doing
12 business within the meaning of California Health & Safety Code § 25249.11.

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

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

18 15. Defendant Lincoln Products 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. Defendants named in paragraphs 12 and 14 are hereinafter referred to collectively
22 as "Defendants".

23 17. The identities of DOES 1-25 are unknown to Plaintiff at this time. Plaintiff
24 suspects that they are business entities with at least ten or more employees that have sold,
25 authorized the distribution, or sale of the said products under the name "Lincoln Products" and
26 other brand names, that contain and/or produce lead, for sale within the State of California,
27 without giving clear and reasonable warning.

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 “Lincoln
3 Products” and other brand names, that contains and/or yields lead, for sale within the State of
4 California.

5 **VENUE AND JURISDICTION**

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

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 June 24, 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, stating that as a result
7 of the DEFENDANTS' sale of the PRODUCTS, purchasers and users in the State of California
8 were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable users
9 of the PRODUCTS, without the individual purchasers and users first having been provided with
10 a "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' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
14 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 notices 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 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;

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 Respectfully Submitted,

Parker A. Smith, Attorney at Law

14 Dated: 10/27/14

15
16 By: 

Parker Smith, Esq.

Attorney for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 W Broadway
 MAILING ADDRESS: 330 W Broadway
 CITY AND ZIP CODE: San Diego, CA 92101-3827
 BRANCH NAME: Central
 TELEPHONE NUMBER: (619) 450-7071

PLAINTIFF(S) / PETITIONER(S): Kingpun Cheng

DEFENDANT(S) / RESPONDENT(S): The Dixieline Lumber Company et.al.

CHENG VS. THE DIXIELINE LUMBER COMPANY

**NOTICE OF CASE ASSIGNMENT
and CASE MANAGEMENT CONFERENCE**

CASE NUMBER:
37-2014-00036774-CU-PO-CTL

CASE ASSIGNMENT

Judge: Ronald S. Prager

Department: C-71

COMPLAINT/PETITION FILED: 10/29/2014

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	04/10/2015	01:00 pm	C-71	Ronald S. Prager

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).