

# SUMMONS (CITACION JUDICIAL)

**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

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

FILED  
CIVIL BUSINESS OFFICE  
CENTRAL DIVISION

15 JUN 17 PM 1:05

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

**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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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):  
**37-2015-00020415-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: JUN 18 2015  
(Fecha)

Clerk, by LORINDA JONES, Deputy  
(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):



FOR COURT USE ONLY

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

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

FILED  
 CIVIL BUSINESS OFFICE  
 CENTRAL DIVISION  
 15 JUN 17 PM 1:06  
 CLERK-SUPERIOR COURT  
 SAN DIEGO COUNTY, CA

CASE NAME:  
 KINGPUN CHENG v. THE DIXIELINE LUMBER COMPNAY, 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:  
**37-2015-00020415-CU-NP-CTL**

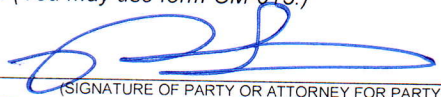
JUDGE:  
 DEPT:

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

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: 6/17/2015  
 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.

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

6 *Attorney for Plaintiff, Kingpun Cheng*

FILED  
CIVIL BUSINESS OFFICE  
CENTRAL DIVISION

15 JUN 17 PM 1:06

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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

12  
13 **KINGPUN CHENG,**

14 **Plaintiff,**

15 **and**

16  
17 **THE DIXIELINE LUMBER COMPANY,**  
18 **LINCOLN PRODUCTS,**  
19 **AND DOES 1 -25 INCLUSIVE**

20 **Defendant.**  
21

22  
23  
24  
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28  
JUN 17 '15 AM 11:29  
**CASE NO.: 37-2015-00020415-CU-NP-CTL**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

1. This Complaint is a representative action brought by plaintiff Kingpun Cheng, in the public interest of the citizens of the State of California, to enforce the people's right to be informed of the presence of lead and lead compounds, a toxic chemical found in Lincoln Product's American Standard Tub Shower Stem (UPC # 054374510153) sold in California.

**COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF**



1           2. By this Complaint, plaintiff seeks to remedy DEFENDANTS continuing failures  
2 to warn California citizens about their exposure to the toxic chemical in or on certain products  
3 that DEFENDANTS manufacture, distribute and/or offer for sale to consumers throughout the  
4 State of California.

5           3. High levels of lead and/or lead compounds are commonly found in Lincoln Product's  
6 American Standard Tub Shower Stem (UPC# 054374510153) 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 American  
21 Standard Tub Shower Stem (054374510153). 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 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"  
26 and/or "American Standard", that contain and/or produce lead, for sale within the State of  
27 California, 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/or "American Standard", that contains and/or yields lead, for sale within the State  
4 of 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 September 23, 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. On April 14, 2015, a supplemental sixty-day notice violation, together with the  
12 requisite certificate of merit, was provided to DEFENDANTS, other potential violators and  
13 various public enforcement agencies, including the California Attorney General’s Office, stating  
14 that as a result of the DEFENDANTS’ sale of the PRODUCTS, purchasers and users in the State  
15 of California were being exposed to the LISTED CHEMICAL resulting from the reasonably  
16 foreseeable users of the PRODUCTS, without the individual purchasers and users first having  
17 been provided with a “clear and reasonable warning” regarding such toxic exposures.

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

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



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

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

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

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

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

16           34. DEFENDANT intended that such exposures to the LISTED CHEMICAL 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           35. DEFENDANTS 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 CHEMICAL through dermal contact and/or ingestion during the  
23 reasonably foreseeable use of the PRODUCTS.

24           36. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
25 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
26 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
27 by DEFENDENT 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.



