

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

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

VALENCIA PIPE COMPANY, INC. 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)

CIVIL JUSTICE
CENTRAL DIVISION

15 OCT 20 PM 1:50

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), 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

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

CASE NUMBER:
(Número del Caso):

37-2015-00035413-CU-NP-CTL

DATE:

(Fecha)

OCT 21 2015

Clerk, by
(Secretario)

N. Adams

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ 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

CASE NAME:

KINGPUN CHENG v. VALENCIA PIPE 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:

37-2015-00035413-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:

Auto Tort

- ☐ Auto (22)
☐ Uninsured motorist (46)

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

- ☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- ☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☒ Other non-PI/PD/WD tort (35)

Employment

- ☐ Wrongful termination (36)
☐ Other employment (15)

Contract

- ☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

- ☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

- ☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

- ☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

- ☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

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. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☐ Substantial amount of documentary evidence f. ☐ 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: 10/20/2015

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.

Page 1 of 2

Parker Smith, Esq., (CSB# 290311)
Law Office of Parker A. Smith, PC
2173 Salk Ave., Suite 250
Carlsbad, CA 92008
Telephone: 619-335-5697

CIVIL BUSINESS OFFICE
CENTRAL DIVISION

15 OCT 20 PM 1:50

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Attorney for Plaintiff, Kingpun Cheng

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

UNLIMITED CIVIL JURISDICTION

KINGPUN CHENG,

Plaintiff,

and

VALENCIA PIPE COMPANY, INC.,

Defendant.

CASE NO.: 37-2015-00035413-CU-NP-CTL

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

OCT 20 15 PM 12:05

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 chemicals found in Home Flex Male X CSST Gas Line Fitting 811000114365 and sold in the state of California.

2. By this Complaint, plaintiff seeks to remedy DEFENDANT'S continuing failures to warn California citizens about their exposure to the toxic chemical in or on certain products

1 that DEFENDANT manufacture, distribute and/or offer for sale to consumers throughout the
2 State of California.

3 3. High levels of lead and/or lead compounds are commonly found in Home Flex
4 Male X CSST Gas Line Fitting 811000114365 that DEFENDANT manufacture, distribute
5 and/or offer for sale to consumers throughout the State of California.

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

11 5. California identified and listed lead and lead compounds as chemicals known to
12 cause birth defects and other reproductive harm.

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

15 7. DEFENDANT manufacture, distribute and/or sell BRASS GAS LINE FITTINGS
16 containing excessive levels of the LISTED CHEMICAL including, but not limited Home Flex
17 Male X CSST Gas Line Fitting 811000114365. All such products containing the LISTED
18 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

19 8. DEFENDANT'S failures to warn consumers and/or other individuals in the State
20 of California about their exposure to the LISTED CHEMICAL in conjunction with defendant's
21 sale of the PRODUCTS is a violation of Proposition 65 and subjects DEFENDANT to
22 enjoinder of such conduct as well as civil penalties for each such violation.

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

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

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PARTIES

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

12. Defendant Valencia Pipe Company, Inc. ("DEFENDANT") is a person doing Business within the meaning of California Health & Safety Code § 25249.11.

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

14. Defendant named in paragraph 12 has at all times relevant hereto authorized the manufacture, distribution, or sale of the products under the brand name "Home Flex" that contains and/or yields lead and lead compounds for sale within the State of California.

VENUE AND JURISDICTION

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

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

17. The California Superior Court has jurisdiction over DEFENDANT based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that either are citizens of the State of California, have sufficient minimum contacts in the State of California, or otherwise purposefully avail themselves of the California market.

1 DEFENDANT'S purposeful availment renders the exercise of personal jurisdiction by
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

5 18. Plaintiff alleges and incorporates by reference, as if full reference, as if full set
6 forth herein, Paragraphs 1 through 17, inclusive.

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

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

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

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

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

4 24. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
5 California by DEFENDANT contained the LISTED CHEMICAL above the allowable state
6 limits.

7 25. DEFENDANT knew or should have known that the PRODUCTS manufactured,
8 distributed, and/or for sale or use by DEFENDANT in California contained the LISTED
9 CHEMICAL.

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

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

16 28. DEFENDANT had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
18 and/or ingestion.

19 29. DEFENDANT intended that such exposures to the LISTED CHEMICAL from the
20 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
21 participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to
22 individuals in the State of California.

23 30. DEFENDANT failed to provide a "clear and reasonable warning" to those
24 consumers and/or other individuals in the State of California who were or who could become
25 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
26 reasonably foreseeable use of the PRODUCTS.

27 31. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold
2 by DEFENDANT without a "clear and reasonable warning," have suffered, and continue to
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

7 33. As a consequence of the above-described acts, California Health & Safety Code §
8 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANT.

9 34. Wherefore, plaintiff prays for judgment against DEFENDANT as set forth
10 hereinafter.

11 **PRAYER FOR RELIEF**

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

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

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

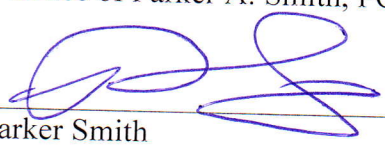
21 3. That the Court grant plaintiff his reasonable attorneys' fees and cost of suit; and

22 4. That the Court grant such other and further relief as may be just and proper.
23

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25 Dated: 10/20/15

Respectfully Submitted,

Law Office of Parker A. Smith, PC

26
27 By: 
28 Parker Smith
Attorney for Plaintiff