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FILED BY FAX
ALAMEDA COUNTY

October 17, 2017

CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy

CASE NUMBER:
RG17878968

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**
10 **UNLIMITED CIVIL JURISDICTION**
11

12
13 KINGPUN CHENG,

14 Plaintiff,

15 vs.

16 ZOOM BAIT COMPANY, INC., BIG BITE
BAITS, INC., CRÈME LURE COMPANY,
17 STRIKE KING LURE COMPANY, PURE
FISHING, INC., JARDEN CORPORATION,
18 BASS ASSASSIN LURES, INC., and DOES 1-
250,

19 Defendants.
20

CASE NO.:

**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

*(Cal. Health & Safety Code § 25219.6 et
seq.)*

21 **NATURE OF THE ACTION**
22

23 1. KINGPUN CHENG (hereinafter, "Plaintiff") brings this representative
24 action, in the public interest of the citizens of the State of California (hereinafter, "citizens"), to
25 enforce the citizen's right to be informed of the presence of Diisononyl Phthalate (hereinafter,
26 "DINP") and Butyl Benzyl Phthalate (hereinafter "BBP") found in Defendants ZOOM BAIT
27 LURE COMPANY, PURE FISHING, INC., JARDEN CORPORATION, BASS ASSASSIN

1
2 LURES, INC. (hereinafter, Defendants”) products —specifically the following:

- 3 A. Zoom Bait Company, Inc.
- 4 a. UPC751981168387 Zoom Bait Company Swimmin Super Fluke Jr. Smoking
- 5 Shad
- 6 b. UPC751981132593 Zoom Bait Company Super Salt Plus 6” Lizard Black Chart
- 7 c. UPC751981149188 Zoom Bait Company Fat Albert Wat Green Orange
- 8 d. UPC751981169636 Zoom Bait Company Super Fluke Disco Green
- 9 B. Big Bite Baits, Inc.
- 10 a. UPC805104074816 Big Bite Lures Saltwater Assortment BBSALT7-ASST7
- 11 b. UPC805104064527 Big Bite Lures Bass Assortment DSG-AST-BASS01
- 12 C. Crème Lure Company
- 13 a. UPC025935501514 It’s The Same Thing 5” Jerk Bait STC5015 6-Pack White Ice
- 14 D. Strike King Lure Company
- 15 a. UPC 051034201383 Strike King Shim-E-Stick, SES-55
- 16 b. UPC 051034220346 Simn’N Caffeine Shad, SCSD4-84
- 17 c. UPC051034120998 Strike King Lure Company Grass Frog Lure, P300-1
- 18 E. Pure Fishing, Inc. and Jarden Corporation
- 19 a. UPC028632650318 Berkley Power Bait Blue Fleck PBBPW4-BF
- 20 b. UPC028632650318 Berkley Power Bait Blue Fleck PBBPW4-BF;
- 21 c. UPC028632631836 Berkley Havoc Skeet Reese
- 22 d. UPC028632651537 Berkley Powerbait Mice Tails
- 23 F. Bass Assassin Lures, Inc.
- 24 a. UPC091538133322 Bass Assassin Baby Shad Fishing Lures for Rainbow Trout

25 The products listed in paragraph 1 section A-F shall hereinafter be referred to as “Fishing Lures”.

26 2. Plaintiff seeks to remedy Defendants’ failure to warn citizens about the risks of

27 exposure to DINP and BBP present in Defendants’ Fishing Lures manufactured, distributed

28 and/or offered for sale to consumers throughout the State of California.

1 12. ZOOM BAIT COMPANY, INC. is a person doing business within the meaning of
2 *California Health & Safety Code § 25249.11.*

3 13. BIG BITE BAITS, INC. is a person doing business within the meaning of
4 *California Health & Safety Code § 25249.11.*

5 14. CRÈME LURE COMPANY is a person doing business within the meaning of
6 *California Health & Safety Code § 25249.11.*

7 15. STRIKE KING LURE COMPANY is a person doing business within the meaning
8 *of California Health & Safety Code § 25249.11.*

9 16. PURE FISHING, INC. is a person doing business within the meaning of *California*
10 *Health & Safety Code § 25249.11.*

11 17. JARDEN CORPORATION is a person doing business within the meaning of
12 *California Health & Safety Code § 25249.11.*

13 18. BASS ASSASSIN LURES, INC. is a person doing business within the meaning of
14 *California Health & Safety Code § 25249.11.*

VENUE AND JURISDICTION

15 19. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
16 Procedure § § 394, 495, 395.5, because this Court is a court of competent jurisdiction, because
17 one or more instances of wrongful conduct occurred, and continues to occur, in the County of
18 Alameda and/or because Defendants conducted, and continue to conduct, business in this County
19 with respect to Fishing Lures.

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

24 21. The California Superior Court has jurisdiction over Defendants based on Plaintiff’s
25 information and good faith belief that each Defendant is a person, firm, corporation or association
26 that is either a citizen of the State of California, has sufficient minimum contacts in the State of
27 California, or otherwise purposefully avail itself of the California market. Defendants’ purposeful
28

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

3 **FIRST CAUSE OF ACTION**

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

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

7 23. 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 24. 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 25. A sixty-day notice of violation, together with the requisite certificates of merit, was
15 provided to Defendants, other potential violators and various public enforcement agencies,
16 including the California Attorney General’s Office, stating that as a result of the Defendants’ sale
17 of Fishing Lures, purchasers and users in the State of California were being exposed to DINP and
18 BBP resulting from the reasonably foreseeable users of Fishing Lures, without the individual
19 purchasers and users first having been provided with a “clear and reasonable warning” regarding
20 such toxic exposures. The Defendants were provided with the requisite notice and supporting
21 documents on the following dates:

- | | | |
|----|------------------------------|-----------------|
| 22 | A. ZOOM BAIT COMPANY, INC. | August 13, 2015 |
| 23 | B. BIG BITE BAITS, INC. | July 17, 2017 |
| 24 | C. CRÈME LURE COMPANY | June 16, 2017 |
| 25 | D. STRIKE KING LURE COMPANY | August 13, 2015 |
| 26 | E. PURE FISHING, INC. | August 13, 2015 |
| 27 | F. JARDEN CORPORATION | August 13, 2015 |
| 28 | G. BASS ASSASSIN LURES, INC. | July 15, 2016 |

26. A Supplemental sixty-day notice of violation, together with the requisite certificates

1 of merit, was provided to Defendants, other potential violators and various public enforcement
2 agencies, including the California Attorney General's Office, stating that as a result of the
3 Defendant's sale of Fishing Lures, purchasers and users in the State of California were being
4 exposed to DINP and BBP resulting from the reasonably foreseeable users of Fishing Lures,
5 without the individual purchasers and users first having been provided with a "clear and
6 reasonable warning" regarding such toxic exposures. The Defendants were provided with the
7 requisite notice and supporting documents on the following dates:

- | | | |
|----|-----------------------------|---------------|
| 8 | A. ZOOM BAIT COMPANY, INC. | July 10, 2017 |
| 9 | B. STRIKE KING LURE COMPANY | July 10, 2017 |
| 10 | C. PURE FISHING, INC. | July 10, 2017 |
| 11 | D. JARDEN CORPORATION | July 10, 2017 |

12 27. Defendants manufacture, distribute and/or offer Fishing Lures for sale or use in
13 violation of *California Health & Safety Code § 25249.6* and Defendants' manufacture,
14 distribution and/or offering of Fishing Lures for sale or use in violation of *California Health &*
15 *Safety Code § 25249.6* has continued to occur beyond Defendants' receipt of Plaintiff's sixty-day
16 Notice of Violation and Supplemental Notice of Violation. Plaintiff further alleges and believes
17 that such violations will continue to occur into the future.

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

21 29. The Fishing Lures manufactured, distributed, and/or offered for sale or use in
22 California by Defendant contained DINP and BBP above the allowable state limits.

23 30. Defendants knew or should have known that the Fishing Lures manufactured,
24 distributed, and/or for sale or use by Defendants in California contained DINP and BBP.

25 31. DINP and/or BBP was present in or on the Fishing Lures in such a way as
26 to expose individuals to DINP and/or BBP through dermal contact and/or ingestion during the
27 reasonably foreseeable use of the Fishing Lures.

28 32. The normal and reasonably foreseeable use of the Fishing Lures have caused and

1 continue to cause consumer exposure to DINP and/or BBP as such exposure is defined by 27
2 *CCR§ 25602(b)*.

3 33. Defendants had knowledge that the normal and reasonably foreseeable use of the
4 Fishing Lures would expose individuals to DINP and/or BBP through dermal contact and/or
5 ingestion.

6 34. Defendants intended that such exposures to DINP and/or BBP from the
7 reasonably foreseeable use of the Fishing Lures would occur by its deliberate, non-accidental
8 participation in the manufacture, distribution and/or offer for sale or use of the Fishing Lures to
9 purchasers, consumers, or users in the State of California.

10 35. Defendants failed to provide a “clear and reasonable warning” to those consumers
11 and/or other individuals in the State of California who were or who could become exposed to
12 DINP and/or BBP through dermal contact and/or ingestion during the reasonably foreseeable use
13 of the Fishing Lures.

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

19 37. As a consequence of the above-described acts, each Defendants is liable for a
20 maximum civil penal of \$2,500.00 per day for each violation pursuant to *California Health &*
Safety Code § 25249.7(b).

21 38. As a consequence of the above-described acts, *California Health & Safety Code §*
22 *25249.7(a)* also specifically authorizes the Court to grant injunctive relief against Defendants.

23 39. Wherefore, Plaintiff prays for judgment against Defendants as set forth hereinafter.

24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff prays for judgment against Defendants as follows:

26 40. That the Court, pursuant to *California Health & Safety Code § 25249.7(b)*, assess
27 civil penalties against Defendants, in the amount of \$2,500.00 per day for each violation alleged
28 herein;


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41. That the Court, pursuant to *California Health & Safety Code § 25249.7(a)*, preliminarily and permanently enjoin Defendants from manufacturing, distributing or offering Fishing Lures for sale or use in California, without providing “clear and reasonable warnings” as detailed by *27 CCR § 25601*, as to the harms associated with exposures to DINP and/or BBP;

42. That the Court grant Plaintiff reasonable attorneys’ fees and cost of suit; and the Court grant such other and further relief as may be just and proper.

Dated: Oct. 16, 2017

Respectfully Submitted,

By: 
Parker A. Smith
Attorney for Plaintiff

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(A VISO AL DEMANDADO):**

Please see attached form, SUM-200 (A)

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

KINGPUN CHENG

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

**FILED BY FAX
ALAMEDA COUNTY**

October 17, 2017

CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy

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 Alameda, George E. McDonald Hall of Justice
2233 Shoreline Drive, Alameda, CA 44501

CASE NUMBER
(Número del Caso):

RG17878968

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 and Stephanie Sy, SY & SMITH, P.C., 11622 El Camino Real, S100, San Diego, CA 92130

DATE:
(Fecha) October 17, 2017

Clerk, by BT
(Secretario) BT

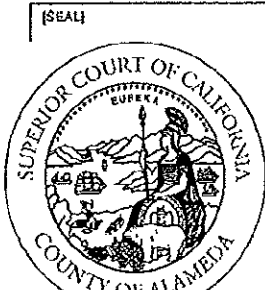
Deputy
(Adjunto)

(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)).

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: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):



SHORT TITLE: Kingpun Cheng v. Zoom Bait Company, et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

Zoom Bait Company, Inc., Big Bite Baits, Inc., Crème Lure Company, Strike King Lure Company, Pure Fishing, Inc., Jarden Corporation, Bass Assassin Lures, Inc., and DOES 1 -250.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Parker A. Smith (#290311), Lori A. Toyama (110021) and Stephanie Sy (247071) Sy and Smith, PC. 11622 El Camino Real, Suite 100 San Diego, CA 92130 TELEPHONE NO.: (858) 746-9554 FAX NO.: (858) 746-5199 ATTORNEY FOR (Name): Plaintiff, Kingpun Cheng		FILED BY FAX ALAMEDA COUNTY October 17, 2017 CLERK OF THE SUPERIOR COURT By Burt Moskaira, Deputy CASE NUMBER: RG17878968
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 2233 Shoreline Drive MAILING ADDRESS: CITY AND ZIP CODE: Alameda, CA 44501 BRANCH NAME: George E. McDonald Hall of Justice		
CASE NAME: Kingpun Cheng v. Zcom Bait Company, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 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 <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other PIP/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (M) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/D/W/D (23) Non-PIP/D/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PIP/D/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (00) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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: October 16, 2017
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