

**SUMMONS
(CITACION JUDICIAL)**

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

BRUNTON, INC. and BRUNTON OUTDOOR, INC.

**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

16 FEB -3 PM 4: 42

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

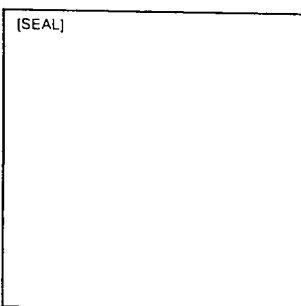
CASE NUMBER
(Número del Caso)
37-2016-00003730-CU-NP-CTL

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, SY AND SMITH, PC., 11622 El Camino Real, Suite 100, Del Mar, CA 92130

DATE:
(Fecha) **FEB 04 2016**

Clerk, by
(Secretario) **C. Hines**, 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

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 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Parker A. Smith (CSB# 290311)
SY AND SMITH, PC.
11622 El Camino Real, Suite 100
Del Mar, CA 92130
TELEPHONE NO.: (858) 746-9554 FAX NO.: (858) 746-5199
ATTORNEY FOR (Name): Plaintiff, King Pun Cheng

FOR COURT USE ONLY
FILED
CIVIL BUSINESS OFFICE
CENTRAL DIVISION
16 FEB -3 PM 4:42
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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. BRUNTON, INC., 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:
37-2016-00003730-CU-NP-C1
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> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <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) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <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) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> 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. <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: 2/3/2016
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 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	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>)	Breach of Rental/Lease Contract (<i>not unlawful detainer or wrongful eviction</i>)	Construction Defect (10)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>)	Claims Involving Mass Tort (40)
Asbestos (04)	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Asbestos Property Damage	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos Personal Injury/Wrongful Death	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41)
Product Liability (<i>not asbestos or toxic/environmental</i>) (24)	Collection Case—Seller Plaintiff	Enforcement of Judgment
Medical Malpractice (45)	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Medical Malpractice—Physicians & Surgeons	Insurance Coverage (<i>not provisionally complex</i>) (18)	Abstract of Judgment (Out of County)
Other Professional Health Care Malpractice	Auto Subrogation	Confession of Judgment (<i>non-domestic relations</i>)
Other PI/PD/WD (23)	Other Coverage	Sister State Judgment
Premises Liability (e.g., slip and fall)	Other Contract (37)	Administrative Agency Award (<i>not unpaid taxes</i>)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Intentional Infliction of Emotional Distress	Other Contract Dispute	Other Enforcement of Judgment Case
Negligent Infliction of Emotional Distress	Real Property	Miscellaneous Civil Complaint
Other PI/PD/WD	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Non-PI/PD/WD (Other) Tort	Wrongful Eviction (33)	Other Complaint (<i>not specified above</i>) (42)
Business Tort/Unfair Business Practice (07)	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08)	Writ of Possession of Real Property	Injunctive Relief Only (<i>non-harassment</i>)
Defamation (e.g., slander, libel) (13)	Mortgage Foreclosure	Mechanics Lien
Fraud (16)	Quiet Title	Other Commercial Complaint Case (<i>non-tort/non-complex</i>)
Intellectual Property (19)	Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>)	Other Civil Complaint (<i>non-tort/non-complex</i>)
Professional Negligence (25)	Unlawful Detainer	Miscellaneous Civil Petition
Legal Malpractice	Commercial (31)	Partnership and Corporate Governance (21)
Other Professional Malpractice (<i>not medical or legal</i>)	Residential (32)	Other Petition (<i>not specified above</i>) (43)
Other Non-PI/PD/WD Tort (35)	Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>)	Civil Harassment
Employment	Judicial Review	Workplace Violence
Wrongful Termination (36)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Other Employment (15)	Petition Re: Arbitration Award (11)	Election Contest
	Writ of Mandate (02)	Petition for Name Change
	Writ—Administrative Mandamus	Petition for Relief From Late Claim
	Writ—Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

1 Parker Smith, Esq., (CSB# 290311)
2 **SY AND SMITH, PC.**
3 11622 El Camino Real, Suite 100
4 Del Mar, CA 92130
5 Telephone: (858) 746-9554
6 Facsimile: (858) 746-5199

7 *Attorney for Plaintiff, Kingpun Cheng*

FILED
CIVIL BUSINESS OFFICE
CENTRAL DIVISION

16 FEB -3 PM 4:43

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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

9 **COUNTY OF SAN DIEGO.**

10 **UNLIMITED CIVIL JURISDICTION**

11 **KINGPUN CHENG,**

12)
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27)
28)

13 **Plaintiff,**

14 **and**

15 **BRUNTON, INC.**

16 **BRUNTON OUTDOOR, INC.**

17 **Defendant.**

CASE NO.: 37-2016-00003730-CU-NP-CTL

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

19 **NATURE OF THE ACTION**

20 1. This Complaint is a representative action brought by plaintiff Kingpun Cheng, in
21 the public interest of the citizens of the State of California, to enforce the people's right to be
22 informed of the presence of lead and lead compounds, a toxic chemicals found in Primus Classic
23 Trail Gas Stove UPC733033224306 and sold in the state of California.

24 2. By this Complaint, plaintiff seeks to remedy DEFENDANT'S continuing failures
25 to warn California citizens about their exposure to the toxic chemical in or on certain products
26 that DEFENDANT manufacture, distribute and/or offer for sale to consumers throughout the
27 State of California.

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

- 1 3. High levels of lead and/or lead compounds are commonly found in Primus Classic
2 Trail Gas Stove UPC733033224306 that DEFENDANT manufacture, distribute
3 and/or offer for sale to consumers throughout the State of California.
- 4 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
5 California Health & Safety Code § 25249.6 et seq. (Proposition 65), "No person in
6 the course of doing business shall knowingly and intentionally expose any
7 individual to a chemical known to the state to cause cancer or reproductive toxicity
8 without first giving clear and reasonable warning to such individual..." (*Cal.*
9 *Health & Safety Code § 25249.6.*)
- 10 5. California identified and listed lead and lead compounds as chemicals known to
11 cause birth defects and other reproductive harm.
- 12 6. Lead and lead compounds shall hereinafter be referred to as the "LISTED
13 CHEMICAL."
- 14 7. DEFENDANT manufacture, distribute and/or sell Primus Classic Trail Gas Stove
15 UPC733033224306 containing excessive levels of the LISTED CHEMICAL
16 including, but not limited to Primus Classic Trail Gas Stove UPC733033224306.
17 All such products containing the LISTED CHEMICAL shall hereinafter be
18 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
21 defendant's sale of the PRODUCTS is a violation of Proposition 65 and subjects
22 DEFENDANT to enjoinder of such conduct as well as civil penalties for each
23 such violation.
- 24 9. For DEFENDANT'S violations of Proposition 65, plaintiff seeks preliminary
25 injunctive and permanent injunctive relief to compel DEFENDANT to provide
26 purchasers or users of the PRODUCTS with the required warning regarding the
27 health hazards of the LISTED CHEMICAL. (*Cal. Health & Safety Code §*
28 *25249.7(a).*)

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

3 **PARTIES**

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

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

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

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

18 15. Defendant Brunton Outdoor, Inc. ("DEFENDANT") is a person doing Business
19 within the meaning of California Health & Safety Code § 25249.11.

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

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

26
27 **VENUE AND JURISDICTION**

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

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

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

18 **FIRST CAUSE OF ACTION**

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

20 21. Plaintiff alleges and incorporates by reference, as if full reference, as if full set
21 forth herein, Paragraphs 1 through 17, inclusive.

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

27 23. Proposition 65 states, "No person in the course of doing business shall knowingly
28 and intentionally expose any individual to a chemical known to the state to cause

1 cancer or productive toxicity without first giving clear and reasonable warning to
2 such individual (*Id.*)”

- 3 . 24. On August 13, 2015, sixty-day notice violation, together with the requisite
4 certificate of merit, was provided to DEFENDANT, other potential violators and
5 various public enforcement agencies, including the California Attorney General’s
6 Office, stating that as a result of the DEFENDANT’S sale of the PRODUCTS,
7 purchasers and users in the State of California were being exposed to the LISTED
8 CHEMICAL resulting from the reasonably foreseeable users of the PRODUCTS,
9 without the individual purchasers and users first having been provided with a
10 “clear and reasonable warning” regarding such toxic exposures.
- 11 25. On November 17, 2015, supplemental sixty-day notice of violation, together with
12 requisite certificate of merit was provided to DEFENDANT, other potential
13 violators and various public enforcement agencies, including the California
14 Attorney General’s Office.
- 15 26. DEFENDANT has engaged in the manufacture, distribution and/or offering of the
16 PRODUCTS for sale or use in violation of California Health & Safety Code §
17 25249.6 and DEFENDANT’S manufacture, distribution and/or offering of the
18 PRODUCTS for sale or use in violation of California Health & Safety Code §
19 25249.6 has continued to occur beyond DEFENDANT’S receipt of plaintiff’s
20 sixty-day notice of violation. Plaintiff further alleges and believes that such
21 violations will continue to occur into the future.
- 22 27. After receipt of the claims asserted in the sixty-day notices of violation, the
23 appropriate public enforcement agencies have failed to commence and diligently
24 prosecute a cause of action against DEFENDANT under Proposition 65.
- 25 28. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
26 California by DEFENDANT contained the LISTED CHEMICAL above the
27 allowable state limits.
28

- 1 29. DEFENDANT knew or should have known that the PRODUCTS manufactured,
2 distributed, and/or for sale or use by DEFENDANT in California contained the
3 LISTED CHEMICAL.
- 4 30. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
5 to expose individuals to the LISTED CHEMICAL through dermal contact and/or
6 ingestion during the reasonably foreseeable use of the PRODUCTS.
- 7 31. The normal and reasonably foreseeable use of the PRODUCTS have caused and
8 continue to cause consumer exposure to the LISTED CHEMICAL, as such
9 exposure is defined by 27 CCR§ 25602(b).
- 10 32. DEFENDANT had knowledge that the normal and reasonably foreseeable use of
11 the PRODUCTS would expose individuals to the LISTED CHEMICAL through
12 dermal contact and/or ingestion.
- 13 33. DEFENDANT intended that such exposures to the LISTED CHEMICAL from the
14 reasonably foreseeable use of the PRODUCTS would occur by their deliberate,
15 non-accidental participation in the manufacture, distribution and/or offer for sale or
16 use of PRODUCTS to individuals in the State of California.
- 17 34. DEFENDANT failed to provide a "clear and reasonable warning" to those
18 consumers and/or other individuals in the State of California who were or who
19 could become exposed to the LISTED CHEMICAL through dermal contact and/or
20 ingestion during the reasonably foreseeable use of the PRODUCTS.
- 21 35. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
22 directly by California voters, individuals exposed to the LISTED CHEMICAL
23 through dermal contact and/or ingestion resulting from the reasonably foreseeable
24 use of the PRODUCTS, sold by DEFENDENT without a "clear and reasonable
25 warning," have suffered, and continue to suffer, irreparable harm, for which harm
26 they have no plain, speedy or adequate remedy at law.
27
28

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

4 37. As a consequence of the above-described acts, California Health & Safety Code §
5 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
6 DEFENDANT.

7 38. Wherefore, plaintiff prays for judgment against DEFENDANT as set forth
8 hereinafter.

9 **PRAYER FOR RELIEF**

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

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

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

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

20 42. That the Court grant such other and further relief as may be just and proper.

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23 Dated: February 3, 2016

Respectfully Submitted,

SY AND SMITH, PC

By: 

Parker Smith

Attorney for Plaintiff