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7 Attorneys for Plaintiff, Kingpun Cheng

**FILED**  
Clerk of the

APR 12 2017

By: V. Bahena, Deputy

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

9 **COUNTY OF SAN DIEGO**

10 **UNLIMITED CIVIL JURISDICTION**

11 KINGPUN CHENG,

12 Plaintiff,

13 vs.

14 EUROPEAN HOME DESIGNS, LLC; TJX  
15 COMPANIES INC.; AND DOES 1-25

16 Defendants.

CASE NO.:

37-2017-00013125-CU-NP-CTL

COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF

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

17 **NATURE OF THE ACTION**

18  
19  
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 DI[2-Ethylhexyl]Phthalate (DEHP) found in Bow Wow Pet Spiked  
23 Rubber Bone Dog Toy.

24 2. By this Complaint, plaintiff seeks to remedy Defendants' failure to warn California  
25 citizens about the risks of exposure to DI[2-Ethylhexyl]Phthalate present in Bow Wow Pet  
26 Spiked Rubber Bone Dog Toy and components manufactured, distributed and/or offered for sale  
27 to consumers throughout the State of California.



1 through its counsel of record, Parker A. Smith, Attorney at Law. Plaintiff brings this action in the  
2 public interest pursuant to California Health & Safety Code § 25249.7.

3 12. European Home Designs, LLC, (“DEFENDANT”) is a person doing business  
4 within the meaning of California Health & Safety Code § 25249.11.

5 13. Defendant European Home Designs, LLC, manufacture, distributes, and/or offers  
6 the PRODUCTS for sale or use in the State of California or implies by their conduct that it  
7 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

8 14. The TJX Companies, Inc. (“DEFENDANT”) is a person doing business within the  
9 meaning of California Health & Safety Code § 25249.11.

10 15. Defendant The TJX Companies, Inc., manufacture, distributes, and/or offers the  
11 PRODUCTS for sale or use in the State of California or implies by their conduct that it  
12 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

13 16. The parties in paragraphs 12 and 15 of this Complaint shall be collectively referred  
14 to as “Defendants”.

15 17. The identities of DOES 1-25 are unknown to Plaintiff at this time. Plaintiff suspects  
16 that they are business entities with at least ten or more employees that have sold, authorized the  
17 distribution, or sale of the said products under the name “Bow Wow Pet” and other brand names,  
18 that contain and/or produce THE LISTED CHEMICAL, for sale within the State of California,  
19 without giving clear and reasonable warning.

### 20 VENUE AND JURISDICTION

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

26 19. The California Superior Court has jurisdiction over this action pursuant to  
27 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in  
28 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.



1 notices of violation. Plaintiff further alleges and believes that such violations will continue to  
2 occur into the future.

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

6 27. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
7 California by Defendants contained the LISTED CHEMICALS above the allowable state limits.

8 28. Defendants knew or should have known that the PRODUCTS manufactured,  
9 distributed, and/or for sale or use by Defendants in California contained the LISTED  
10 CHEMICALS.

11 29. The LISTED CHEMICALS were present in or on the PRODUCTS in such a way  
12 as to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion  
13 during the reasonably foreseeable use of the PRODUCTS.

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

17 31. Defendants had knowledge that the normal and reasonably foreseeable use of the  
18 PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal contact  
19 and/or ingestion.

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

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

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

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

4 35. As a consequence of the above-described acts, each Defendants 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 36. 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 Defendants.

9 37. Wherefore, plaintiff prays for judgment against Defendants as set forth hereinafter.

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against Defendants as follows:

- 12 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
13 civil penalties against Defendants, in the amount of \$2,500 per day for each violation alleged  
14 herein;
- 15 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
16 preliminarily and permanently enjoin Defendants from manufacturing, distributing or offering the  
17 PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as  
18 detailed by 27 CCR § 25601, as to the harms associated with exposures to the LISTED  
19 CHEMICALS;
- 20 3. That the Court grant plaintiff his reasonable attorneys' fees and cost of suit; and  
21 that the Court grant such other and further relief as may be just and proper.

22  
23 Dated: \_\_\_\_\_

Respectfully Submitted,

24 By:   
25 \_\_\_\_\_  
26 Parker A. Smith  
27 Attorney for Plaintiff  
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Parker A. Smith, Attorney at Law (#290311)
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
CIVIL BUSINESS OFFICE
CENTRAL DIVISION
2017 APR 12 P 3:13
CLERK SUPERIOR COURT
SAN DIEGO COUNTY

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:
King Pun Cheng v. European Home Designs, LLC., 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:
37-2017-00013125-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
Contract
Provisionally Complex Civil Litigation
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
Real Property
Unlawful Detainer
Non-PI/PD/WD (Other) Tort
Judicial Review
Employment
Miscellaneous Civil Complaint
Miscellaneous Civil Petition

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

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

**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

- |   |  |  |
|---|--|--|
| <p><b>Auto Tort</b></p> <ul style="list-style-type: none"> <li>Auto (22)—Personal Injury/Property Damage/Wrongful Death</li> <li>Uninsured Motorist (46) (<i>if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto</i>)</li> </ul> <p><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <ul style="list-style-type: none"> <li>Asbestos (04)                             <ul style="list-style-type: none"> <li>Asbestos Property Damage</li> <li>Asbestos Personal Injury/Wrongful Death</li> </ul> </li> <li>Product Liability (<i>not asbestos or toxic/environmental</i>) (24)</li> <li>Medical Malpractice (45)                             <ul style="list-style-type: none"> <li>Medical Malpractice—Physicians &amp; Surgeons</li> <li>Other Professional Health Care Malpractice</li> </ul> </li> <li>Other PI/PD/WD (23)                             <ul style="list-style-type: none"> <li>Premises Liability (e.g., slip and fall)</li> <li>Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)</li> <li>Intentional Infliction of Emotional Distress</li> <li>Negligent Infliction of Emotional Distress</li> <li>Other PI/PD/WD</li> </ul> </li> </ul> <p><b>Non-PI/PD/WD (Other) Tort</b></p> <ul style="list-style-type: none"> <li>Business Tort/Unfair Business Practice (07)</li> <li>Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08)</li> <li>Defamation (e.g., slander, libel) (13)</li> <li>Fraud (16)</li> <li>Intellectual Property (19)</li> <li>Professional Negligence (25)                             <ul style="list-style-type: none"> <li>Legal Malpractice</li> <li>Other Professional Malpractice (<i>not medical or legal</i>)</li> </ul> </li> <li>Other Non-PI/PD/WD Tort (35)</li> </ul> <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Wrongful Termination (36)</li> <li>Other Employment (15)</li> </ul> | <p><b>Contract</b></p> <ul style="list-style-type: none"> <li>Breach of Contract/Warranty (06)                             <ul style="list-style-type: none"> <li>Breach of Rental/Lease</li> <li>Contract (<i>not unlawful detainer or wrongful eviction</i>)</li> </ul> </li> <li>Contract/Warranty Breach—Seller Plaintiff (<i>not fraud or negligence</i>)</li> <li>Negligent Breach of Contract/Warranty</li> <li>Other Breach of Contract/Warranty</li> <li>Collections (e.g., money owed, open book accounts) (09)                             <ul style="list-style-type: none"> <li>Collection Case—Seller Plaintiff</li> <li>Other Promissory Note/Collections Case</li> </ul> </li> <li>Insurance Coverage (<i>not provisionally complex</i>) (18)                             <ul style="list-style-type: none"> <li>Auto Subrogation</li> <li>Other Coverage</li> </ul> </li> <li>Other Contract (37)                             <ul style="list-style-type: none"> <li>Contractual Fraud</li> <li>Other Contract Dispute</li> </ul> </li> </ul> <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li>Eminent Domain/Inverse Condemnation (14)</li> <li>Wrongful Eviction (33)</li> <li>Other Real Property (e.g., quiet title) (26)                             <ul style="list-style-type: none"> <li>Writ of Possession of Real Property</li> <li>Mortgage Foreclosure</li> <li>Quiet Title</li> <li>Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>)</li> </ul> </li> </ul> <p><b>Unlawful Detainer</b></p> <ul style="list-style-type: none"> <li>Commercial (31)</li> <li>Residential (32)</li> <li>Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>)</li> </ul> <p><b>Judicial Review</b></p> <ul style="list-style-type: none"> <li>Asset Forfeiture (05)</li> <li>Petition Re: Arbitration Award (11)</li> <li>Writ of Mandate (02)                             <ul style="list-style-type: none"> <li>Writ—Administrative Mandamus</li> <li>Writ—Mandamus on Limited Court Case Matter</li> </ul> </li> <li>Writ—Other Limited Court Case Review</li> <li>Other Judicial Review (39)                             <ul style="list-style-type: none"> <li>Review of Health Officer Order</li> <li>Notice of Appeal—Labor Commissioner Appeals</li> </ul> </li> </ul> | <p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</b></p> <ul style="list-style-type: none"> <li>Antitrust/Trade Regulation (03)</li> <li>Construction Defect (10)</li> <li>Claims Involving Mass Tort (40)</li> <li>Securities Litigation (28)</li> <li>Environmental/Toxic Tort (30)</li> <li>Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41)</li> </ul> <p><b>Enforcement of Judgment</b></p> <ul style="list-style-type: none"> <li>Enforcement of Judgment (20)                             <ul style="list-style-type: none"> <li>Abstract of Judgment (Out of County)</li> <li>Confession of Judgment (<i>non-domestic relations</i>)</li> <li>Sister State Judgment</li> <li>Administrative Agency Award (<i>not unpaid taxes</i>)</li> <li>Petition/Certification of Entry of Judgment on Unpaid Taxes</li> <li>Other Enforcement of Judgment Case</li> </ul> </li> </ul> <p><b>Miscellaneous Civil Complaint</b></p> <ul style="list-style-type: none"> <li>RICO (27)</li> <li>Other Complaint (<i>not specified above</i>) (42)                             <ul style="list-style-type: none"> <li>Declaratory Relief Only</li> <li>Injunctive Relief Only (<i>non-harassment</i>)</li> </ul> </li> <li>Mechanics Lien</li> <li>Other Commercial Complaint Case (<i>non-tort/non-complex</i>)</li> <li>Other Civil Complaint (<i>non-tort/non-complex</i>)</li> </ul> <p><b>Miscellaneous Civil Petition</b></p> <ul style="list-style-type: none"> <li>Partnership and Corporate Governance (21)</li> <li>Other Petition (<i>not specified above</i>) (43)                             <ul style="list-style-type: none"> <li>Civil Harassment</li> <li>Workplace Violence</li> <li>Elder/Dependent Adult Abuse</li> <li>Election Contest</li> <li>Petition for Name Change</li> <li>Petition for Relief From Late Claim</li> </ul> </li> <li>Other Civil Petition</li> </ul> |
|---|--|--|



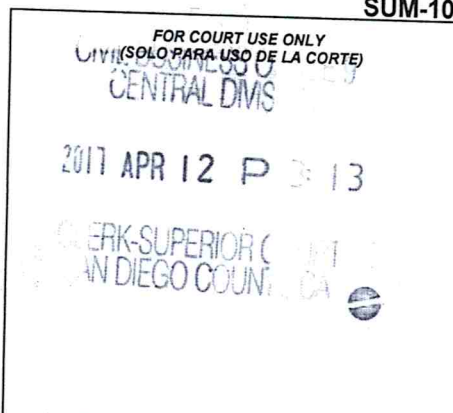
**SUMMONS  
(CITACION JUDICIAL)**

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

European Home Designs, LLC., TJX Companies, Inc. and Does 1 - 25  
Inclusive

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

KINGPUN CHENG



**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

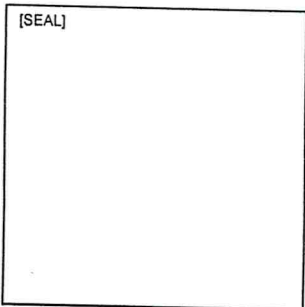
CASE NUMBER:  
(Número del Caso):  
**37-2017-00013125-CU-NP-CTL**

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: **APR 13 2017**  
(Fecha)

Clerk, by V. BAHENA, 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)).



**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):