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

9 **COUNTY OF SAN DIEGO**

10 **UNLIMITED CIVIL JURISDICTION**

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12
13 **KING PUN CHENG,**) **CASE NO.:**
14)
15 **Plaintiff,**) **COMPLAINT FOR CIVIL PENALTIES**
16 **and**) **AND INJUNCTIVE RELIEF**
17) *(Cal. Health & Safety Code § 25249.6 et seq.)*
18 **SKF USA, INC. AND**)
19 **DOES 1 -25 INCLUSIVE,**)
20 **Defendant.**)

21 **NATURE OF THE ACTION**

22 1. This Complaint is a representative action brought by plaintiff King Pun Cheng, in
23 the public interest of the citizens of the State of California, to enforce the people's right to be
24 informed of the presence of lead and lead compounds found in Lincoln Model #5818 Whip
25 Hose Extension.

26 2. By this Complaint, plaintiff seeks to remedy Defendant's failure to warn California
27 citizens about the risks of exposure to lead present in Lincoln Model #5818 Whip Hose
28

1 Extension and components manufactured, distributed and/or offered for sale to consumers
2 throughout the State of California.

3 3. Detectable levels of lead and/or lead compounds are found in Lincoln Model
4 #5818 Whip Hose and components that Defendant manufactures, distributes and/or offers for
5 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 § 25249.5 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. Under Proposition 65, California identified and listed lead and lead compounds as
12 chemicals known to cause birth defects and other reproductive harm.

13 6. Lead and lead compounds shall hereinafter be referred to as the “LISTED
14 CHEMICALS.”

15 7. Defendant manufactures, distributes and/or sells without a health hazard warning
16 in California Whip Hose Extension including Lincoln Model #5818 Whip Hose Extension
17 UPC084041015612 containing the LISTED CHEMICALS shall hereinafter be referred to as the
18 “PRODUCTS.”

19 8. Defendant’s failure to warn consumers and/or other individuals in the State of
20 California about their exposure to the LISTED CHEMICALS in conjunction with Defendant’s
21 sale of the PRODUCTS is a violation of Proposition 65 and subjects Defendant to enjoinder of
22 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 users of
25 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 its violations of
28 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

1 **PARTIES**

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

7 12. SKF USA, Inc. is a person doing business within the meaning of California
8 Health & Safety Code § 25249.11.

9 13. The parties in paragraphs 12 of this Complaint shall be collectively referred
10 to as “Defendant”.

11 14. SKF USA, Inc. manufactures, distributes, and/or offers the PRODUCTS for sale
12 or use in the State of California or implies by its conduct that it manufactures, distributes and/or
13 offers the PRODUCTS for sale or use in the State of California.

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

19 **VENUE AND JURISDICTION**

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

25 17. The California Superior Court has jurisdiction over this action pursuant to
26 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in
27 all causes except those given by statute to other trial courts.” The statute under which this action
28 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 24. 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 Defendant under Proposition 65.

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

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

11 27. 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 28. 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 29. Defendant 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 30. Defendant 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 31. Defendant 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.

