

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Parker A. Smith, Attorney at Law (#290311)</b> 11622 El Camino Real, Suite 100 Del Mar, CA 92130  TELEPHONE NO.: (858) 746-9554      FAX NO.: (858) 746-5199 ATTORNEY FOR (Name): <b>Plaintiff, King Pun Cheng</b>	<b>FOR COURT USE ONLY</b>  FILED CIVIL BUSINESS OFFICE 18 CENTRAL DIVISION  2016 SEP 19 P 3:58  CLERK-SUPERIOR COURT SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>San Diego</b> STREET ADDRESS: <b>330 West Broadway</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>San Diego, CA 92101</b> BRANCH NAME: <b>Hall of Justice</b>	
CASE NAME: <b>King Pun Cheng v. Hangzhou Great Star Industrial Co., Ltd., et al.</b>	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: <b>37-2016-00032613-CU-NP-CTL</b>  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:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <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) <b>Non-PI/PD/WD (Other) Tort</b> <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) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <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) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <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)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <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) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <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: **9/15/2016**  
 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 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

**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

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

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

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—  
Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

**SUMMONS  
(CITACION JUDICIAL)**

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

Hangzhou Great Star Industrial Co., Ltd. and Does 1 - 25 Inclusive

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

KING PUN CHENG

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

CIVIL BUSINESS OFFICE 18  
CENTRAL DIVISION

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CLERK OF 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](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):  
**37-2016-00032613-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)

**SEP 20 2016**

Clerk, by  
(Secretario)

**B. Schmelzel**

, 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: <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):	
4.  by personal delivery on (date):

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CLERK SUPERIOR COURT  
SAN DIEGO COUNTY, CA

1 Parker Smith, Esq., (CSB# 290311)  
2 **Sy and Smith, PC**  
3 11622 El Camino Real, Suite 100  
4 Del Mar, CA 92130  
Telephone: 858-746-9554

5 *Attorney for Plaintiff, King Pun Cheng*

6  
7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9  
10 **COUNTY OF SAN DIEGO**  
11 **UNLIMITED CIVIL JURISDICTION**

12  
13 **KING PUN CHENG,** ) **CASE NO.: 37-2016-00032613-CU-NP-CTL**  
14 )  
15 **Plaintiff,** ) **COMPLAINT FOR CIVIL PENALTIES**  
16 ) **AND INJUNCTIVE RELIEF**  
17 **and** ) *(Cal. Health & Safety Code § 25249.6 et seq.)*  
18 )  
19 **HANGZHO GREAT STAR** )  
20 **INDUSTRIAL, INC.; LOWE'S** )  
21 **COMPANIES, INC. AND** )  
22 **DOES 1 -25 INCLUSIVE,** )  
23 **Defendant.** )

24 **NATURE OF THE ACTION**

25 1. This Complaint is a representative action brought by plaintiff King Pun Cheng, in  
26 the public interest of the citizens of the State of California, to enforce the people's right to be  
27 informed of the presence of lead and lead compounds found in Adjustable Block Plane tools.

28 2. By this Complaint, plaintiff seeks to remedy Defendant's failure to warn California  
citizens about the risks of exposure to lead present in Adjustable Block Plane and components

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

3 3. Detectable levels of lead and/or lead compounds are found in Adjustable Block  
4 Plane and components that Defendant manufactures, distributes and/or offers for sale to  
5 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 Adjustable Block Plane, including Kobalt Adjustable Block Plane, #0118007,  
17 UPC820909630470, 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).

**PARTIES**

1  
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. HANGZHOU GREAT STAR INDUSTRIAL CO., LTD. is a person doing  
8 business within the meaning of California 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. Hangzhou Great Star Industrial Co., Ltd. manufactures, distributes, and/or offers  
12 the PRODUCTS for sale or use in the State of California or implies by its conduct that it  
13 manufactures, distributes and/or 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 "Kobalt" 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.

**VENUE AND JURISDICTION**

19  
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 18. The California Superior Court has jurisdiction over Defendant based on plaintiff's  
2 information and good faith belief that Defendant is a person, firm, corporation or association that  
3 either are citizens of the State of California, has sufficient minimum contacts in the State of  
4 California, or otherwise purposefully avail itself of the California market. Defendant's  
5 purposeful availment renders the exercise of personal jurisdiction by California courts consistent  
6 with traditional notions of fair play and substantial justice.

7 **FIRST CAUSE OF ACTION**

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

9 19. Plaintiff alleges and incorporates by reference, as if full reference, as if full set  
10 forth herein, Paragraphs 1 through 19, inclusive.

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

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

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

25 23. Defendant manufactures, distributes and/or offers the PRODUCTS for sale or use  
26 in violation of California Health & Safety Code § 25249.6 and Defendant's manufacture,  
27 distribution and/or offering of the PRODUCTS for sale or use in violation of California Health &  
28 Safety Code § 25249.6 has continued to occur beyond Defendant's receipt of plaintiff's sixty-day

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.

1 32. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
2 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal  
3 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
4 by Defendant without a "clear and reasonable warning," have suffered, and continue to suffer,  
5 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

9 34. As a consequence of the above-described acts, California Health & Safety Code §  
10 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendant.

11 35. Wherefore, plaintiff prays for judgment against Defendant as set forth hereinafter.

12 **PRAYER FOR RELIEF**

13 Wherefore, plaintiff prays for judgment against Defendant as follows:

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

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

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

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

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27 Respectfully Submitted,

Sy and Smith, PC

28 Dated: 9/15/16

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By:   
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Parker A. Smith  
Attorney for Plaintiff