

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State number, and address):
Parker A. Smith, Attorney at Law (#291)
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ATTORNEY FOR (Name): Plaintiff, King Pun Cheng

FOR COURT USE ONLY

FILED
CIVIL JUSTICE OFFICE
SAN DIEGO

2016 DEC 15 A 9:38

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. CERRO WIRE, 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:
37-2016-00044231-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
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46) | Contract
<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) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) |
| Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<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) | Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) | Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20) |
| Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) | Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) | Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42) |
| Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Miscellaneous Civil Petition
<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: 12/15/2016
Parker A. Smith, Esq.

(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

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

FILED
CIVIL BUSINESS OFFICE 9
COURT CLERK

2016 DEC 15 A 9:39

CLERK OF SUPERIOR COURT
SAN DIEGO, CALIFORNIA

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
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7
8 *Attorney for Plaintiff, King Pun Cheng*

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

13 **KING PUN CHENG,**)
14)
15 **Plaintiff,**)
16 **and**)
17 **CERRO WIRE, LLC**)
18)
19 **Defendant.**)
20)

CASE NO.:
37-2016-00044231-CU-NP-CTL
COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF
(Cal. Health & Safety Code § 25249.6 et seq.)

21
22 **NATURE OF THE ACTION**

23 1. This Complaint is a representative action brought by plaintiff King Pun Cheng, in
24 the public interest of the citizens of the State of California, to enforce the people's right to be
25 informed of the presence of Diisononyl phthalate (hereinafter referred to as "DINP") found in
26 Cerro Wire Low Voltage Cable.

27 2. By this Complaint, plaintiff seeks to remedy Defendant's failure to warn California
28 citizens about the risks of exposure to DINP present in Cerro Wire Low Voltage Cable

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

3 3. Detectable levels of DINP are found in Cerro Wire Low Voltage Cable and
4 components that Defendant manufactures, distributes and/or offers for sale to consumers
5 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 DINP as chemicals known to
12 cause cancer.

13 6. DINP shall hereinafter be referred to as the "LISTED CHEMICALS."

14 7. Defendant manufactures, distributes and/or sells without a health hazard warning
15 in California, Cerro Wire Low Voltage Cable including, UPC 048243319480, containing the
16 LISTED CHEMICALS shall hereinafter be referred to as the "PRODUCTS."

17 8. Defendant's failure to warn consumers and/or other individuals in the State of
18 California about their exposure to the LISTED CHEMICALS in conjunction with Defendant's
19 distribution or sale of the PRODUCTS is a violation of Proposition 65 and subjects Defendant to
20 enjoinder of such conduct as well as civil penalties for each such violation.

21 9. For Defendant's violations of Proposition 65, plaintiff seeks preliminary
22 injunctive and permanent injunctive relief to compel Defendant to provide purchasers or users of
23 the PRODUCTS with the required warning regarding the health hazards of the LISTED
24 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

25 10. Plaintiff also seeks civil penalties against Defendant for its violations of
26 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

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PARTIES

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

12. Cerro Wire, LLC is a person doing business within the meaning of California Health & Safety Code § 25249.11.

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

14. Cerro Wire, LLC manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

15. The identities of DOES 1-25 are unknown to Plaintiff at this time. Plaintiff suspects that they are business entities with at least ten or more employees that have sold, authorized the distribution, or sale of the said PRODUCTS under the name “Cerro Wire Low Voltage Cable” and other brand names, that contain and/or produce DINP, for sale within the State of California, without giving clear and reasonable warning.

VENUE AND JURISDICTION

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

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

1 all causes except those given by statute to other trial courts.” The statute under which this action
2 is brought does not specify any other basis of subject matter jurisdiction.

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

9
10 **FIRST CAUSE OF ACTION**

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

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

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

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

21 22. On, September 26, 2016, a sixty-day notice of violation, together with the requisite
22 certificates of merit, was provided to Defendant, other potential violators and various public
23 enforcement agencies, including the California Attorney General’s Office, stating that as a result
24 of the Defendant’s sale of the PRODUCTS, purchasers and users in the State of California were
25 being exposed to the LISTED CHEMICALS resulting from the reasonably foreseeable users of
26 the PRODUCTS, without the individual purchasers and users first having been provided with a
27 “clear and reasonable warning” regarding such toxic exposures.

1 23. Defendant manufactures, distributes and/or offers the PRODUCTS for sale or use
2 in violation of California Health & Safety Code § 25249.6 and Defendant's manufacture,
3 distribution and/or offering of the PRODUCTS for sale or use in violation of California Health &
4 Safety Code § 25249.6 has continued to occur beyond Defendant's receipt of plaintiff's sixty-day
5 notices of violation. Plaintiff further alleges and believes that such violations will continue to
6 occur into the future.

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

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

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

15 27. The LISTED CHEMICALS were present in or on the PRODUCTS in such a way
16 as to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion
17 during the reasonably foreseeable use of the PRODUCTS.

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

21 29. Defendant had knowledge that the normal and reasonably foreseeable use of the
22 PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal contact
23 and/or ingestion.

24 30. Defendant intended that such exposures to the LISTED CHEMICAL from the
25 reasonably foreseeable use of the PRODUCTS would occur by its deliberate, non-accidental
26 participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to
27 individuals in the State of California.

1 31. Defendant failed to provide a "clear and reasonable warning" to those consumers
2 and/or other individuals in the State of California who were or who could become exposed to the
3 LISTED CHEMICALS through dermal contact and/or ingestion during the reasonably
4 foreseeable use of the PRODUCTS.

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

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

13 34. As a consequence of the above-described acts, California Health & Safety Code §
14 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendant.

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

16
17 **PRAYER FOR RELIEF**

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

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

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

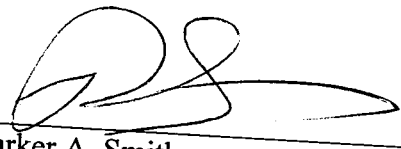
27 3. That the Court grant plaintiff his reasonable attorneys' fees and cost of suit; and

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

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Dated: 12/15/16

Respectfully Submitted,

By: 
Parker A. Smith
Attorney for Plaintiff