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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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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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13 KINGPUN CHENG,

14 Plaintiff,

15 vs.

16 TRUPER S.A DE C.V.,

17 Defendant.

CASE NO. **37-2017-00049607-CU-PO-CTL**

**COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF**

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

18  
19 **NATURE OF THE ACTION**

20 1. Plaintiff Kingpun Cheng ("Plaintiff") brings this representative action, in the  
21 public interest of the citizens of the State of California ("citizens"), to enforce the citizen's right  
22 to be informed of the presence of Diisononyl Phthalate ("DINP") found in Defendant Truper S.A  
de C.V.'s ("Defendant") Ace Round Point Shovel, Heavy Duty Fiberglass Handle #7011273.

23 2. Plaintiff seeks to remedy Defendant's failure to warn citizens about the risks of  
24 exposure to DINP present in Defendant's round point shovel manufactured, distributed and/or  
25 offered for sale to consumers throughout the State of California.

26 3. Defendant manufactures, distributes or offers for sale to consumers throughout the  
27 State of California round point shovel containing detectable levels of DINP.



1 VENUE AND JURISDICTION

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

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

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

17 FIRST CAUSE OF ACTION

18 (Violation of Proposition 65 – Against Defendant)

19 15. Plaintiff alleges and incorporates by reference, as if full reference, as if full set forth  
20 herein, Paragraphs 1 through 14, inclusive.

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

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

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1           18. On September 21, 2017, a sixty-day notice of violation, together with the requisite  
2 certificates of merit, was provided to Defendant, other potential violators and various public  
3 enforcement agencies, including the California Attorney General's Office, stating that as a result  
4 of the Defendant's sale of round point shovel, purchasers and users in the State of California were  
5 being exposed to the DINP resulting from the reasonably foreseeable users of the round point  
6 shovel, without the individual purchasers and users first having been provided with a "clear and  
7 reasonable warning" regarding such toxic exposures.

8           19. Defendant manufactures, distributes and/or offers round point shovel for sale or use  
9 in violation of California Health & Safety Code § 25249.6 and Defendant's manufacture,  
10 distribution and/or offering of the round point shovel for sale or use in violation of California  
11 Health & Safety Code § 25249.6 has continued to occur beyond Defendant's receipt of plaintiff's  
12 sixty-day Notice of Violation. Plaintiff further alleges and believes that such violations will  
13 continue to occur into the future.

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

17           21. The round point shovel manufactured, distributed, and/or offered for sale or use in  
18 California by Defendant contained DINP above the allowable state limits.

19           22. Defendant knew or should have known that the round point shovel manufactured,  
20 distributed, and/or for sale or use by Defendant in California contained DINP.

21           23. DINP was present in or on the round point shovel in such a way as to expose  
22 individuals to DINP through dermal contact and/or ingestion during the reasonably foreseeable  
23 use of the round point shovel.

24           24. The normal and reasonably foreseeable use of the round point shovel have caused  
25 and continue to cause consumer exposure to DINP, as such exposure is defined by 27 CCR§  
26 25602(b).

27           25. Defendant had knowledge that the normal and reasonably foreseeable use of the  
28 round point shovel would expose individuals to DINP through dermal contact and/or ingestion.

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3. That the Court grant Plaintiff reasonable attorneys' fees and cost of suit; and the Court grant such other and further relief as may be just and proper.

Dated: 11/21/17

Respectfully Submitted,

By: 

Parker A. Smith  
Attorney for Plaintiff

**SUMMONS  
(CITACION JUDICIAL)**

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

TRUPER S.A. DE C.V.

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

KINGPUN CHENG

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

FILED  
CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

2017 DEC 21 P 2:18

**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):  
**37-2017-00049607-CU-PO-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 and Stephanie Sy, SY & SMITH, P.C., 11622 El Camino Real, S100, San Diego, CA 92130

DATE:  
(Fecha) **DEC 26 2017**

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) **C. MCMAHON** (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:  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 (290311) and Stephanie Sy (247071) 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, Kingpun Cheng	FOR COURT USE ONLY  FILED 2017 DEC 21 P 2:18 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. Truper S.A DE C.V.	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: <b>37-2017-00049607-CU-PO-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/DPD/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/DPD/WD (23) <b>Non-PI/DPD/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/DPD/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: November 21, 2017  
 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

<b>Auto Tort</b>	<b>Contract</b>	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)</b>
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)
	Contract/Warranty Breach—Seller Plaintiff ( <i>not fraud or negligence</i> )	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims ( <i>arising from provisionally complex case type listed above</i> ) (41)
Asbestos (04)	Collection Case—Seller Plaintiff	<b>Enforcement of Judgment</b>
Asbestos Property Damage	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Asbestos Personal Injury/Wrongful Death	Insurance Coverage ( <i>not provisionally complex</i> ) (18)	Abstract of Judgment (Out of County)
Product Liability ( <i>not asbestos or toxic/environmental</i> ) (24)	Auto Subrogation	Confession of Judgment ( <i>non-domestic relations</i> )
Medical Malpractice (45)	Other Coverage	Sister State Judgment
Medical Malpractice—Physicians & Surgeons	Other Contract (37)	Administrative Agency Award ( <i>not unpaid taxes</i> )
Other Professional Health Care Malpractice	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Other PI/PD/WD (23)	Other Contract Dispute	Other Enforcement of Judgment Case
Premises Liability (e.g., slip and fall)	<b>Real Property</b>	<b>Miscellaneous Civil Complaint</b>
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	Other Complaint ( <i>not specified above</i> ) (42)
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Other PI/PD/WD	Writ of Possession of Real Property	Injunctive Relief Only ( <i>non-harassment</i> )
<b>Non-PI/PD/WD (Other) Tort</b>	Mortgage Foreclosure	Mechanics Lien
Business Tort/Unfair Business Practice (07)	Quiet Title	Other Commercial Complaint Case ( <i>non-tort/non-complex</i> )
Civil Rights (e.g., discrimination, false arrest) ( <i>not civil harassment</i> ) (08)	Other Real Property ( <i>not eminent domain, landlord/tenant, or foreclosure</i> )	Other Civil Complaint ( <i>non-tort/non-complex</i> )
Defamation (e.g., slander, libel) (13)	<b>Unlawful Detainer</b>	<b>Miscellaneous Civil Petition</b>
Fraud (16)	Commercial (31)	Partnership and Corporate Governance (21)
Intellectual Property (19)	Residential (32)	Other Petition ( <i>not specified above</i> ) (43)
Professional Negligence (25)	Drugs (38) ( <i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i> )	Civil Harassment
Legal Malpractice	<b>Judicial Review</b>	Workplace Violence
Other Professional Malpractice ( <i>not medical or legal</i> )	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Other Non-PI/PD/WD Tort (35)	Petition Re: Arbitration Award (11)	Election Contest
<b>Employment</b>	Writ of Mandate (02)	Petition for Name Change
Wrongful Termination (36)	Writ—Administrative Mandamus	Petition for Relief From Late Claim
Other Employment (15)	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	