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

9 **COUNTY OF SAN DIEGO**

10 **UNLIMITED CIVIL JURISDICTION**

11
12 KINGPUN CHENG,

13 Plaintiff,

14 vs.

15 LINCOLN TEXTILE PRODUCTS CO., INC., and
16 DOES 1-25,

17 Defendants.

CASE NO.: 37-2019-00044792-CU-NP-CTL

**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

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

18 **NATURE OF THE ACTION**

19
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 DI[2-Ethylhexyl]Phthalate ("DEHP") found in plastic bags
23 enclosing consumer products distributed by Lincoln Textile Products Co., Inc. ("Defendant"),
24 including but not limited to Willow One Pinch Pleat Black Tab Panel UPC751612036542 and
Door Panel Crushed Voile UPC751612042628 ("Products").

25 2. Plaintiff seeks to remedy Defendants' failure to warn citizens about the risks of
26 exposure to DEHP present in Defendants' Products manufactured, distributed and/or offered for
27 sale to consumers throughout the State of California.

3. Defendant manufactures, distributes or offers for sale to consumers throughout the State of California Product containing detectable levels of DEHP.

4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 et seq. (“Proposition 65”), “No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...” (*Cal. Health & Safety Code § 25249.6.*)

5. Under Proposition 65, California identified and listed DEHP as chemicals known to cause cancer or reproductive harm.

6. Defendants manufacture, distribute or sell Products containing DEHP without a health hazard warning in California.

7. Defendants' failure to warn consumers and/or other individuals in the State of California about their exposure to DEHP in conjunction with Defendants' sale of the Products is a violation of Proposition 65 which subjects Defendants to enjoinder of such conduct as well as civil penalties for each such violation.

8. For Defendant's violations of Proposition 65, plaintiff seeks preliminary injunctive and permanent injunctive relief to compel Defendants to provide purchasers or users of the Product with the required warning regarding the health hazards of DEHP. (*Cal. Health & Safety Code* § 25249.7(a).)

9. Plaintiff also seeks civil penalties against Defendants for their violations of Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

PARTIES

10. Plaintiff resides in the City of Carlsbad, County of San Diego, in the State of California and as such, as citizen of the state of California. Plaintiff 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, Sy and Smith, PC. Plaintiff brings this action in the public interest pursuant to California Health & Safety Code § 25249.7.

11. Lincoln Textile Products Co., Inc., is a person doing business within the meaning of California Health & Safety Code § 25249.11.

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 Defendants conducted, and continue to conduct, business in this County
6 with respect to the Products.

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 Defendants based on Plaintiff’s
12 information and good faith belief that Defendants are each a person, firm, corporation or
13 association that either are citizens of the State of California, have sufficient minimum contacts in
14 the State of California, or otherwise purposefully avail themselves of the California market.
15 Defendants’ purposeful availment renders the exercise of personal jurisdiction by California
16 courts consistent 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.*)”

28 18. On August 23, 2018, a sixty-day notice of violation, together with the requisite
certificates of merit, was provided to Defendants, other potential violators and various public

1 enforcement agencies, including the California Attorney General's Office, stating that as a result
2 of the Defendants' sale of Product, purchasers and users in the State of California were being
3 exposed to the DEHP resulting from the reasonably foreseeable users of the Products, without the
4 individual purchasers and users first having been provided with a "clear and reasonable warning"
5 regarding such toxic exposures.

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

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

15 21. The Products manufactured, distributed, and/or offered for sale or use in California
16 by Defendant contained DEHP above the allowable state limits.

17 22. Defendant knew or should have known that the Product manufactured, distributed,
18 and/or for sale or use by Defendant in California contained DEHP.

19 23. DEHP was present in or on the Products in such a way as to expose individuals to
20 DEHP through dermal contact and/or ingestion during the reasonably foreseeable use of the
21 Products.

22 24. The normal and reasonably foreseeable use of the Products have caused and
23 continue to cause consumer exposure to DEHP, as such exposure is defined by 27 CCR§
24 25602(b).

25 25. Defendant had knowledge that the normal and reasonably foreseeable use of the
26 Products would expose individuals to DEHP through dermal contact and/or ingestion.

27 26. Defendant intended that such exposures to DEHP from the reasonably foreseeable
28 use of the Products would occur by its deliberate, non-accidental participation in the manufacture,

1 distribution and/or offer for sale or use of the Product to purchasers, consumers, or users in the
2 State of California.

3 27. Defendant failed to provide a "clear and reasonable warning" to those consumers
4 and/or other individuals in the State of California who were or who could become exposed to
5 DEHP through dermal contact and/or ingestion during the reasonably foreseeable use of the
6 Products.

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

12 29. As a consequence of the above-described acts, each Defendant is liable for a
13 maximum civil penal of \$2,500.00 per day for each violation pursuant to California Health &
14 Safety Code § 25249.7(b).

15 30. As a consequence of the above-described acts, California Health & Safety Code §
16 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendant.

17 31. Wherefore, Plaintiff prays for judgment against Defendant as set forth hereinafter.

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiff prays for judgment against Defendant as follows:

20 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
21 civil penalties against Defendant, in the amount of \$2,500.00 per day for each violation alleged
22 herein;

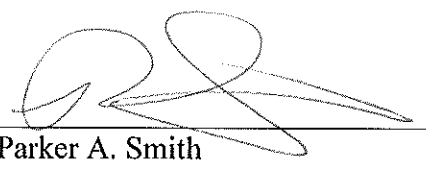
23 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
24 preliminarily and permanently enjoin Defendant from manufacturing, distributing or offering
25 Products for sale or use in California, without providing "clear and reasonable warnings" as
26 detailed by 27 CCR § 25601,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

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

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Dated: Aug 22, 2019

Respectfully Submitted,

By: 
Parker A. Smith
Attorney for Plaintiff

SUMMONS (CITACION JUDICIAL)

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

LINCOLN TEXTILE PRODUCTS CO., Inc. and DOES 1-25

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

KINGPUN CHENG

FOR COURT USE ONLY
(SÓLO PARA USO DE LA CORTE)
CIVIL BUSINESS DIVISION
CENTRAL DIVISION
2019 SEP 26 AM 11:58
CLERK-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), 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), the California Courts Online Self-Help Center (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), 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), en el Centro de Ayuda de las Cortes de California, (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):

37-2019-00044792-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 & SMITH, PC., 11622 El Camino Real, Suite 100, San Diego, CA 92130

DATE:
(Fecha) SEP 27 2019

Clerk, by
(Secretario)

T. Cutts

, 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)).

T. Cutts

(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):