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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/10/2020 at 12:33:12 PM
Clerk of the Superior Court
By Megan Diethofer, Deputy Clerk

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

9 **COUNTY OF SAN DIEGO**

10 **UNLIMITED CIVIL JURISDICTION**

11 KINGPUN CHENG,

12 Plaintiff,

13 vs.

14 LINCOLN PRODUCTS, INC., AND DOES 1-25,

15 Defendants.

CASE NO.: 37-2020-00007569-CU-NP-CTL

**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

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

16 **NATURE OF THE ACTION**

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20 1. Plaintiff KINGPUN CHENG (hereinafter, "Plaintiff") brings this representative
21 action, in the public interest of the citizens of the State of California (hereinafter, "citizens"), to
22 enforce the citizen's right to be informed of the presence of LEAD AND/OR LEAD
23 COMPOUNDS (hereinafter, "Lead") found in Defendants LINCOLN PRODUCTS, INC.
24 hereinafter referred to as "Defendant") products—specifically "Pop-Up Drain
25 UPC054374138296", "3/4 FHT x 3/4 MHT Cooler Valve UPC054374011117", and "3/4 Relief
26 Valve UPC054374013081" (hereinafter, "Products".)
27

1 consumer products, represented by and through its counsel of record, Parker A. Smith. Plaintiff
2 brings this action in the public interest pursuant to *California Health & Safety Code § 25249.7*.

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

5 VENUE AND JURISDICTION

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

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

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

21 FIRST CAUSE OF ACTION

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

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

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

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

4 18. On August 30, 2018, a sixty-day notice of violation, together with the requisite
5 certificates of merit, was provided to Defendant, other potential violators and various public
6 enforcement agencies, including the California Attorney General’s Office, stating that as a result
7 of the Defendant’s sale of Products, purchasers and users in the State of California were being
8 exposed to Lead resulting from the reasonably foreseeable users of the Products without the
9 individual purchasers and users first having been provided with a “clear and reasonable warning”
10 regarding such toxic exposures.

11 19. Defendant manufactures, distributes and/or offers Products for sale or use in
12 violation of *California Health & Safety Code § 25249.6* and Defendant’s manufacture,
13 distribution and/or offering of Products for sale or use in violation of *California Health & Safety*
14 *Code § 25249.6* has continued to occur beyond Defendant’s receipt of Plaintiff’s sixty-day Notice
15 of Violation. Plaintiff further alleges and believes that such violations will continue to occur into
16 the future.

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

20 21. The Products manufactured, distributed, and/or offered for sale or use in California
21 by Defendants contained Lead above the allowable state limits.

22 22. Defendant knew or should have known that the Products manufactured, distributed,
23 and/or for sale or use by Defendant in California contained Lead.

24 23. Lead was present in or on the Products in such a way as to expose individuals to
25 Lead through dermal contact and/or ingestion during the reasonably foreseeable use of the
26 Products.

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


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Products for sale or use in California, without providing “clear and reasonable warnings” as detailed by 27 CCR § 25601, as to the harms associated with exposures to Lead;

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: Feb. 6, 2020

Respectfully Submitted,

By: 
Parker A. Smith
Attorney for Plaintiff

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Parker A. Smith (#290311) Sy and Smith, PC. 11622 El Camino Real, Suite 100 San Diego, CA 92130 TELEPHONE NO.: (858) 746-9554 FAX NO.: (858) 746-5199 ATTORNEY FOR (Name): Plaintiff, King Pun Cheng	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 02/10/2020 at 12:33:12 PM Clerk of the Superior Court By Megan Diethofer, Deputy Clerk
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. LINCOLN PRODUCTS CO., INC., et al.
CIVIL CASE COVER SHEET <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: 37-2020-00007569-CU-NP-CTL	JUDGE: DEPT: Judge John S. Meyer

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) Other PII/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 PII/PD/WD (23) Non-PII/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-PII/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	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) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) 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)	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) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <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
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
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
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: February 6, 2020
 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	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
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)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Contract/Warranty Breach–Seller Plaintiff (<i>not fraud or negligence</i>)	Claims Involving Mass Tort (40)
Asbestos (04)	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Asbestos Property Damage	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos Personal Injury/Wrongful Death	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims (<i>arising from provisionally complex case type listed above</i>) (41)
Product Liability (<i>not asbestos or toxic/environmental</i>) (24)	Collection Case–Seller Plaintiff	Enforcement of Judgment
Medical Malpractice (45)	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Medical Malpractice–Physicians & Surgeons	Insurance Coverage (<i>not provisionally complex</i>) (18)	Abstract of Judgment (Out of County)
Other Professional Health Care Malpractice	Auto Subrogation	Confession of Judgment (<i>non-domestic relations</i>)
Other PI/PD/WD (23)	Other Coverage	Sister State Judgment
Premises Liability (e.g., slip and fall)	Other Contract (37)	Administrative Agency Award (<i>not unpaid taxes</i>)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Intentional Infliction of Emotional Distress	Other Contract Dispute	Other Enforcement of Judgment Case
Negligent Infliction of Emotional Distress	Real Property	Miscellaneous Civil Complaint
Other PI/PD/WD	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Non-PI/PD/WD (Other) Tort	Wrongful Eviction (33)	Other Complaint (<i>not specified above</i>) (42)
Business Tort/Unfair Business Practice (07)	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Civil Rights (e.g., discrimination, false arrest) (<i>not civil harassment</i>) (08)	Writ of Possession of Real Property	Injunctive Relief Only (<i>non-harassment</i>)
Defamation (e.g., slander, libel) (13)	Mortgage Foreclosure	Mechanics Lien
Fraud (16)	Quiet Title	Other Commercial Complaint Case (<i>non-tort/non-complex</i>)
Intellectual Property (19)	Other Real Property (<i>not eminent domain, landlord/tenant, or foreclosure</i>)	Other Civil Complaint (<i>non-tort/non-complex</i>)
Professional Negligence (25)	Unlawful Detainer	Miscellaneous Civil Petition
Legal Malpractice	Commercial (31)	Partnership and Corporate Governance (21)
Other Professional Malpractice (<i>not medical or legal</i>)	Residential (32)	Other Petition (<i>not specified above</i>) (43)
Other Non-PI/PD/WD Tort (35)	Drugs (38) (<i>if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential</i>)	Civil Harassment
Employment	Judicial Review	Workplace Violence
Wrongful Termination (36)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Other Employment (15)	Petition Re: Arbitration Award (11)	Election Contest
	Writ of Mandate (02)	Petition for Name Change
	Writ–Administrative Mandamus	Petition for Relief From Late Claim
	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	

**SUMMONS
(CITACION JUDICIAL)**

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

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

LINCOLN PRODUCTS, Inc., and DOES 1-25

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/10/2020 at 12:33:12 PM

Clerk of the Superior Court
By Megan Diethofer, Deputy Clerk

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

KINGPUN CHENG

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): 37-2020-00007569-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: 02/11/2020
(Fecha)

Clerk, by _____, Deputy
(Secretario) M. Diethofer (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)).



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):