

1 Stephen Ure, Esq., (CSB# 188244)
2 11622 El Camino Real, Ste. 100
3 San Diego, CA 92130
4 Telephone: 619-235-540

5 *Attorneys for Plaintiff, Evelyn Wimberley*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/13/2021 at 09:47:19 PM
Clerk of the Superior Court
By Ashley Carini, Deputy Clerk

6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 **UNLIMITED CIVIL JURISDICTION**

11
12
13 **EVELYN WIMBERLEY,**)

14 **Plaintiff,**)

15 **VS.**)

16 **COPPERFIELD CHIMNEY SUPPLY;**)
17 **OLYMPIA CHIMNEY & VENTING,**)
18 **INC.; SHOP CHIMNEY.COM**)

19 **AND DOES 1-25 INCLUSIVE**)

20)
21 **DEFENDANTS.**)
22)

CASE NO.: 37-2021-00001618-CU-NP-NC

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

23 **NATURE OF THE ACTION**

24 1. This Complaint is a representative action brought by plaintiff Evelyn Wimberley,
25 in the public interest of the citizens of the State of California, to enforce the people’s right to be
26 informed of the dangers from exposures to carbon monoxide and soot (hereafter “Listed
27 Chemicals”), when using the Homesaver Gelled Firestarter sold in California by Defendants.
28

1 2. By this Complaint, plaintiff seeks to remedy DEFENDANTS' continuing failures
2 to warn California citizens about their exposure to the Listed Chemicals produced as a result of
3 combustion during the normal and intended use of the Homesaver Gelled Firestarter (UPC
4 633210541508), (hereafter "PRODUCT"), that the DEFENDANTS manufactured, distributed
5 and sold, in the State of California and PRODUCT that DEFENDANTS continue to manufacture,
6 distribute and offer for sale in the State of California.

7 3. High levels of the Listed Chemicals are common combustion byproducts produced
8 during the normal and intended use of the PRODUCT that DEFENDANTS manufacture,
9 distribute and/or offer for sale to consumers throughout the State of California.

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

15 5. California identified and listed Carbon Monoxide as a chemical known to cause
16 birth defects and other reproductive harm. Carbon Monoxide became subject to the warning
17 requirements of Proposition 65 for developmental toxicity beginning on July 1, 1989 (*27 CCR §*
18 *27002; Cal. Health & Safety Code § 25249.6.*)

19 6. California identified and listed Soot as a chemical known to cause birth defects and
20 cancer. Soot became subject to the warning requirements of Proposition 65 for developmental
21 toxicity beginning on February 27, 1987. (*27 CCR Sec. 27002; Cal. Health & Safety Code Sec.*
22 *25249.6*)

23 7. DEFENDANTS' past and continuing failures to warn consumers and/or other
24 individuals in the State of California about their exposure to the LISTED CHEMICALS in
25 conjunction with defendant's sale of the PRODUCTS is a violation of Proposition 65 and
26 subjects DEFENDANTS to enjoinder of such conduct as well as civil penalties for each such
27 violation.
28

1 County of San Diego and/or because DEFENDANTS conducted, and continue to conduct,
2 business in this County with respect to the PRODUCTS.

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

7 17. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
9 association that either are citizens of the State of California, have sufficient minimum contacts in
10 the State of California, or otherwise purposefully avail themselves of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
12 courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65 – Against Defendants)**

15 18. Plaintiff realleges and incorporates by reference, as if full reference, as if fully set
16 forth herein, Paragraphs 1 through 16, inclusive.

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

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

25 21. On March 31, 2020 a Sixty-Day Notice violation, together with the requisite
26 certificate of merit, was provided to Defendants (Copperfield Chimney Supply and
27 ShopChimney.com) and various public enforcement agencies stating that as a result of the
28 DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the State of California were

1 being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable users of
2 the PRODUCTS, without the individual purchasers and users first having been provided with a
3 “clear and reasonable warning” regarding such toxic exposures.

4 22. On June 12, 2020 a Supplemental Sixty-Day Notice violation, together with the
5 requisite certificate of merit, was provided to Defendant Olympia Chimney & Venting Inc., and
6 various public enforcement agencies stating that as a result of the DEFENDANTS’ sales of the
7 PRODUCTS, purchasers and users in the State of California were being exposed to the LISTED
8 CHEMICAL 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 23. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
12 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
13 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
14 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
15 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
16 believes that such violations will continue to occur into the future.

17 24. 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 25. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
21 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
22 limits.

23 26. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
24 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED
25 CHEMICAL.

26 27. The PRODUCTS, through normal use produces the LISTED CHEMICALS in
27 such a way as to expose individuals to the LISTED CHEMICALS through inhalation, dermal
28 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

