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11 TRUPER S.A. de C.V. and ACE HARDWARE
CORPORATION

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO**

14
15 KINGPUN CHENG,
16
17 Plaintiff,
18
19 v.
20 TRUPER S.A. de C.V. and ACE HARDWARE
CORPORATION,
21 Defendants.

CASE NO. 37-2017-00049607-CU-PO-CTL
[PROPOSED] CONSENT JUDGMENT

22 **1. INTRODUCTION**

23 1.1 On December 21, 2017, plaintiff Kingpun Cheng (“Cheng”), acting on behalf of
24 himself and the general public, initiated this action by filing its Complaint for civil penalties and
25 injunctive relief against defendant Truper S.A. de C.V. (“Truper”). On April 17, 2018, Cheng
26 filed an Amended Complaint (“Amended Complaint”) adding Ace Hardware Corporation
27 (“Ace”) as a defendant and referencing the Supplemental 60-Day Notice of Violation
28 (“Supplemental Notice”) sent out on February 14, 2018, among other things. The Amended

1 Complaint alleges, among other things, that Truper and Ace violated provisions of the Safe
2 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5,
3 *et seq.* (“Proposition 65”), by failing to give clear and reasonable warnings to residents of
4 California that garden tools manufactured by or on behalf of Truper and sold by Ace (identified in
5 Exhibit A attached hereto, and hereinafter referred to as the “Covered Products”), including
6 (without limitation) the Ace Round Point Shovel, Garden Hoe and Bow Rake, cause exposure to
7 diisononyl phthalate (“DINP”), a chemical known to the State of California to cause cancer. Ace
8 sells the Covered Products in California. Truper and Ace filed their Answer to the Amended
9 Complaint on April 30, 2018; both Truper and Ace denied all material allegations of the
10 Amended Complaint and asserted numerous affirmative defenses. Cheng, Truper and Ace shall
11 sometimes be referred to individually as a “Party” or together as the “Parties.”

12 1.2 The Amended Complaint is based upon several 60-Day Notices of Violation and
13 Supplemental Notices of Violation, sent by Cheng on or about June 16, 2017 and December 27,
14 2017 to Ace, and on or about September 21, 2017 and February 14, 2018 to both Ace and Truper
15 (hereinafter, the “Notices”). Cheng served the aforementioned Parties, the California Attorney
16 General, all District Attorneys, and all City Attorneys with populations exceeding 750,000, with
17 the Notices on the same dates pursuant to Health & Safety Code §25249.7(d). True and correct
18 copies of the Notices are attached hereto at Exhibit B. No public enforcer has filed suit against
19 Truper or Ace with regard to the Covered Products or the alleged violations.

20 1.3 Truper and Ace are businesses that employ more than ten persons. Truper
21 manufactures (or arranges for the manufacture) of the Covered Products, and Ace sells the
22 Covered Products in California. Cheng contends that use of the Covered Products results in an
23 exposure to DINP and that the Covered Products require a warning under Proposition 65,
24 pursuant to Health and Safety Code Section 25249.6. Truper and Ace deny that use of the
25 Covered Products creates an exposure requiring a warning under Proposition 65, and deny that
26 they have violated Proposition 65. Nevertheless, Truper began putting a Proposition 65 warning
27 on the Covered Products in July and August, 2017.

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1 1.4 For purposes of this Consent Judgment, the Parties stipulate that this Court has
2 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
3 over Truper and Ace as to the acts alleged in the Complaint, that venue is proper in the County of
4 San Diego, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
5 resolution of all claims which were or could have been asserted in this action based on the facts
6 alleged in the Notice Letters or in the Complaint.

7 1.5 The Parties have entered into this Consent Judgment in order to settle, compromise
8 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
9 Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by
10 any of their respective officers, directors, shareholders, employees, agents, parent companies,
11 subsidiaries, divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers,
12 retailers, or successors in interest, of any fact, conclusion of law, issue of law, violation of law,
13 fault, wrongdoing, or liability, including without limitation, any admission concerning any
14 alleged violation of Proposition 65 or any other statutory, regulatory, common law, or equitable
15 doctrine, or the meaning of the terms "knowingly and intentionally expose" or "clear and
16 reasonable warning" as used in Cal. Health & Safety Code § 25249.6. This Consent Judgment
17 shall not be offered or admitted as evidence in any administrative or judicial proceeding or
18 litigation in any court, agency, or forum, except in an action seeking to enforce the terms of this
19 Consent Judgment. Nor may this Consent Judgment, or compliance with it, be used as evidence
20 of any wrongdoing, misconduct, culpability or liability on the part of Truper or Ace. This Section
21 shall not, however, diminish or otherwise affect Truper's or Ace's obligations, responsibilities,
22 and duties under this Consent Judgment.

23 1.6 The term "Effective Date" means the date this Consent Judgment is entered by the
24 Court. The term "Compliance Deadline" means the date sixty (60) days after the Effective Date.

25 **2. INJUNCTIVE RELIEF**

26 2.1 **Warnings**

27 A Covered Product that is (1) manufactured by or on behalf of Truper on or after the
28 Compliance Deadline; and (2) distributed or offered for sale in California by or on behalf of

1 Truper or Ace on or after the Compliance Deadline, shall include the following warning:

2 **WARNING:** This product contains chemicals known to the State of California to cause
3 cancer and birth defects or other reproductive harm.

4 The warning statements shall be affixed to the Covered Product and displayed with such
5 conspicuousness, as compared with other words, statements or designs, as to render it likely to be
6 read and understood by an ordinary individual under customary conditions of purchase or use.

7 The type size of the warning must be legible, and no smaller than any other warning provided
8 with the Covered Product. The word “**WARNING:**” shall be in upper case letters and bold text.

9 2.2 The warning required by Section 2.1 above is imposed pursuant to the terms of this
10 Consent Judgment. The Parties recognize that this is not the exclusive method of providing a
11 warning under Proposition 65 and its implementing regulations, and that this may or may not be
12 appropriate in other circumstances. Moreover, Truper and Ace reserve the right to amend the
13 warning in order to comply with Proposition 65 warning regulations that take effect after the
14 Compliance Deadline.

15 2.3 If Proposition 65 warnings for DINP should no longer be required, either by
16 statutory or regulatory amendments or court order, and Truper or Ace desires to modify or cease
17 implementing the warnings required under this Consent Judgment, they may, by stipulation with
18 Cheng or noticed motion, seek modification of this Consent Judgment by the Court.

19 3. **SETTLEMENT PAYMENTS**

20 3.1 **Civil Penalty**

21 Pursuant to Health and Safety Code section 25249.7(b), Truper shall pay a civil penalty of
22 one thousand dollars (\$1,000). The penalty payment will be allocated in accordance with
23 California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount
24 paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the
25 remaining 25% of the penalty amount paid to Kingpun Cheng. Truper will provide these
26 payments to Cheng’s counsel in two checks, as follows: 1) one made payable to “OEHHA” in the
27 amount of seven hundred fifty dollars (\$750), and 2) the second made payable to “Kingpun
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1 Cheng” in the amount of two hundred fifty dollars (\$250). Cheng shall be responsible for
2 forwarding OEHHA’s payment to OEHHA.

3 **3.2 Attorneys’ Fees and Litigation Costs**

4 Truper shall pay and will not oppose an application made by Cheng’s counsel for an
5 award of attorney fees, inclusive of all expenses and costs incurred as a result of investigating,
6 bringing this matter to Truper’s and Ace’s attention, litigating, negotiating and obtaining judicial
7 approval of a settlement in the public interest, pursuant to Code of Civil Procedure section
8 1021.5, in an amount of seventeen thousand dollars (\$17,000). Truper shall provide this payment
9 to Cheng’s counsel by check made payable to “Sy & Smith, PC.” Other than the payment
10 required hereunder, each side is to bear its own attorney’s fees and costs (including but not
11 limited to expert and consultant fees, if any).

12 **3.3 Payments**

13 All payments required by Sections 3.1 and 3.2 above shall be sent no later than 10 days
14 after the Effective Date via certified mail, return receipt requested, to the following address:

15 Parker A. Smith
16 SY & SMITH, PC
11622 El Camino Real, Suite 100
Del Mar, California 92130

17 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

18 4.1 This Consent Judgment is a full, final, and binding resolution between Cheng
19 acting in the public interest, and Truper, Ace, and each of their respective parent companies,
20 officers, directors, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies,
21 affiliates, employees, agents, and their respective successors and assigns (hereinafter, collectively,
22 “Defendant Releasees”), and all persons and entities from whom they obtain and/or to whom they
23 directly or indirectly distribute or sell Covered Products, including but not limited to
24 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers,
25 franchisees, cooperative members, and all other entities in the distribution chain down to the
26 consumers of any Covered Products, and their respective successors and assigns (collectively,
27 “Downstream Defendant Releasees”), of all claims for alleged violation of Proposition 65 as
28 described in the Notices that have been or could have been asserted in this action regarding any

1 alleged exposure to DINP in or from use of any Covered Products manufactured, distributed or
2 sold by or on behalf of Truper or Ace prior to the Compliance Deadline (hereinafter, the
3 “Released Claims”). Cheng acting in the public interest, releases, waives and forever discharges
4 Defendant Releasees and Downstream Defendant Releasees from the Released Claims.
5 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
6 with regard to any alleged exposure to DINP in or from use of the Covered Products.

7 4.2 Cheng, Truper and Ace recognize that other claims not known to the Parties may
8 exist concerning the Covered Products. Accordingly, the Parties, on behalf of themselves and
9 each of their respective past and current agents, representatives, attorneys, successors, and/or
10 assignees, provide each other and Defendant Releasees and Downstream Defendant Releasees
11 with a mutual general release, which shall be effective as a full and final accord and satisfaction,
12 and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages,
13 losses, claims, liabilities and demands of any nature, character or kind, known or unknown, fixed
14 or contingent, suspected or unsuspected, now or in the future, arising out of any alleged failure to
15 warn about DINP exposures from the use of Covered Products manufactured, distributed or sold
16 by or on behalf of Truper or Ace prior to the Compliance Deadline. The Parties acknowledge that
17 they are familiar with Section 1542 of the California Civil Code, which provides as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
20 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
21 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
22 OR HER SETTLEMENT WITH THE DEBTOR.

23 The Parties hereby expressly waive and relinquish any and all rights and benefits which they
24 may have under, or which may be conferred on them by, the provisions of Section 1542 of the
25 California Civil Code, as well as under any other state or federal statute or common law principle
26 of similar effect, to the fullest extent that they may lawfully waive such rights or benefits
27 pertaining to the matters released in Sections 4.1 and 4.2. In furtherance of such intention, the
28 release hereby given shall be and remain in effect as a full and complete release notwithstanding
the discovery or existence of any additional or different claims or facts arising out of the released

1 matters.

2 **5. ENTRY OF CONSENT JUDGMENT**

3 5.1 The Parties hereby request that the Court promptly enter this Consent Judgment.
4 Upon entry of this Consent Judgment, Truper, Ace and Cheng waive their respective rights to a
5 hearing or trial on the allegations of the Complaint.

6 **6. ENFORCEMENT OF JUDGMENT**

7 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
8 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
9 San Diego County, giving the notice required by law, enforce the terms and conditions of this
10 Consent Judgment.

11 6.2 In any proceeding brought by any Party to enforce this Consent Judgment, such
12 Party may seek to recover from the other Party whatever penalties, fees, costs or injunctive
13 remedies as may be provided by law for any violation of Proposition 65 or this Consent
14 Judgment.

15 **7. MODIFICATION AND CONSTRUCTION OF JUDGMENT**

16 7.1 This Consent Judgment may be modified only upon written agreement of the
17 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
18 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

19 7.2 The terms and conditions of this Consent Judgment have been reviewed by the
20 Parties' respective counsel, and each Party has had the opportunity to fully discuss the terms and
21 conditions with its counsel. In any subsequent interpretation or construction of this Consent
22 Judgment, the terms and conditions shall not be construed against any Party based on any role it
23 or its counsel may have played in drafting this Consent Judgment.

24 **8. TERMINATION AND RETENTION OF JURISDICTION**

25 8.1 This Court shall retain jurisdiction of this matter to implement, modify and enforce
26 the terms and conditions of this Consent Judgment.

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1 **9. AUTHORITY TO STIPULATE**

2 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to enter into this Consent Judgment, to execute it on behalf of
4 the Party represented, and legally to bind that Party to the terms and conditions of this Consent
5 Judgment.

6 **10. SERVICE ON THE ATTORNEY GENERAL; MOTION FOR APPROVAL AND**
7 **ENTRY**

8 10.1 Cheng shall serve a copy of this Consent Judgment, signed by all Parties, on the
9 California Attorney General on behalf of the Parties so that the Attorney General may review this
10 Consent Judgment prior to its submittal to the Court for approval and entry. No sooner than forty
11 five (45) days after the Attorney General has received the aforementioned copy of this Consent
12 Judgment, and in the absence of any written objection by the Attorney General to the terms of this
13 Consent Judgment, the Parties shall seek court approval of the settlement and entry of this
14 Consent Judgment under California Health and Safety Code section 25249.7(f)(4) . If the
15 Attorney General objects to the Consent Judgment, the Parties shall meet and confer in good faith
16 to modify the terms and conditions of this Consent Judgment to address the Attorney General’s
17 objections. If the Parties are not able to reach agreement on the necessary modifications, this
18 Consent Judgment shall be null and void.

19 10.2 If this Consent Judgment is not approved and entered by the Court, it shall be of no
20 force or effect, and cannot be used in any proceeding for any purpose.

21 **11. ENTIRE AGREEMENT**

22 11.1 This Consent Judgment contains the sole and entire agreement and understanding
23 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
24 negotiations, commitments and understandings related hereto. No representations, oral or
25 otherwise, express or implied, other than those contained herein have been made by any Party
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
27 deemed to exist or to bind any of the Parties.

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1 **12. GOVERNING LAW**

2 12.1 The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.

5 **13. EXECUTION AND COUNTERPARTS**

6 13.1 This Consent Judgment may be executed in counterparts and by portable document
7 format (.pdf) signature, which taken together shall constitute one document.



8 **14. NOTICES**

9 14.1 Any notices or payments due under this Consent Judgment shall be sent by
10 personal delivery, overnight courier, or certified mail, return receipt requested, to the following:


11 If to Kingpun Cheng: Parker A. Smith
12 SY & SMITH, PC
13 11622 El Camino Real, Suite 100
14 Del Mar, California 92130

14 If to Truper or Ace: Thomas M. Donnelly
15 JONES DAY
16 555 California Street, 26th Floor
17 San Francisco, California 94101

16 **APPROVED AS TO FORM:**

<p>18 Date: <u>May 1</u>, 2018</p> <p>19</p> <p>20 By: </p> <p>21 On Behalf of KINGPUN CHENG</p> <p>22 Parker A. Smith 23 SY & SMITH, PC</p>	<p>18 Date: <u>May 16</u>, 2018</p> <p>19</p> <p>20 By: </p> <p>21 On Behalf of TRUPER S.A. de C.V. and ACE 22 HARDWARE CORPORATION</p> <p>23 Thomas M. Donnelly 24 JONES DAY</p>
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25 **IT IS SO STIPULATED:**

26 DATED: May 2 2018 BY: 
27 KINGPUN CHENG

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DATED: 5-11-18

TRUPER S.A. DE C.V.

BY: *Mark Dorenkoti*

ITS: President, US Division
Mark Dorenkoti

DATED: 5-16-18

ACE HARDWARE CORPORATION

BY: *[Signature]*

ITS: Executive Vice President

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

NAI-150354164Jvt

Exhibit A

Ace Sku #	Truper Code	Truper Model	Description
70600	10700	ATJ-P-ACE	48" handle garden hoe
73251	10701	A2C-P-ACE	48" handle, garden hoe- promo
72388	10702	CUL-P-ACE	48" handle cultivator
73268	10704	PRY-P-ACE	D handle round point shovel
73269	10705	PCY-P-ACE	D handle square point shovel
73249	10706	PES-P-ACE	D handle garden spade shovel
70498	10707	PRL-P-ACE	Large handle, round point shovel
70530	10708	PCL-P-ACE	Large handle, square point shovel
70566	10709	R-14AL-ACE	48" handle, 14 tines bow rake
70093	30017	ATJ-ACE	Garden hoe forged head
70105	30025	CUL-ACE	cultivator, forged head, 4 tines
7012859	30080	ATJF-ACE	Garden hoe Forged Head
70091	30294	BJ-4-ACE	D-handle manure fork, 4 tines
7098262	30304	BJ-4F-ACE	D-Handle Manure Fork,4 Tines Off-Set D
70013	31310	PCY-ACE	D-Handle Square Pt Shovel
70024	31311	PCL-ACE	Long handle Square PT Shovel
70027	31312	PEP-ACE	D-handle drain spade shovel 162 blade
70033	31314	PES-ACE	D-handle garden spade shovel
70018	31316	PRL-ACE	Long handle round pt shovel
70016	31318	PRY-ACE	D-handle round pt shovel
7011414	31320	PCL-F-ACE	Long Handle Square PT Shovel
7098239	31322	PCY-F-ACE	D-fiberglass hdl square pt shovel-tru gl
7098254	31324	PEP-F-ACE	D-handle Drain Spade Shovel Off-Set "D"
7098247	31326	PES-F-ACE	D-Handle garden Spade Shovel Off-Set "D"
7011273	31328	PRL-F-ACE	Long Handle Round Pt Shovel
7098221	31330	PRY-F-ACE	D-handle Round PT Shovel Off-Set "D"
71752	31354	R16A-ACE	Bow rake welded head,16 ines
7012818	31382	R16AM-F-ACE	Bow Rake Welded Head 16 Tines
7135049	31913	TR-BY-ACE	Trunk buddy round pt shovel-ace brand
73432	32451	KR-1L-C	Heavy duty light tamper wood handle
73433	32452	KR-2L-C	Tamper 10" X 10", 17 lbs, wood handle
7300064	33134	SB-12	weed cutter, 12, sling blade style
7196637	33400	PRL-FP-ACE	Long handle round pt shovel, fiberglass h
7198211	33402	PCL-FP-ACE	Long handle square pt shovel, fiberglass h
7196652	33403	R-14ALFP-ACE	Welded bow rake, 14 tines, fiberglass hd
7196645	33404	ATJ-FP-ACE	Garden hoe welded head fiberglass hdl
7214968	33635	PES-LES-ACE	48" handle, garden spade
7039159	34124	CA-35E-ACE	48" wood hdl, Atlas, post hole digger
7003064	34125	CA-38F-ACE	48"fiberglass, Hercules,post hole digger
7331366	34126	CA-38M-ACE	48" steel hdl, Hercules,post hole digger
7331598	34127	TH-RA-ACE	19 teeth, wood handle, thatching rake
7331374	34128	ATME-X	7" forged meadow hoe, Ace
7331580	34129	ATS-X	7", hoe floral scuffle , Ace
7331390	34130	ATO-X	7" forged onion hoe, Ace
7331523	34131	ROT-EDG-ACE	Ash handle, dual wheel,rotary lawn edger
7331564	34132	ROT-EDG-S	Ash handle, rotary lawn edger, Ace

7331432	34136	LAWE-ACE	Lawn weeder, v-notched blade, ash handle
70043	34302	PALY-10M-ACE	27" D-handle, # 10, aluminum scoop
70044	34304	PALY-12M-ACE	27" D-handle, # 12, aluminum scoop
70045	34305	PALY-14M-ACE	27" D-handle, # 14, aluminum scoop
7272610	34642	EMXC-6-ACE	6 " head, wood handle, steel leaf rake
7272347	34643	EMXC-18-ACE	18 " head, wood handle, steel leaf rake
74978	34644	EMXC-22-ACE	22 " head, wood handle, steel leaf rake
7012867	34645	EMX-24F-ACE	24 ", fiberglass hdl, steel leaf rake
7268667	34646	EMX-24-ACE	24 " head, wood handle, steel leaf rake
72384	34647	EP-15-ACE	15" head, wood handle, poly leaf rake
7272297	34648	EP-22-ACE	22" head, wood handle, poly leaf rake
7502917	34649	EP-26-ACE	26" head, wood handle, poly leaf rake
7502925	34650	EP-30F-ACE	30" head, fiberglass hdl, poly leaf rake
7272834	34651	EMP-22-ACE	22" head, wood hdl, poly steel leaf rake
70068	31390	R-16MX	Road rake, 16 teeth, ash handle
7039266	31750	SCR-4	4" forged heavy duty scraper
7090467	31760	SCR-7D	D-handle 7" forged heavy duty scraper
7030509	31752	SCR-7	7" forged heavy duty scraper
73432*	34387	KR-1S	8 X 8", steel handle tamper
73433*	34391	KR-2S	10 X 10", steel handle tamper

Exhibit B

60 DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

DATE: June 16, 2017

To: President or CEO – Ace Hardware Corporation
California Attorney General’s Office;
District Attorney’s Office for 58 counties;
City Attorney’s for San Francisco, San Diego, San Jose, and Los Angeles.

From: Mr. Kingpun Cheng

- I. My name is Kingpun Cheng. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 et seq. (“Proposition 65”). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemical (“listed chemical”) identified below as follows:

Product Exposure: See Section VII. Exhibit A
Listed Chemical: (DINP) Diisononyl Phthalate
Routes of Exposure: Dermal absorption, Ingestion
Types of Harm: Cancer

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer exposures in violation of Proposition 65, and that is covered by this Notice, is listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the “products.”

The sale of these products in the state of California dating at least as far back as May 9, 2017 are subject to this notice. As a result, exposures to the listed chemical from the use of the products have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

California citizens, including children, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical in homes, workplaces, cars, and places throughout California where these products are used. By way of example but not limitation, exposures occur when California citizens use, hold, grab, dig, carry, shovel, move, clean, store or otherwise handle these products, the listed chemical transfers onto the hands through routine touching of the parts and portions of the products containing readily available surface amounts of the listed chemical and is subsequently absorbed through the skin or ingested via inhalation, hand-to-mouth behavior, hand-to-food-to-mouth behavior, or through hand-to-cigarette-to-lung behavior. Exposure may continue to occur for a significant period after the initial contact. These activities cause California citizens to be exposed directly through migration of the listed chemical from the products. California citizens likely to be exposed are men, women, and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed as carcinogens and as reproductive toxins.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel’s office at the following address:

Mr. Kingpun Cheng
c/o Mr. Parker A. Smith
Sy and Smith, PC
11622 El Camino Real, Suite 100
Del Mar, CA 92130
Tel: (858) 746-9554

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is interested in resolving this dispute without resort to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL INFORMATION

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 22CAL. CODE REGS., §12903 (h)(4).

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the Internet, and/or via catalog by the Violator and other distributors and retailers of the manufacturer.

Product*	Retailer(s)	Manufacturer(s)/Distributor(s)
UPC082901022626 Ace Round Point Shovel, Heavy Duty Fiberglass Handle #7011273	Ace Hardware Corporation	Ace Hardware Corporation

VII. EXHIBIT A

Product Category/Type	Such As*	Toxins
Round Point Shovels	UPC082901022626 Ace Round Point Shovel, Heavy Duty Fiberglass Handle #7011273	(DINP) Diisononyl Phthalate

*The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

APPENDIX A
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all full and part-time employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>

² See Section 25501(a)(4).

not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the

alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHH's website at: <http://oehha.ca.gov/prop65law/p65law72003.html>. The notice is reproduced here:

Date: June 16, 2017

Page 1

Name of Noticing Party or attorney for Noticing Party: Kingpun Cheng

Address: Sy and Smith, PC, 11622 El Camino Real, Suite 100, Del Mar, CA 92130

Phone number: (858) 746-9554

**SPECIAL COMPLIANCE PROCEDURE
PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form.
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

_____ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

_____ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

_____ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

_____ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: June 16, 2017

Page 2

Name of Noticing Party or attorney for Noticing Party: Kingpun Cheng

Address: Sy and Smith, PC, 11622 El Camino Real, Suite 100, Del Mar, CA 92130

Phone number: (858) 746-9554

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative

Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May, 2014

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Parker A. Smith, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this action;
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: June 16, 2017



Parker A. Smith

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is, 11622 El Camino Real, Suite 100, Del Mar, CA 92130.

On June 16, 2017, I served the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY
CODE §25249.7(d);
PROPOSITION 65: SUMMARY;
CERTIFICATE OF MERIT; AND
CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY
GENERAL)

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing true and correct copy in a sealed envelope, addressed to the Violator and providing such envelope to a United States Postal Service Representative:

Ace Hardware Corporation
Current President or CEO
2200 Kensington Ct.
Oak Brook, IL 60523

Ace Hardware Corporation
Attn: The Prentice-Hall Corporation System, Inc.
2710 Gateway Oaks Dr., Ste 150 N
Sacramento, CA 95833

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below and served as follows:

By Uploading onto http://oag.ca.gov/prop65/add-60-day-notice	The Attorney General of the State of California
By placing each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys for 44 California Counties and; The City Attorneys for Los Angeles, San Diego, San Jose, San Francisco.
By sending electronic mail	The District Attorneys for the following California Counties: San Joaquin, San Luis Obispo, Sonoma, Santa Clara, Napa, Lassen, Riverside, Tulare, Ventura, Yolo, Monterey, Sacramento, San Francisco and Contra Costa

A list of address for each of the recipient's is attached.
Executed on June 16, 2017, San Diego, California



Parker A. Smith

District Attorney
COLUSA COUNTY
547 Market Street, Ste. 102
Colusa, CA 95932

District Attorney
DEL NORTE COUNTY
450 H Street, Room 171
Crescent City, CA 95531

District Attorney
ALPINE COUNTY
PO Box 248
Markleeville, CA 96120

District Attorney
EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

District Attorney
AMADOR COUNTY
708 Court Street #202
Jackson, CA 95642

District Attorney
FRESNO COUNTY
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

District Attorney
GLENN COUNTY
PO Box 430
Willows, CA 95988

District Attorney
BUTTE COUNTY
25 County Center Drive --
Administration Building
Oroville, CA 95965

District Attorney
HUMBOLDT COUNTY
825 5th Street
Eureka, CA 95501

District Attorney
IMPERIAL COUNTY
940 West Main Street, Ste. 102
El Centro, CA 92243

District Attorney
CALAVERAS COUNTY
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney
INYO COUNTY
PO Drawer D
Independence, CA 93526

District Attorney
KERN COUNTY
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

District Attorney
MARIN COUNTY
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney
MARIPOSA COUNTY
PO BOX 730
Mariposa, CA 95338

District Attorney
MENDOCINO COUNTY
PO BOX 1000
Ukiah, CA 95482

District Attorney
MERCED COUNTY
2222 M Street
Merced, CA 95340

District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

District Attorney
MONO COUNTY
PO BOX 617
Bridgeport, CA 93546

District Attorney
SAN DIEGO COUNTY
330 W. Broadway, Suite 1300
San Diego, CA 92101

District Attorney
County of Los Angeles
210 West Temple Street,
Suite 18000
Los Angeles, CA 90012-3210

District Attorney
NEVADA COUNTY
201 Commercial Street
Nevada City, CA 95959

District Attorney
ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

District Attorney
PLACER COUNTY
10810 Justice Center Drive
Roseville, CA 95678

District Attorney
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 95023-3801

District Attorney
SAN JOAQUIN COUNTY
PO BOX 990
Stockton, CA 95202

District Attorney
SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

District Attorney
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney
SANTA CRUZ COUNTY
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

District Attorney
SIERRA COUNTY
100 Courthouse Square
Downieville, CA 95936

District Attorney
SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

District Attorney
SOLANO COUNTY
675 Texas Street, Ste. 4500
Fairfield, CA 94533

District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

District Attorney
County of San Bernardino
316 N. Mountain View Ave
San Bernardino, CA 92415-
0004

District Attorney
STANISLAUS COUNTY
832 12th Street, Ste. 300
Modesto, CA 95353

District Attorney
SUTTER COUNTY
446 2nd Street, Suite 102
Yuba City, CA 95991

District Attorney
TEHAMA COUNTY
PO BOX 519
Red Bluff, CA 96080

District Attorney
TRINITY COUNTY
PO BOX 310
Weaverville, CA 96093

District Attorney
TUOLUMNE COUNTY
423 No. Washington Street
Sonora, CA 95370

District Attorney
YUBA COUNTY
215 Fifth Street, Ste. 152
Marysville, CA 95901

District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

Office of the City Attorney
CITY OF LOS ANGELES
200 N. Main Street
Los Angeles, CA 90012

Office of the City Attorney
CITY OF SAN DIEGO
Consumer and Environmental
Protection
1200 Third Avenue, Suite 700
San Diego, CA 92101

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

Office of the City Attorney
City of San Jose
200 East Santa Clara Street
16th Floor
San Jose, CA 95113

60 DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

DATE: December 27, 2017

To: President or CEO – Ace Hardware Corporation
California Attorney General’s Office;
District Attorney’s Office for 58 counties;
City Attorney’s for San Francisco, San Diego, San Jose, and Los Angeles.

From: Mr. Kingpun Cheng

- I. My name is Kingpun Cheng. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 et seq. (“Proposition 65”). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemical (“listed chemical”) identified below as follows:

Product Exposure:	See Section VII. Exhibit A
Listed Chemical:	(DINP) Diisononyl Phthalate
Routes of Exposure:	Dermal absorption, Ingestion
Types of Harm:	Cancer

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer exposures in violation of Proposition 65, and that is covered by this Notice, is listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the “products.”

The sale of these products in the state of California dating at least as far back as November 10, 2017 are subject to this notice. As a result, exposures to the listed chemical from the use of the products have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

California citizens, including children, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical in homes, workplaces, cars, and places throughout California where these products are used. By way of example but not limitation, exposures occur when California citizens use, hold, grab, dig, carry, move, pull, clean, store or otherwise handle these products, the listed chemical transfers onto the hands through routine touching of the parts and portions of the products containing readily available surface amounts of the listed chemical and is subsequently absorbed through the skin or ingested via inhalation, hand-to-mouth behavior, hand-to-food-to-mouth behavior, or through hand-to-cigarette-to-lung behavior. Exposure may continue to occur for a significant period after the initial contact. These activities cause California citizens to be exposed directly through migration of the listed chemical from the products. California citizens likely to be exposed are men, women, and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed as carcinogens and as reproductive toxins.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel’s office at the following address:

Mr. Kingpun Cheng
c/o Mr. Parker A. Smith
Sy and Smith, PC
11622 El Camino Real, Suite 100
Del Mar, CA 92130
Tel: (858) 746-9554

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is interested in resolving this dispute without resort to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL INFORMATION

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 22 CAL. CODE REGS., §12903 (b)(4).

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the Internet, and/or via catalog by the Violator and other distributors and retailers of the manufacturer.

Product*	Retailer(s)	Manufacturer(s)/Distributor(s)
UPC082901022640 Ace Garden Hoe #7012859	Ace Hardware Corporation	Ace Hardware Corporation

VII. EXHIBIT A

Product Category/Type	Such As*	Toxins
Garden Hoe	UPC082901022640 Ace Garden Hoe #7012859	(DINP) Diisononyl Phthalate

*The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

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OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all full and part-time employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>

² See Section 25501(a)(4).

not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the

alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date: December 27, 2017

Page 1

Name of Noticing Party or attorney for Noticing Party: Kingpun Cheng

Address: Sy and Smith, PC, 11622 El Camino Real, Suite 100, Del Mar, CA 92130

Phone number: (858) 746-9554

**SPECIAL COMPLIANCE PROCEDURE
PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form.
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

_____ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

_____ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

_____ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

_____ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: December 27, 2017

Page 2

Name of Noticing Party or attorney for Noticing Party: Kingpun Cheng

Address: Sy and Smith, PC, 11622 El Camino Real, Suite 100, Del Mar, CA 92130

Phone number: (858) 746-9554

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative

Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65PublicComments@oehha.ca.gov.

Revised: May, 2014

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Parker A. Smith, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this action;
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: December 27, 2017



Parker A. Smith

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is, 11622 El Camino Real, Suite 100, Del Mar, CA 92130.

On December 27, 2017, I served the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY
CODE §25249.7(d);
PROPOSITION 65: SUMMARY;
CERTIFICATE OF MERIT; AND
CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY
GENERAL)

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing true and correct copy in a sealed envelope, addressed to the Violator and providing such envelope to a United States Postal Service Representative:

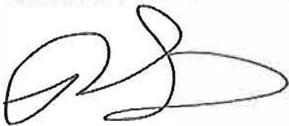
Ace Hardware Corporation
Current President or CEO
2200 Kensington Ct.
Oak Brook, IL 60523

Ace Hardware Corporation
Attn: The Prentice-Hall Corporation System, Inc.
2710 Gateway Oaks Dr., Ste 150 N
Sacramento, CA 95833

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below and served as follows:

By Uploading onto http://oag.ca.gov/prop65/add-60-day-notice	The Attorney General of the State of California
By placing each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys for 44 California Counties and; The City Attorneys for Los Angeles, San Diego, San Jose, San Francisco.
By sending electronic mail	The District Attorneys for the following California Counties: San Joaquin, San Luis Obispo, Sonoma, Santa Clara, Napa, Lassen, Riverside, Tulare, Ventura, Yolo, Monterey, Sacramento, San Francisco and Contra Costa

A list of address for each of the recipient's is attached.
Executed on December 27, 2017, San Diego, California



Parker A. Smith

District Attorney
COLUSA COUNTY
547 Market Street, Ste. 102
Colusa, CA 95932

District Attorney
DEL NORTE COUNTY
450 H Street, Room 171
Crescent City, CA 95531

District Attorney
ALPINE COUNTY
PO Box 248
Markleeville, CA 96120

District Attorney
EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

District Attorney
AMADOR COUNTY
708 Court Street #202
Jackson, CA 95642

District Attorney
FRESNO COUNTY
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

District Attorney
GLENN COUNTY
PO Box 430
Willows, CA 95988

District Attorney
BUTTE COUNTY
25 County Center Drive --
Administration Building
Oroville, CA 95965

District Attorney
HUMBOLDT COUNTY
825 5th Street
Eureka, CA 95501

District Attorney
IMPERIAL COUNTY
940 West Main Street, Ste. 102
El Centro, CA 92243

District Attorney
CALAVERAS COUNTY
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney
INYO COUNTY
PO Drawer D
Independence, CA 93526

District Attorney
KERN COUNTY
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

District Attorney
MARIN COUNTY
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney
MARIPOSA COUNTY
PO BOX 730
Mariposa, CA 95338

District Attorney
MENDOCINO COUNTY
PO BOX 1000
Ukiah, CA 95482

District Attorney
MERCED COUNTY
2222 M Street
Merced, CA 95340

District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

District Attorney
MONO COUNTY
PO BOX 617
Bridgeport, CA 93546

District Attorney
SAN DIEGO COUNTY
330 W. Broadway, Suite 1300
San Diego, CA 92101

District Attorney
County of Los Angeles
210 West Temple Street,
Suite 18000
Los Angeles, CA 90012-3210

District Attorney
NEVADA COUNTY
201 Commercial Street
Nevada City, CA 95959

District Attorney
ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

District Attorney
PLACER COUNTY
10810 Justice Center Drive
Roseville, CA 95678

District Attorney
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 95023-3801

District Attorney
SAN JOAQUIN COUNTY
PO BOX 990
Stockton, CA 95202

District Attorney
SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

District Attorney
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney
SANTA CRUZ COUNTY
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

District Attorney
SIERRA COUNTY
100 Courthouse Square
Downieville, CA 95936

District Attorney
SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

District Attorney
SOLANO COUNTY
675 Texas Street, Ste. 4500
Fairfield, CA 94533

District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

District Attorney
County of San Bernardino
316 N. Mountain View Ave
San Bernardino, CA 92415-
0004

District Attorney
STANISLAUS COUNTY
832 12th Street, Ste. 300
Modesto, CA 95353

District Attorney
SUTTER COUNTY
446 2nd Street, Suite 102
Yuba City, CA 95991

District Attorney
TEHAMA COUNTY
PO BOX 519
Red Bluff, CA 96080

District Attorney
TRINITY COUNTY
PO BOX 310
Weaverville, CA 96093

District Attorney
TUOLUMNE COUNTY
423 No. Washington Street
Sonora, CA 95370

District Attorney
YUBA COUNTY
215 Fifth Street, Ste. 152
Marysville, CA 95901

District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

Office of the City Attorney
CITY OF LOS ANGELES
200 N. Main Street
Los Angeles, CA 90012

Office of the City Attorney
CITY OF SAN DIEGO
Consumer and Environmental
Protection
1200 Third Avenue, Suite 700
San Diego, CA 92101

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

Office of the City Attorney
City of San Jose
200 East Santa Clara Street
16th Floor
San Jose, CA 95113

60 DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

DATE: December 27, 2017

To: President or CEO – Ace Hardware Corporation
California Attorney General’s Office;
District Attorney’s Office for 58 counties;
City Attorney’s for San Francisco, San Diego, San Jose, and Los Angeles.

From: Mr. Kingpun Cheng

- I. My name is Kingpun Cheng. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 et seq. (“Proposition 65”). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemical (“listed chemical”) identified below as follows:

Product Exposure: See Section VII. Exhibit A
Listed Chemical: (DINP) Diisononyl Phthalate
Routes of Exposure: Dermal absorption, Ingestion
Types of Harm: Cancer

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer exposures in violation of Proposition 65, and that is covered by this Notice, is listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the “products.”

The sale of these products in the state of California dating at least as far back as November 10, 2017 are subject to this notice. As a result, exposures to the listed chemical from the use of the products have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

California citizens, including children, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical in homes, workplaces, cars, and places throughout California where these products are used. By way of example but not limitation, exposures occur when California citizens use, hold, grab, rake, carry, move, pull, clean, store or otherwise handle these products, the listed chemical transfers onto the hands through routine touching of the parts and portions of the products containing readily available surface amounts of the listed chemical and is subsequently absorbed through the skin or ingested via inhalation, hand-to-mouth behavior, hand-to-food-to-mouth behavior, or through hand-to-cigarette-to-lung behavior. Exposure may continue to occur for a significant period after the initial contact. These activities cause California citizens to be exposed directly through migration of the listed chemical from the products. California citizens likely to be exposed are men, women, and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed as carcinogens and as reproductive toxins.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel’s office at the following address:

Mr. Kingpun Cheng
c/o Mr. Parker A. Smith
Sy and Smith, PC
11622 El Camino Real, Suite 100
Del Mar, CA 92130
Tel: (858) 746-9554

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is interested in resolving this dispute without resort to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL INFORMATION

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 22 CAL. CODE REGS., §12903 (b)(4).

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the Internet, and/or via catalog by the Violator and other distributors and retailers of the manufacturer.

Product*	Retailer(s)	Manufacturer(s)/Distributor(s)
UPC082901022657 Ace Bow Rake #7012818	Ace Hardware Corporation	Ace Hardware Corporation

VII. EXHIBIT A

Product Category/Type	Such As*	Toxins
Bow Rake	UPC082901022657 Ace Bow Rake #7012818	(DINP) Diisononyl Phthalate

*The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

APPENDIX A
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

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The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all full and part-time employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>

² See Section 25501(a)(4).

not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the

alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHH's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date: December 27, 2017

Page 1

Name of Noticing Party or attorney for Noticing Party: Kingpun Cheng

Address: Sy and Smith, PC, 11622 El Camino Real, Suite 100, Del Mar, CA 92130

Phone number: (858) 746-9554

**SPECIAL COMPLIANCE PROCEDURE
PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form.
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

_____ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

_____ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

_____ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

_____ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: December 27, 2017

Page 2

Name of Noticing Party or attorney for Noticing Party: Kingpun Cheng

Address: Sy and Smith, PC, 11622 El Camino Real, Suite 100, Del Mar, CA 92130

Phone number: (858) 746-9554

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative

Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May, 2014

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Parker A. Smith, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this action;
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: December 27, 2017



Parker A. Smith

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is, 11622 El Camino Real, Suite 100, Del Mar, CA 92130.

On December 27, 2017, I served the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY
CODE §25249.7(d);
PROPOSITION 65: SUMMARY;
CERTIFICATE OF MERIT; AND
CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY
GENERAL)

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing true and correct copy in a sealed envelope, addressed to the Violator and providing such envelope to a United States Postal Service Representative:

Ace Hardware Corporation
Current President or CEO
2200 Kensington Ct.
Oak Brook, IL 60523

Ace Hardware Corporation
Attn: The Prentice-Hall Corporation System, Inc.
2710 Gateway Oaks Dr., Ste 150 N
Sacramento, CA 95833

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below and served as follows:

By Uploading onto http://oag.ca.gov/prop65/add-60-day-notice	The Attorney General of the State of California
By placing each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys for 44 California Counties and; The City Attorneys for Los Angeles, San Diego, San Jose, San Francisco.
By sending electronic mail	The District Attorneys for the following California Counties: San Joaquin, San Luis Obispo, Sonoma, Santa Clara, Napa, Lassen, Riverside, Tulare, Ventura, Yolo, Monterey, Sacramento, San Francisco and Contra Costa

A list of address for each of the recipient's is attached.
Executed on December 27, 2017, San Diego, California



Parker A. Smith

District Attorney COLUSA COUNTY 547 Market Street, Ste. 102 Colusa, CA 95932	District Attorney MADERA COUNTY 209 West Yosemite Avenue Madera, CA 93637	District Attorney SAN BENITO COUNTY 419 4th Street Hollister, CA 95023-3801	District Attorney STANISLAUS COUNTY 832 12th Street, Ste. 300 Modesto, CA 95353
District Attorney DEL NORTE COUNTY 450 H Street, Room 171 Crescent City, CA 95531	District Attorney MARIN COUNTY 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney SAN JOAQUIN COUNTY PO BOX 990 Stockton, CA 95202	District Attorney SUTTER COUNTY 446 2nd Street, Suite 102 Yuba City, CA 95991
District Attorney ALPINE COUNTY PO Box 248 Markleeville, CA 96120	District Attorney MARIPOSA COUNTY PO BOX 730 Mariposa, CA 95338	District Attorney SAN LUIS OBISPO COUNTY 1035 Palm Street San Luis Obispo, CA 93408	District Attorney TEHAMA COUNTY PO BOX 519 Red Bluff, CA 96080
District Attorney EL DORADO COUNTY 515 Main Street Placerville, CA 95667	District Attorney MENDOCINO COUNTY PO BOX 1000 Ukiah, CA 95482	District Attorney SAN MATEO COUNTY 400 County Center, Third Floor Redwood City, CA 94063	District Attorney TRINITY COUNTY PO BOX 310 Weaverville, CA 96093
District Attorney AMADOR COUNTY 708 Court Street #202 Jackson, CA 95642	District Attorney MERCED COUNTY 2222 M Street Merced, CA 95340	District Attorney SANTA BARBARA COUNTY 1112 Santa Barbara Street Santa Barbara, CA 93101	District Attorney TUOLUMNE COUNTY 423 No. Washington Street Sonora, CA 95370
District Attorney FRESNO COUNTY 2220 Tulare Street, Ste. 1000 Fresno, CA 93721	District Attorney MODOC COUNTY 204 S. Court Street, Room 202 Alturas, CA 96101	District Attorney SANTA CRUZ COUNTY 701 Ocean Street, Room 200 Santa Cruz, CA 95060	District Attorney YUBA COUNTY 215 Fifth Street, Ste. 152 Marysville, CA 95901
District Attorney GLENN COUNTY PO Box 430 Willows, CA 95988	District Attorney MONO COUNTY PO BOX 617 Bridgeport, CA 93546	District Attorney SHASTA COUNTY 1355 West Street Redding, CA 96001	District Attorney ALAMEDA COUNTY 1225 Fallon Street, Room 900 Oakland, CA 94612
District Attorney BUTTE COUNTY 25 County Center Drive -- Administration Building Oroville, CA 95965	District Attorney SAN DIEGO COUNTY 330 W. Broadway, Suite 1300 San Diego, CA 92101	District Attorney SIERRA COUNTY 100 Courthouse Square Downieville, CA 95936	Office of the City Attorney CITY OF LOS ANGELES 200 N. Main Street Los Angeles, CA 90012
District Attorney HUMBOLDT COUNTY 825 5th Street Eureka, CA 95501	District Attorney County of Los Angeles 210 West Temple Street, Suite 18000 Los Angeles, CA 90012-3210	District Attorney SISKIYOU COUNTY PO BOX 986 Yreka, CA 96097	Office of the City Attorney CITY OF SAN DIEGO Consumer and Environmental Protection 1200 Third Avenue, Suite 700 San Diego, CA 92101
District Attorney IMPERIAL COUNTY 940 West Main Street, Ste. 102 El Centro, CA 92243	District Attorney NEVADA COUNTY 201 Commercial Street Nevada City, CA 95959	District Attorney SOLANO COUNTY 675 Texas Street, Ste. 4500 Fairfield, CA 94533	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682
District Attorney CALAVERAS COUNTY 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney ORANGE COUNTY 401 Civic Center Drive West Santa Ana, CA 92701	District Attorney PLUMAS COUNTY 520 Main Street, Room 404 Quincy, CA 95971	Office of the City Attorney City of San Jose 200 East Santa Clara Street 16th Floor San Jose, CA 95113
District Attorney INYO COUNTY PO Drawer D Independence, CA 93526	District Attorney PLACER COUNTY 10810 Justice Center Drive Roseville, CA 95678	District Attorney County of San Bernardino 316 N. Mountain View Ave San Bernardino, CA 92415- 0004	
District Attorney KERN COUNTY 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney LAKE COUNTY 255 N. Forbes Street Lakeport, CA 95453		
District Attorney KINGS COUNTY 1400 West Lacey Blvd. Hanford, CA 93230			

SUPPLEMENTAL

60 DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

DATE: September 21, 2017

To: President or CEO – Ace Hardware Corporation
President or CEO – Truper S.A de C.V.
California Attorney General’s Office;
District Attorney’s Office for 58 counties;
City Attorney’s for San Francisco, San Diego, San Jose, and Los Angeles.

From: Mr. Kingpun Cheng

- I. My name is Kingpun Cheng. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 et seq. (“Proposition 65”). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemical (“listed chemical”) identified below as follows:

Product Exposure: See Section VII. Exhibit A
Listed Chemical: (DINP) Diisononyl Phthalate
Routes of Exposure: Dermal absorption, Ingestion
Types of Harm: Cancer

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer exposures in violation of Proposition 65, and that is covered by this Notice, is listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the “products.”

The sale of these products in the state of California dating at least as far back as May 9, 2017 are subject to this notice. As a result, exposures to the listed chemical from the use of the products have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products, California citizen lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

California citizens, including children, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical in homes, workplaces, cars, and places throughout California where these products are used. By way of example but not limitation, exposures occur when California citizens use, hold, grab, dig, carry, shovel, move, clean, store or otherwise handle these products, the listed chemical transfers onto the hands through routine touching of the parts and portions of the products containing readily available surface amounts of the listed chemical and is subsequently absorbed through the skin or ingested via inhalation, hand-to-mouth behavior, hand-to-food-to-mouth behavior, or through hand-to-cigarette-to-lung behavior. Exposure may continue to occur for a significant period after the initial contact. These activities cause California citizens to be exposed directly through migration of the listed chemical from the products. California citizens likely to be exposed are men, women, and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed as carcinogens and as reproductive toxins.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's office at the following address:

Mr. Kingpun Cheng
c/o Mr. Parker A. Smith
Sy and Smith, PC
11622 El Camino Real, Suite 100
Del Mar, CA 92130
Tel: (858) 746-9554

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is interested in resolving this dispute without resort to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL INFORMATION

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 22 CAL. CODE REGS., §12903 (b)(4).

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the Internet, and/or via catalog by the Violator and other distributors and retailers of the manufacturer.

Product*	Retailer(s)	Manufacturer(s)/Distributor(s)
UPC082901022626 Ace Round Point Shovel, Heavy Duty Fiberglass Handle #7011273	Ace Hardware Corporation	Ace Hardware Corporation

VII. EXHIBIT A

Product Category/Type	Such As*	Toxins
Round Point Shovels	UPC082901022626 Ace Round Point Shovel, Heavy Duty Fiberglass Handle #7011273	(DINP) Diisononyl Phthalate

*The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

APPENDIX A
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all full and part-time employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>

² See Section 25501(a)(4).

not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the

alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date: September 21, 2017

Page 1

Name of Noticing Party or attorney for Noticing Party: Kingpun Cheng
Address: Sy and Smith, PC, 11622 El Camino Real, Suite 100, Del Mar, CA 92130
Phone number: (858) 746-9554

**SPECIAL COMPLIANCE PROCEDURE
PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form.
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

_____ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

_____ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

_____ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

_____ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: September 21, 2017

Page 2

Name of Noticing Party or attorney for Noticing Party: Kingpun Cheng
Address: Sy and Smith, PC, 11622 El Camino Real, Suite 100, Del Mar, CA 92130
Phone number: (858) 746-9554

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative

Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@cehha.ca.gov.

Revised: May, 2014


NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Parker A. Smith, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this action;
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: September 21, 2017


Parker A. Smith

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is, 11622 El Camino Real, Suite 100, Del Mar, CA 92130.

On September 21, 2017, I served the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY
CODE §25249.7(d);
PROPOSITION 65: SUMMARY;
CERTIFICATE OF MERIT; AND
CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY
GENERAL)

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing true and correct copy in a sealed envelope, addressed to the Violator and providing such envelope to a United States Postal Service Representative:

Ace Hardware Corporation
Current President or CEO
2200 Kensington Ct.
Oak Brook, IL 60523

Ace Hardware Corporation
Attn: The Prentice-Hall Corporation System, Inc.
2710 Gateway Oaks Dr., Ste 150 N
Sacramento, CA 95833

Truper S.A. de C.V.
Attn: Mark Dorenkott
U.S. Director of Sales
28697 Woodmill Drive
Westlake, Ohio 44145

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below and served as follows:

By Uploading onto http://oag.ca.gov/prop65/add-60-day-notice	The Attorney General of the State of California
By placing each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys for 44 California Counties and; The City Attorneys for Los Angeles, San Diego, San Jose, San Francisco.
By sending electronic mail	The District Attorneys for the following California Counties: San Joaquin, San Luis Obispo, Sonoma, Santa Clara, Napa, Lassen, Riverside, Tulare, Ventura, Yolo, Monterey, Sacramento, San Francisco and Contra Costa

A list of address for each of the recipient's is attached.
Executed on September 21, 2017, San Diego, California



Parker A. Smith

District Attorney
COLUSA COUNTY
547 Market Street, Ste. 102
Colusa, CA 95932

District Attorney
DEL NORTE COUNTY
450 H Street, Room 171
Crescent City, CA 95531

District Attorney
ALPINE COUNTY
PO Box 248
Markleeville, CA 96120

District Attorney
EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

District Attorney
AMADOR COUNTY
708 Court Street #202
Jackson, CA 95642

District Attorney
FRESNO COUNTY
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

District Attorney
GLENN COUNTY
PO Box 430
Willows, CA 95988

District Attorney
BUTTE COUNTY
25 County Center Drive --
Administration Building
Oroville, CA 95965

District Attorney
HUMBOLDT COUNTY
825 5th Street
Eureka, CA 95501

District Attorney
IMPERIAL COUNTY
940 West Main Street, Ste. 102
El Centro, CA 92243

District Attorney
CALAVERAS COUNTY
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney
INYO COUNTY
PO Drawer D
Independence, CA 93526

District Attorney
KERN COUNTY
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

District Attorney
MARIN COUNTY
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney
MARIPOSA COUNTY
PO BOX 730
Mariposa, CA 95338

District Attorney
MENDOCINO COUNTY
PO BOX 1000
Ukiah, CA 95482

District Attorney
MERCED COUNTY
2222 M Street
Merced, CA 95340

District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

District Attorney
MONO COUNTY
PO BOX 617
Bridgeport, CA 93546

District Attorney
SAN DIEGO COUNTY
330 W. Broadway, Suite 1300
San Diego, CA 92101

District Attorney
County of Los Angeles
210 West Temple Street,
Suite 18000
Los Angeles, CA 90012-3210

District Attorney
NEVADA COUNTY
201 Commercial Street
Nevada City, CA 95959

District Attorney
ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

District Attorney
PLACER COUNTY
10810 Justice Center Drive
Roseville, CA 95678

District Attorney
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 95023-3801

District Attorney
SAN JOAQUIN COUNTY
PO BOX 990
Stockton, CA 95202

District Attorney
SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

District Attorney
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney
SANTA CRUZ COUNTY
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

District Attorney
SIERRA COUNTY
100 Courthouse Square
Downieville, CA 95936

District Attorney
SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

District Attorney
SOLANO COUNTY
675 Texas Street, Ste. 4500
Fairfield, CA 94533

District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

District Attorney
County of San Bernardino
316 N. Mountain View Ave
San Bernardino, CA 92415-
0004

District Attorney
STANISLAUS COUNTY
832 12th Street, Ste. 300
Modesto, CA 95353

District Attorney
SUTTER COUNTY
446 2nd Street, Suite 102
Yuba City, CA 95991

District Attorney
TEHAMA COUNTY
PO BOX 519
Red Bluff, CA 96080

District Attorney
TRINITY COUNTY
PO BOX 310
Weaverville, CA 96093

District Attorney
TUOLUMNE COUNTY
423 No. Washington Street
Sonora, CA 95370

District Attorney
YUBA COUNTY
215 Fifth Street, Ste. 152
Marysville, CA 95901

District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

Office of the City Attorney
CITY OF LOS ANGELES
200 N. Main Street
Los Angeles, CA 90012

Office of the City Attorney
CITY OF SAN DIEGO
Consumer and Environmental
Protection
1200 Third Avenue, Suite 700
San Diego, CA 92101

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

Office of the City Attorney
City of San Jose
200 East Santa Clara Street
16th Floor
San Jose, CA 95113

SUPPLEMENTAL

60 DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

DATE: February 14, 2018

To: President or CEO – Ace Hardware Corporation
President or CEO – Truper S.A de C.V.
California Attorney General's Office;
District Attorney's Office for 58 counties;
City Attorney's for San Francisco, San Diego, San Jose, and Los Angeles.

From: Mr. Kingpun Cheng

- I. My name is Kingpun Cheng. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 et seq. ("Proposition 65"). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemical ("listed chemical") identified below as follows:

Product Exposure: See Section VII. Exhibit A
Listed Chemical: (DINP) Diisononyl Phthalate
Routes of Exposure: Dermal absorption, Ingestion
Types of Harm: Cancer

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the "products."

The sale of these products in the state of California dating at least as far back as November 10, 2017 are subject to this notice. As a result, exposures to the listed chemical from the use of the products have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products, California citizen lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

California citizens, including children, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical in homes, workplaces, cars, and places throughout California where these products are used. By way of example but not limitation, exposures occur when California citizens use, hold, grab, rake, dig, carry, move, pull, clean, store or otherwise handle these products, the listed chemical transfers onto the hands through routine touching of the parts and portions of the products containing readily available surface amounts of the listed chemical and is subsequently absorbed through the skin or ingested via inhalation, hand-to-mouth behavior, hand-to-food-to-mouth behavior, or through hand-to-cigarette-to-lung behavior. Exposure may continue to occur for a significant period after the initial contact. These activities cause California citizens to be exposed directly through migration of the listed chemical from the products. California citizens likely to be exposed are men, women, and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed as carcinogens and as reproductive toxins.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's office at the following address:

Mr. Kingpun Cheng
c/o Mr. Parker A. Smith
Sy and Smith, PC
11622 El Camino Real, Suite 100
Del Mar, CA 92130
Tel: (858) 746-9554

IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the Lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is interested in resolving this dispute without resort to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL INFORMATION

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 22 CAL. CODE REGS. §12903 (b)(4).

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the Internet, and/or via catalog by the Violator and other distributors and retailers of the manufacturer.

Product*	Retailer(s)	Manufacturer(s)/Distributor(s)
UPC082901022640 Ace Garden Hoe #7012859 and UPC082901022657 Ace Bow Rake #7012818	Ace Hardware Corporation	Truper S.A de C.V.

VII. EXHIBIT A

Product Category/Type	Such As*	Toxins
Garden Hoe and Bow Rake	UPC082901022640 Ace Garden Hoe #7012859 and UPC082901022657 Ace Bow Rake #7012818	(DINP) Diisononyl Phthalate

*The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

APPENDIX A
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prcp65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all full and part-time employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 et seq. of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 et seq. of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>

² See Section 25501(a)(4).

not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the

alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date: February 14, 2018

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Name of Noticing Party or attorney for Noticing Party: Kingpun Cheng
Address: Sy and Smith, PC, 11622 El Camino Real, Suite 100, Del Mar, CA 92130
Phone number: (858) 746-9554

**SPECIAL COMPLIANCE PROCEDURE
PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form.
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

_____ Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

_____ A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

_____ Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

_____ Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: February 14, 2018

Page 2

Name of Noticing Party or attorney for Noticing Party: Kingpun Cheng
Address: Sy and Smith, PC, 11622 El Camino Real, Suite 100, Del Mar, CA 92130
Phone number: (858) 746-9554

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
 Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR
 Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative

Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65PublicComments@oehha.ca.gov.

Revised: May, 2014


NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Parker A. Smith, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this action;
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: February 14, 2018



Parker A. Smith

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is, 11622 El Camino Real, Suite 100, Del Mar, CA 92130.

On February 14, 2018, I served the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY
CODE §25249.7(d);
PROPOSITION 65: SUMMARY;
CERTIFICATE OF MERIT; AND
CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY
GENERAL)

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing true and correct copy in a sealed envelope, addressed to the Violator and providing such envelope to a United States Postal Service Representative:

Ace Hardware Corporation
Current President or CEO
2200 Kensington Ct.
Oak Brook, IL 60523

Ace Hardware Corporation
Attn: The Prentice-Hall Corporation System, Inc.
2710 Gateway Oaks Dr., Ste 150 N
Sacramento, CA 95833

Truper S.A. de C.V.
Attn: Mark Dorenkott
U.S. Director of Sales
28697 Woodmill Drive
Westlake, Ohio 44145

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below and served as follows:

By Uploading onto http://oag.ca.gov/prop65/add-60-day-notice	The Attorney General of the State of California
By placing each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys for 44 California Counties and; The City Attorneys for Los Angeles, San Diego, San Jose, San Francisco.
By sending electronic mail	The District Attorneys for the following California Counties: San Joaquin, San Luis Obispo, Sonoma, Santa Clara, Napa, Lassen, Riverside, Tulare, Ventura, Yolo, Monterey, Sacramento, San Francisco and Contra Costa

A list of address for each of the recipient's is attached.

Executed on February 14, 2018, San Diego, California


Parker A. Smith

District Attorney
COLUSA COUNTY
547 Market Street, Ste. 102
Colusa, CA 95932

District Attorney
DEL NORTE COUNTY
450 H Street, Room 171
Crescent City, CA 95531

District Attorney
ALPINE COUNTY
PO Box 248
Markleeville, CA 96120

District Attorney
EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

District Attorney
AMADOR COUNTY
708 Court Street #202
Jackson, CA 95642

District Attorney
FRESNO COUNTY
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

District Attorney
GLENN COUNTY
PO Box 430
Willows, CA 95988

District Attorney
BUTTE COUNTY
25 County Center Drive --
Administration Building
Oroville, CA 95965

District Attorney
HUMBOLDT COUNTY
825 5th Street
Eureka, CA 95501

District Attorney
IMPERIAL COUNTY
940 West Main Street, Ste. 102
El Centro, CA 92243

District Attorney
CALAVERAS COUNTY
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney
INYO COUNTY
PO Drawer D
Independence, CA 93526

District Attorney
KERN COUNTY
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

District Attorney
MARIN COUNTY
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney
MARIPOSA COUNTY
PO BOX 730
Mariposa, CA 95338

District Attorney
MENDOCINO COUNTY
PO BOX 1000
Ukiah, CA 95482

District Attorney
MERCED COUNTY
2222 N Street
Merced, CA 95340

District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

District Attorney
MONO COUNTY
PO BOX 617
Bridgeport, CA 93546

District Attorney
SAN DIEGO COUNTY
330 W. Broadway, Suite 1300
San Diego, CA 92101

District Attorney
County of Los Angeles
210 West Temple Street,
Suite 18000
Los Angeles, CA 90012-3210

District Attorney
NEVADA COUNTY
201 Commercial Street
Nevada City, CA 95959

District Attorney
ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

District Attorney
PLACER COUNTY
10810 Justice Center Drive
Roseville, CA 95678

District Attorney
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 95023-3801

District Attorney
SAN JOAQUIN COUNTY
PO BOX 990
Stockton, CA 95202

District Attorney
SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

District Attorney
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney
SANTA CRUZ COUNTY
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

District Attorney
SIERRA COUNTY
100 Courthouse Square
Downieville, CA 95936

District Attorney
SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

District Attorney
SOLANO COUNTY
675 Texas Street, Ste. 4500
Fairfield, CA 94533

District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

District Attorney
County of San Bernardino
316 N. Mountain View Ave
San Bernardino, CA 92415-
0004

District Attorney
STANISLAUS COUNTY
832 12th Street, Ste. 300
Modesto, CA 95353

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SUTTER COUNTY
446 2nd Street, Suite 102
Yuba City, CA 95991

District Attorney
TEHAMA COUNTY
PO BOX 519
Red Bluff, CA 96080

District Attorney
TRINITY COUNTY
PO BOX 310
Weaverville, CA 96093

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TUOLUMNE COUNTY
423 No. Washington Street
Sonora, CA 95370

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YUBA COUNTY
215 Fifth Street, Ste. 152
Marysville, CA 95901

District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

Office of the City Attorney
CITY OF LOS ANGELES
200 N. Main Street
Los Angeles, CA 90012

Office of the City Attorney
CITY OF SAN DIEGO
Consumer and Environmental
Protection
1200 Third Avenue, Suite 700
San Diego, CA 92101

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

Office of the City Attorney
City of San Jose
200 East Santa Clara Street
16th Floor
San Jose, CA 95113