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FILED
Clerk of the Superior Court

MAR -2 2016

By: J. Browder, Deputy

5 *Attorney for Plaintiff, Kingpun Cheng*
6

7 '16 FEB 24 AM 9:25

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

9 **COUNTY OF SAN DIEGO**

10 **UNLIMITED CIVIL JURISDICTION**
11

13 **KINGPUN CHENG,**)

CASE NO.: 37-2014-00043779-CU-NP-CTL

14)
15 **Plaintiff,**)

[PROPOSED]

JUDGMENT APPROVING

PROP 65 STIPULATION AND

CONSENT JUDGMENT

16 **and**)

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

17 **HOME DEPOT, INC., KTC SLAMS INC.)**

18 **THE AGENCY ACBH INC.; and)**

19 **DOES 1 THROUGH 25 INCLUSIVE,)**

“IMAGED FILE”

Date: January 25, 2016

Time: 1:30 PM

Dept. C-69

Judge: Hon. Katherine Bacall

20 **Defendant.**)
21)
22)

Action Filed: December 30, 2014

23
24 In the above entitled action, Plaintiff, Kingpun Cheng and Defendants, Home
25 Depot, Inc., KTC Slams, Inc. and ACBH Inc., having agreed through their respective counsel
26 that judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the
27 form of a [Proposed] Consent Judgment entered into by the parties, and following issuance of
28 an order approving this Proposition 65 settlement agreement and entering this Consent
Judgment on 3/2/2016

1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to
2 Code of Civil Procedure §664.6, judgment is entered in accordance with the Consent Judgment
3 attached hereto as Exhibit 1.
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5 **IT IS SO ORDERED.**

6
7 **Dated:** 3/2/16
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KATHERINE A. BACAL

JUDGE OF THE SUPERIOR COURT

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Attorney for Plaintiff
KINGPUN CHENG

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

KINGPUN CHENG,

Plaintiff,

v.

KTC SLAMS INC.; THE AGENCY ACBH
INC.; and DOES 1 through 25, Inclusive,

Defendant.

Case No. 37-2014-00043779-CU-NP-CTL
**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

Trial Date: None Set

1 **1. INTRODUCTION**

2 **1.1 Kingpun Cheng, KTC Slams, Inc., and The Agency ACBH**

3 This Consent Judgment is entered into by and between plaintiff Kingpun Cheng
4 ("Plaintiff") and defendants KTC Slams, Inc. (KTC) and The Agency ACBH Inc. ("The
5 Agency") (collectively "Defendants"), with Plaintiff and Defendants collectively referred to as
6 the "Parties" and individually as a "Party." Cheng is an individual residing in California who
7 seeks to promote awareness of exposures to toxic chemicals and improve human health by
8 reducing or eliminating hazardous substances contained in consumer products. Plaintiff alleges
9 that Defendants employ ten or more persons and are each a person in the course of doing business
10 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
11 & Safety Code § 25249.6, *et seq.* ("Proposition 65").

12 **1.2 General Allegations**

13 Plaintiff alleges that Defendants have manufactured, imported, distributed and/or sold
14 plumbing valve accessories that contain lead and lead compounds ("Lead") without the requisite
15 Proposition 65 warnings. Lead is listed as a carcinogen and reproductive toxin under Proposition
16 65.

17 **1.3 Notice of Violation**

18 On January 27, 2014, Plaintiff served Defendant and various public enforcement agencies
19 with a document entitled "60-Day Notice of Violation" ("Notice") alleging that Defendants were
20 in violation of Proposition 65 for failing to warn consumers and customers of alleged exposures
21 to Lead in plumbing/hardware, including "AS-51-NL Cold Stem for American Standard 58019"
22 UPC013964580198. No public enforcer has diligently prosecuted the allegations set forth in the
23 Notice.

24 **1.4 Complaint**

25 On [DATE] Plaintiff, acting in the public interest under Cal. Health & Safety Code §
26 25249.7(d), filed its complaint against Defendants in the above-captioned action ("Action"),
27 alleging exposures to Lead in plumbing valve stems.
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1.5 No Admission

Defendants deny the material, factual and legal allegations contained in the Notice and asserted in the Action and maintain that they have at all times been in compliance with all laws and all products that it has sold, manufactured, imported and/or distributed in California, including the Covered Products. Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendants of any fact, finding, issue of law or violation of law. However, this Section 1.5 shall not diminish or otherwise affect Defendants' obligations, responsibilities and duties under this Consent Judgment.

1.6 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendants as to the allegations contained in the Notice, that venue is proper in the County of San Diego, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

2. DEFINITIONS

2.1 "Covered Products" means plumbing repair parts that contain Lead.

2.2 "Effective Date" means the date on which the Court approves and enters judgment pursuant to the terms of this Consent Judgment.

3. INJUNCTIVE RELIEF: REFORMULATION/CLEAR AND REASONABLE WARNING

3.1 As of the Effective Date, Defendant shall not distribute, sell or offer for sale any Covered Product that will be sold or offered for sale to California consumers containing more than 300 ppm lead, unless the Covered Product bears a clear and reasonable warning pursuant to this Section 3.

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3.2 The warning shall state: "WARNING: This product contains [lead,] a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. [Wash hands after handling.]" The bracketed terms are optional.

3.3 The warning shall be prominently displayed on the Covered Product or its packaging with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale.

4. MONETARY PAYMENTS

4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)

Defendants shall pay a total civil penalty payment of \$1,000 within ten (10) days of the Effective Date, as follows: the civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c) and (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of these funds remitted to Plaintiff, both pursuant to the procedures set forth in Section 4.3.

4.2 Reimbursement of Plaintiff's Fees and Costs

The Parties acknowledge that Plaintiff and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Defendants expressed a desire to resolve the fee and cost issue after the other settlement terms had been agreed. The Parties then attempted to (and did) reach an accord on the compensation due to Plaintiff and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5 for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Defendants shall pay the amount of \$22,000 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting and obtaining the Court's approval of this Consent Judgment in the public interest.

4.3 Payment Procedures

All payments required by Sections 4.1 and 4.2 shall be made within ten (10) days of the

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Effective Date, in three checks made payable as follows:

4.3.1 one check to "OEHHA" in the amount of \$750;

4.3.2 one check to "Parker A. Smith in Trust for Kingpun Cheng" in the amount of \$250; and

4.3.3 one check to "Parker A. Smith, Attorney at Law" in the amount of \$22,000.

4.4 Issuance of W-9 and 1099 Forms

Plaintiff shall provide W-9 forms for all payees under this Consent Judgment upon signing the Consent Judgment. After the settlement funds have been transmitted to Plaintiff's counsel, Defendants shall issue separate 1099 forms, as follows:

4.4.1 one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the amount of \$750;

4.4.2 a second 1099 form in the amount of \$250 to "Kingpun Cheng," whose address and tax identification number shall be furnished upon request; and

4.4.3 a third 1099 to "Parker A. Smith, Attorney at Law" (EIN: 68-0284486) in the amount of \$22,000.

4.5 Issuance of Payments.

4.5.1 Payments to OEHHA shall be delivered to the following address:

Proposition 65 Settlement Coordinator
California Department of Justice
1515 Clay Street, 20th Floor
Oakland, CA 94612-1413

4.5.2 All other payments shall be delivered to the following payment address:

Parker A. Smith, Attorney at Law
2173 Salk Ave., Suite #250
Carlsbad, CA 92008

5. CLAIMS COVERED AND RELEASED

5.1 This Consent Judgment is a full, final, and binding resolution between Plaintiff, acting in the public interest, and Defendants and each of their parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, divisions, partners, shareholders, attorneys and their successors and assigns (collectively, the "Defendant

1 Releasees"), and each entity to whom any Defendant Releasee directly or indirectly distributed or
2 sold any Covered Products, including, but not limited to, downstream distributors, wholesalers,
3 customers, retailers, franchisees, cooperative members, licensors and licensees (collectively,
4 "Downstream Releasees"), of all violations of Proposition 65 based on exposure to Lead from
5 Covered Products as set forth in the Notice, with respect to any Covered Products manufactured,
6 distributed, or sold by Defendants prior to the Effective Date. Compliance with the terms of this
7 Consent Judgment by Defendants and Defendant Releasees constitutes compliance with
8 Proposition 65 with respect to any alleged exposure to Lead from the Covered Products as set
9 forth in the Notice and the Action.

10 5.2 Plaintiff, on behalf of itself and its past and current agents, representatives,
11 attorneys, successors and assigns, and in the public interest, waives all right to participate in any
12 action and releases and discharges Defendant Releasees and Downstream Releasees with respect
13 to all claims, including but not limited to causes of action, suits, liabilities, demands, obligations,
14 damages, costs, fines, penalties, fees (including but not limited to expert fees, attorneys' fees and
15 investigation fees) or losses (collectively, "Claims") regarding any violation of Proposition 65
16 based on failure to warn about alleged exposure to Lead, or alleged exposure to Lead, in any
17 Covered Products manufactured, distributed, or sold by Defendants prior to the Effective Date.

18 5.3 In addition, Plaintiff, on behalf of himself and his past and current agents,
19 representatives, attorneys, successors and assigns, in his individual capacity only and not in his
20 representative capacity, provides a release herein which shall be effective as a full and final
21 accord and satisfaction, and as a bar to all Claims under Proposition 65 and any other statutory or
22 common law, whether known or unknown, suspected or unsuspected, limited to and arising out of
23 alleged exposure to, and/or failure to warn of alleged exposure to, Lead in the Covered Products
24 manufactured, distributed or sold by Defendants. It is possible that other Claims not known to the
25 Parties arising out of the facts alleged in the Notice or the Action will develop or be discovered.
26 Plaintiff, on behalf of himself and his past and current agents, representatives, attorneys,
27 successors and assigns, and not in his representative capacity, acknowledges that this Consent
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1 Judgment is expressly intended to cover and include all such Claims, including all rights of action
2 therefor. Plaintiff has full knowledge of the contents of California Civil Code § 1542. Plaintiff
3 acknowledges that the Claims released in Sections 5.1 and 5.2 include unknown Claims, and
4 Plaintiff nevertheless waives California Civil Code § 1542 as to any such unknown Claims.
5 California Civil Code § 1542 reads as follows:
6

7 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
10 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
11 HER SETTLEMENT WITH THE DEBTOR."

12 Plaintiff, on behalf of itself and its past and current agents, representatives, attorneys, and
13 successors and assigns, and not in its representative capacity, acknowledges and understands the
14 significance and consequences of this specific waiver of California Civil Code § 1542.

15 5.4 Defendants, on behalf of themselves and their past and current agents,
16 representatives, attorneys, and successors and assignees, hereby waive any and all claims against
17 Plaintiff and its attorneys and other representatives, for any and all actions taken or statements
18 made (or those that could have been taken or made) by Plaintiff and its attorneys and other
19 representatives, whether in the course of investigating claims or of otherwise seeking to enforce
20 Proposition 65 against them in this matter with respect to the Covered Products.

21 6. INTEGRATION

22 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
23 any and all prior negotiations and understandings related hereto shall be deemed to have been
24 merged within it. No representations or terms of agreement other than those contained herein
25 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

26 7. MODIFICATION

27 7.1 Modification. This Consent Judgment may be modified from time to time by
28 express written agreement of the Parties, with the approval of the Court, or by an order of this
Court upon motion and in accordance with law.

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2 7.2 Notice; Meet and Confer. Any Party seeking to modify this Consent Judgment
3 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
4 modify the Consent Judgment, sending the other Party notice by first class and electronic mail.

5 8. COURT APPROVAL

6 8.1 This Consent Judgment shall become effective on the Effective Date, provided
7 however, that Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and
8 Defendant shall support approval of such Motion.

9 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
10 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
11 purpose.

12 9. GOVERNING LAW

13 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California and the obligations of Defendant hereunder as to the Covered Products apply only
15 within the State of California. In the event that Proposition 65 is repealed, preempted, or is
16 otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
17 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal
18 or preemption or rendered inapplicable by reason of law generally as to the Covered Products,
19 including, without limitation, the removal of Lead from OEHHA's list of Proposition 65
20 chemicals, then Defendants shall have no further obligations pursuant to this Consent Judgment
21 with respect to, and to the extent that, any Covered Products are so affected.

22 10. RETENTION OF JURISDICTION

23 10.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 11. ATTORNEYS' FEES

26 A Party who unsuccessfully brings or contests an action arising out of this Consent
27 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs.
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12. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and (i) personally delivered, (ii) sent by first-class or by registered or certified mail return receipt requested, or (iii) sent by overnight courier to one Party from the other Party at the following addresses:

12.1 For Defendants:

Bill Harper
President
The Agency ACBH
2810 Edgmont Ave, Suite D
Parkside, PA 19015

With a copy to:

Jeffrey Margulies
Fulbright & Jaworski L.L.P.
555 South Flower St.
Forty First Floor
Los Angeles, CA 90071

12.2 For Plaintiff:

Parker A. Smith, Attorney at Law
2173 Salk Ave., Suite #250
Carlsbad, CA 92008

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

13. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or .pdf signature shall be as valid as the original.

14. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

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AGREED TO:

Date: _

By: _____

Plaintiff, KINGPUN CHENG

Name: _____

Its: _____

AGREED TO:

Date: - 6/4/15

By: William L. Harper

Defendant, KTC SLAMS, INC.

Name: William L. Harper

Its: PRESIDENT

AGREED TO:

Date: - 6/4/15

By: William L. Harper

Defendant, The Agency ACBH Inc..

Name: William L. Harper

Its: PRESIDENT

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AGREED TO:

Date: 6-22-2015

By: [Signature]
Plaintiff, KINGPUN CHENG

Name: Kingpun Cheng
Its: _____

AGREED TO:

Date: 6/4/15

By: William L. Harper
Defendant, KTC SLAMS, INC.

Name: William L. Harper
Its: PRESIDENT

AGREED TO:

Date: 6/4/15

By: William L. Harper
Defendant, The Agency ACBH Inc..

Name: William L. Harper
Its: PRESIDENT