

1 Parker A. Smith, Esq.  
2 PARKER A. SMITH, ATTORNEY AT LAW  
3 2173 Salk Ave., Suite 250  
4 Carlsbad, CA 92008  
5 Phone: 760 579 7600

**FILED**  
San Diego Superior Court

**MAR 15 2016**

6 *Attorney for Plaintiff, Kingpun Cheng*

By: \_\_\_\_\_, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**  
10 **UNLIMITED CIVIL JURISDICTION**

13 **KINGPUN CHENG ,**

15 **Plaintiff,**

17 **and**

18 **THE DIXIELINE LUMBER CO.,**  
19 **LINCOLN PRODUCTS, INC. AND**  
20 **DOES 1 - 25 INCLUSIVE**

21 **Defendant.**

CASE NO.:37-2015-00020415-CU-NP-CTL

22 )  
23 )  
24 )  
25 ) **[PROPOSED]**  
26 ) **JUDGMENT APPROVING**  
27 ) **PROP 65 STIPULATION AND**  
28 ) **CONSENT JUDGMENT**  
(Cal. Health & Safety Code § 25249.6 et seq.)  
Date: **December 17, 2015**  
Time: **9:00 AM**  
Dept. **C-73**  
Judge: **Hon. Joel R. Wohlfeil**  
Action Filed: **June 17, 2015**

23 In the above entitled action, Plaintiff, Kingpun Cheng and Defendant, Lincoln  
24 Products, Inc. having agreed through their respective counsel that judgment be entered pursuant  
25 to the terms of the Proposition 65 settlement agreement in the form of a [Proposed] Consent  
26 Judgment entered into by the parties, and following issuance of an order approving this  
27 Proposition 65 settlement agreement and entering this Consent Judgment on \_\_\_\_\_.

**[PROPOSED] JUDGMENT APPROVING PROP 65 STIPULATION AND CONSENT JUDGMENT**

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.  
4

5 **IT IS SO ORDERED.**

6  
7 Dated: 3/15/16

JOEL R. WOHLFEL

8 **JUDGE OF THE SUPERIOR COURT**  
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## **Exhibit 1**

## **Exhibit 1**

1 PARKER SMITH, ESQ. (SBN 290311)  
2 PARKER SMITH, ATTORNEY AT LAW  
2173 Salk Ave.  
3 Suite 250  
Carlsbad, CA 92008  
4 Telephone: 619-335-5697

5 Attorneys for Plaintiff, King Pun Cheng

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10 KING PUN CHENG,

11 Plaintiff,

12 vs.

13 LINCOLN PRODUCTS.; AND  
14 DOES 1-25

15 Defendants.

Case No.

UNLIMITED JURISDICTION

STIPULATION RE ENTRY OF  
CONSENT JUDGMENT AS TO  
LINCOLN RODUCTS, INC.

Complaint Filed: June 16, 2015

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Stipulation and [Proposed] Order Re Consent Judgment ("Consent Judgment") is  
4 hereby entered into by and between King Pun Cheng acting on behalf of the public interest  
5 (hereinafter "Cheng") and Lincoln Products, Inc., (hereinafter "Lincoln" or "Defendant").  
6 Collectively Lincoln and Cheng shall be referred to hereafter as the "Parties" and each of them as  
7 a "Party." Cheng is an individual residing in California who seeks to promote awareness of  
8 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous  
9 substances contained in consumer products. Defendant employs ten or more persons and is a  
10 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code  
11 §§ 25249.6 et seq.

12 **1.2 Allegations and Representations**

13 Cheng alleges that Defendant has offered for sale in the State of California and has sold in  
14 California, brass plumbing and hose products, including valves, fittings, connectors, nipples, and  
15 accessories, specified as "No Lead", "(NL)" or "Lead Free Compliant" products which contain  
16 lead, and that such sales have not been accompanied by Proposition 65 warnings. Lead is listed  
17 under Proposition 65 as a chemical known to the State of California to cause cancer and birth  
18 defects or other reproductive harm. Cheng has cited Lincoln "Lead Compliant American  
19 Standard Tub Shower Stem 054374510153", hereafter ("Lead Free") as a specific example of  
20 "lead free" plumbing hardware that is the subject of his allegations.

21 **1.3 Covered Products Description**

22 The products that are covered by this Consent Judgment are defined as , brass plumbing  
23 and hose products, including valves, fittings, connectors, nipples, and accessories, specified as  
24 "No Lead", "(NL)" or "Lead Free Compliant" products in conformity with California Health &  
25 Safety Code §116875 (and equivalent Federal law) which contain statutorily proscribed low  
26 levels of lead and that are distributed Lincoln and/or sold in California by Defendant and/or  
27  
28

1 Releasees (as defined in Section 5.1 below). All such items shall be referred to herein as the  
2 "Covered Products."  
3

4 **1.4 Notices of Violation/Complaint**

5 A) On or about September 23, 2014, Cheng served Dixieline Lumber Company  
6 ("Dixieline"), Lincoln and various public enforcement agencies with a document entitled "60-Day  
7 Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that  
8 Lincoln and Dixieline were in violation of Proposition 65 for failing to warn consumers and  
9 customers that the Covered Products exposed users in California to lead. No public enforcer  
10 diligently prosecuted the claims threatened in the Notice within sixty days plus service time  
11 relative to the provision of the Notice to them by Cheng.

12 B) On or about April 14, 2015, Cheng served Dixieline Lumber Company ("Dixieline"),  
13 Lincoln and various public enforcement agencies with a document entitled "Supplemental 60-Day  
14 Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that  
15 Lincoln and Dixieline were in violation of Proposition 65 for failing to warn consumers and  
16 customers that the Covered Products exposed users in California to lead. No public enforcer  
17 diligently prosecuted the claims threatened in the Notice within sixty days plus service time  
18 relative to the provision of the Notice to them by Cheng.

19 C) On June 16, 2015, Cheng, acting in the interest of the general public in the State of  
20 California, filed a complaint in the Superior Court of San Diego County alleging violations of  
21 Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of  
22 exposures to lead contained in Covered Products manufactured, distributed, or sold by Dixieline  
23 or Lincoln.

24 **1.5 Stipulation as to Jurisdiction/No Admission**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
26 jurisdiction over Defendant as to the allegations contained in the complaint filed in this matter,  
27 that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve,  
28 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution

1 of all claims which were or could have been raised in the Complaint based on the facts alleged  
2 therein and/or in the Notices.

3 Defendant denies the material allegations contained in Cheng's Notice and Complaint and  
4 maintains that it has not violated Proposition 65 and did not fraudulently or deliberately mislead  
5 consumers regarding the Covered Products or their designation as "lead free" pursuant to  
6 California Health & Safety Code §116875. Nothing in this Consent Judgment shall be construed  
7 as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall  
8 compliance with this Consent Judgment constitute or be construed as an admission by Defendant  
9 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied  
10 by Defendant. However, this section shall not diminish or otherwise affect the obligations,  
11 responsibilities, and duties of Defendant under this Consent Judgment.

12 **1.6 Effective Date**

13 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
14 Consent Judgment is entered as a judgment of the Court. All Covered Products already shipped  
15 on or before the "Effective Date" or within 120 days thereafter are deemed to be covered by the  
16 waiver and release provisions of Paragraph 5.1 of this Consent Judgment and shall not be subject  
17 to any future enforcement action by Cheng hereunder. The reformulation and warning  
18 requirements of Paragraphs 2.1 and 2.2 shall apply to any Covered Product shipped later than 120  
19 days after the Effective Date.

20 For purposes of this Consent Judgment, the term "Execution Date" shall mean the date  
21 this Consent Judgment is signed by all parties in Clause 14 below.

22  
23 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

24 Commencing One Hundred and Twenty (120) days after the Effective Date, Lincoln shall  
25 not ship, sell, or offer to sell in California a Covered Product(s) that is/are manufactured,  
26 distributed or sold by Lincoln containing more than 300 ppm lead without a warning as set forth  
27 in Section 2.3. One Hundred and Twenty (120) days after the Effective Date in California,  
28



1 Covered Products manufactured, distributed or sold by Lincoln shall either be (a) reformulated  
2 pursuant to Section 2.1 or (b) include a warning as provided in Section 2.3.  
3

4 **2.1 Reformulation Option.** The Covered Products shall be deemed to comply with  
5 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements  
6 for lead if the exposed brass or other metal components that are part of the Covered Products  
7 meet the following criteria: (a) the alloy from which the components are made shall have no lead  
8 as an intentionally added constituent; and (b) the alloy from which the components are made shall  
9 have a lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm").  
10 Defendants and the Releasees (as defined in Section 5.1 below) may comply with the above  
11 requirements by relying on information obtained from their manufacturers, suppliers distributors,  
12 official product certification organizations (such as LAPMO) or any other person in the course of  
13 doing business that manufacturers, supplies or otherwise distributes the reformulated Covered  
14 Products to the Defendants, provided that the Defendants' and Releasees' reliance is in good  
15 faith. Although good faith reliance regarding the content of the brass alloy may also be  
16 established by other means, Cheng agrees that obtaining test results showing that the lead content  
17 is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of  
18 quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish  
19 good faith reliance.  
20  
21

22 **2.2 Warning Alternative.** Commencing on the Effective Date, Covered Products that  
23 Lincoln ships, sells or offers for sale in California that do not meet the warning exemption  
24 standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section  
25 2.3 below no later than One Hundred and Twenty (120) days after the Effective Date. The  
26 warning requirements set forth in paragraph 2.3 below, apply only to Covered Products  
27  
28

1 Defendant manufactures, distributes, markets, sells or ships for distribution One Hundred and  
2 Twenty (120) days after the Effective Date for sale or use inside the State of California.

3  
4 **2.3 Warnings.** Where required under Section 2.2 above, Lincoln shall provide either  
5 of the Proposition 65 warnings as follows:

6 **WARNING: This product contains lead, a chemical known to the State of California**  
7 **to cause cancer and birth defects or other reproductive harm.** [Wash hands after  
8 handling.]

9 **OR**

10 **WARNING: This product contains [OR may contain] chemicals [,including lead and**  
11 **lead compounds] known to the State of California to cause cancer and birth defects**  
12 **or other reproductive harm.** [Do not use in connection with drinking water.] [Wash  
13 hands after handling.]

14 Bracketed language may be omitted at Defendant's or Releasees' option. Defendant or  
15 Releasees may add additional listed chemicals to the warning unless the Attorney General  
16 advises that the inclusion of such additional chemicals would render the warning  
17 misleading or constitute an over warning. The word "WARNING" shall be in bold and  
18 may be preceded by the words "CALIFORNIA," "PROP 65," or "CALIFORNIA PROP  
19 65" at Lincoln's option.

20 **2.4** Where utilized as an alternative to meeting the reformulation criteria set forth in  
21 Section 2.1, Defendant shall provide the warning language set forth in Section 2.3 either:

22 (a) With the unit package of the Covered Products or affixed to the Covered Products. Such  
23 warning shall be prominently affixed to or printed on each Covered Product's label or package or  
24 the Covered Product itself. If printed on the label, the warning shall be contained in the same  
25 section that states other safety warnings, if any, concerning the use of the Covered Product;  
26 Lincoln may continue to utilize, on an ongoing basis, unit packaging containing substantively the  
27 same Proposition 65 warnings as those set forth in Section 2.3 above, but only to the extent such  
28 packaging materials have already been printed within one hundred twenty days of the Effective  
Date, or

1 (b) In the owner's manual of another product in which the Covered Product is a component,  
2 but only if the other product: (i) may cause serious injury or bodily harm unless used as directed;  
3 (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has one or more  
4 features a consumer must read about in order to know how to program or use the Covered  
5 Product. If the warning is given in the owner's manual pursuant to this subsection, it shall be  
6 located in one of the following places in the manual: the outside of the front cover; the inside of  
7 the front cover; the first page other than the cover; or the outside of the back cover. The warning  
8 shall be printed or stamped in the manual or contained in a durable label or sticker affixed to the  
9 manual in a font no smaller than the font used for other chemically-related safety warnings in the  
10 manual. Alternatively, the warning may be included in a safety warning section of the owner's  
11 manual. Lincoln may continue to utilize, on an ongoing basis, owner's manuals containing  
12 substantively the same Proposition 65 warnings and without the additional admonitions as those  
13 set forth in Section 2.3 above, but only to the extent such manuals have already been printed  
14 within ninety days of the Effective Date. Owner's manual warnings may only be allowed if the  
15 owner's manual is sold in the same package and at the same time as the other product and not for  
16 Covered Products sold separately.

19  
20 2.5 The requirements for warnings, set forth in Section 2.3 above are imposed  
21 pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the  
22 exclusive methods of providing a warning under Proposition 65 and its implementing regulations  
23 and that they may or may not be appropriate in other circumstances.

24 2.6 If Proposition 65 warnings for lead or lead compounds or other specified  
25 chemicals should no longer be required, Defendant and Releasees shall have no further warning  
26 obligations pursuant to this Settlement Agreement. Except in the event that a change in the law  
27 requires modification or ceases to require such warnings in the event that Defendant or Releasees  
28

1 claims in the Complaint are resolved with prejudice by this Consent Judgment.

2 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
3 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,  
4 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
5 action and releases any other Claims that he could make against Defendant, Releasees or  
6 Downstream Releasees arising up to One Hundred and Twenty (120) days after the Effective  
7 Date with respect to violations of Proposition 65 and/or Business and Professions Code §17200  
8 based upon the Covered Products. With respect to the foregoing waivers and releases in this  
9 paragraph, Cheng hereby specifically waives any and all rights and benefits which he now has, or  
10 in the future may have, conferred by virtue of the provisions of Section 1542 of the California  
11 Civil Code, which provides as follows:

12  
13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
14 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR  
15 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY  
16 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH  
17 THE DEBTOR.

18  
19 **5.2 Defendant's Release of Cheng**

20 Defendant waives any and all claims against Cheng, his attorneys and other  
21 representatives, for any and all actions taken or statements made (or those that could have been  
22 taken or made) by Cheng and his attorneys and other representatives, in the course of  
23 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this  
24 matter, and/or with respect to the Covered Products.

25  
26 **6. SEVERABILITY AND MERGER**

27 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
28 document are held by a court to be unenforceable, the validity of the enforceable provisions  
remaining shall not be adversely affected.

This Consent Judgment contains the sole and entire agreement of the Parties and any and  
all prior negotiations and understandings related hereto shall be deemed to have been merged  
within it. No representations or terms of agreement other than those contained herein exist or

1 have been made by any Party with respect to the other Party or the subject matter hereof.

2 **7. GOVERNING LAW**

3 The terms of this Consent Judgment shall be governed by the laws of the State of  
4 California and apply within the State of California. Compliance with the terms of this Consent  
5 Judgment resolves any issue, now or in the future, as to the requirements of Proposition 65 with  
6 respect to alleged exposures to lead arising from the Covered Products. In the event that  
7 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as  
8 to the Covered Products, then Defendant shall provide written notice to Cheng of any asserted  
9 change in the law, and shall have no further obligations pursuant to this Consent Judgment with  
10 respect to, and to the extent that, the Covered Products are so affected.

11 **8. NOTICES**

12 Unless specified herein, all correspondence and notices required to be provided pursuant  
13 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
14 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
15 other party at the following addresses:

16  
17 For Lincoln Products, Inc.:

18 Brenda K. Radmacher  
19 Wood, Smith, Henning, & Berman LLP  
20 505 N. Brand Boulevard, Suite 1100  
21 Glendale, California 91203

22 and

23 For Cheng:

24 Parker Smith, Esq.  
25 Parker A. Smith, Attorney at Law  
26 2173 Salk Ave., Suite 250  
27 Carlsbad, CA 92008

28 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.

**9. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES**

This Consent Judgment may be executed in counterparts and by email or facsimile, each

1 of which shall be deemed an original, and all of which, when taken together, shall constitute one  
2 and the same document.

3 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
4 **APPROVAL**

5 Cheng agrees to comply with the requirements set forth in California Health & Safety  
6 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and  
7 Defendants shall support approval of such Motion.

8 This Consent Judgment shall not be effective until it is approved and entered by the Court  
9 and shall be null and void if, for any reason, it is not approved and entered by the Court within  
10 twelve months after it has been fully executed by the Parties.

11 **11. MODIFICATION**

12 This Consent Judgment may be modified only by further stipulation of the Parties and the  
13 approval of the Court or upon the granting of a motion brought to the Court by either Party.

14 **12. ATTORNEY'S FEES**

15 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
16 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
17 unless the unsuccessful party has acted with substantial justification. For purposes of this  
18 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
19 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
24 Judgment.

25 **14. AUTHORIZATION**

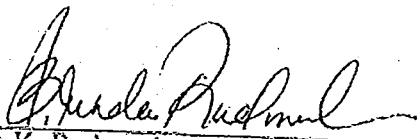
26 The undersigned are authorized to execute this Consent Judgment on behalf of their respective  
27 Parties and have read, understood and agree to all of the terms and conditions of this document  
28

1 and certifies that he or she is fully authorized by the Party he or she represents to execute the  
2 Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
3 explicitly provided herein each Party is to bear its own fees and costs.  
4


5 [Signatures Follow]

6  
7 APPROVED AS TO FORM:

8  
9 Dated: June 16, 2015

10  
11  
12 By:   
13 Brenda K. Radmacher, Esq.  
14 Attorneys for Defendant  
15 Lincoln Products, Inc.


16 Dated: June 16<sup>th</sup>, 2015

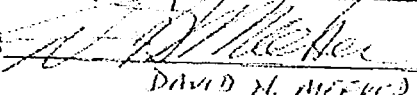
17 PARKER A. SMITH, ATTORNEY AT LAW  
18 By:   
19 Parker Smith, Esq.  
20 Attorneys for Plaintiff,  
21 King Pun Cheng

22 IT IS HEREBY SO STIPULATED:

23 AGREED TO:

24 AGREED TO:

25 Date: 10-6-15  
26 By:   
27 KING PUN CHENG

28 Date: 6/16/15  
By:   
On Behalf of:  
LINCOLN PRODUCTS, INC.