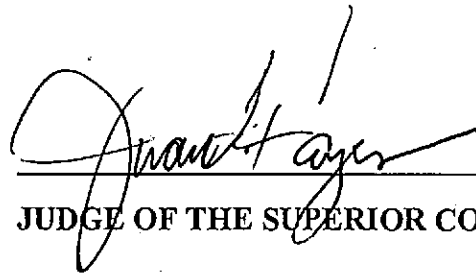


1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to
2 Code of Civil Procedure §664.6, judgment is entered in accordance with the Consent Judgment
3 attached hereto as Exhibit 1.
4

5 **IT IS SO ORDERED.**

6
7 Dated: 8.15.18



JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 PARKER SMITH, ESQ. (SBN 290311)
2 SY AND SMITH, PC.
3 11622 El Camino Real, Suite 100
4 Del Mar, CA 92130
5 Telephone: (858) 746-9554
6 Facsimile: (858)746-5199
7
8 Attorneys for Plaintiff, King Pun Cheng

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

10 KING PUN CHENG,

11 Plaintiff,

12 vs.

13 TRACTOR SUPPLY CO., INC.; et. al.

14 Defendants.

Case No. 37-2016-00030166-CU-NP-CTL

UNLIMITED JURISDICTION

STIPULATION AND [PROPOSED]
ORDER RE ENTRY OF CONSENT
JUDGMENT AS TO TRACTOR
SUPPLY CO., INC.

Complaint Filed: August 30, 2016

17 1. Introduction

18 1.1 This Settlement Agreement (hereinafter "Settlement") is hereby entered into by
19 and between King Pun Cheng, as an individual, (hereinafter "Cheng") and Tractor Supply Co.,
20 Inc. (hereinafter "Tractor Supply"). Tractor Supply and Cheng shall be collectively referred to as
21 the "Parties" and each of them as a "Party." Cheng is an individual residing in California who
22 seeks to promote awareness of exposures to toxic chemicals and improve human health by
23 reducing or eliminating hazardous substances contained in consumer products.
24

25 1.2 Cheng alleges that Tractor Supply has offered for sale and sold in the State of
26 California, nozzle blanks, pressure gauges, and carburetor repair kits with brass, including but not
27 limited to "Countyline Nozzle Blanks, Countyline Pressure Gauges, and Countyline Carburetor
28

1 Repair Kits" ("Covered Products") containing lead and lead compounds, a chemical listed under
2 Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, or
3 other reproductive harm, and that they did so without providing the warning Cheng alleges is
4 required by Proposition 65.

5
6 1.3 For purposes of this Settlement only, Tractor Supply represents that: Countyline
7 Nozzle Blanks, Countyline Pressure Gauges, and Countyline Carburetor Repair Kits are items it
8 distributed to retailers and consumers (online and storefront) in the state of California.

9 1.4 On or about November 17, 2015, Cheng served Tractor Supply and various public
10 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health
11 & Safety Code §25249.7(d) (the "Notice"), alleging that Tractor Supply was in violation of
12 Proposition 65 for failing to warn consumers and customers that the Covered Products exposed
13 users in California to lead and lead compounds. No public enforcer diligently prosecuted the
14 claims threatened in the Notice within sixty days plus service time after service of the Notice to
15 them by Cheng.

16
17 1.5 For purposes of this Settlement only, the Parties stipulate that in the event that
18 enforcement of this Settlement or a dispute arises regarding this Settlement, the Superior Court of
19 California, County of San Diego has proper jurisdiction over Tractor Supply as to the allegations
20 contained in the 60 day notice served on or about November 17, 2015, and that venue is proper in
21 the County of San Diego.

22
23 1.6 Nothing in this Consent Judgment shall be construed as an admission by Tractor
24 Supply of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance
25 with this Consent Judgment constitute or be construed as an admission by Tractor Supply of any
26 fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by
27
28

1 Tractor Supply. This Section shall not, however, diminish or otherwise affect Tractor Supply's
2 obligations, responsibilities, and duties under this Consent Judgment.

3 1.7 For purposes of this Settlement, the term "Effective Date" shall mean the date on
4 which notice of the approval and entry of this Consent Judgment by the Court is received by
5 Tractor Supply.
6

7 2. Injunctive Relief

8 Commencing on the Effective Date, Tractor Supply shall only sell, offer for sale, or
9 distribute for sale in California, Covered Products that are either (a) reformulated pursuant to
10 Section 2.1 or (b) include a warning as provided in Section 2.3.

11 2.1 Reformulation Option. The Covered Products shall be deemed to comply with
12 Proposition 65 with regard to lead and lead compounds and be exempt from any Proposition 65
13 warning requirements for lead and lead compounds if the exposed components that are part of the
14 Covered Products meet the following criteria: the Covered Products shall have a lead and lead
15 compounds content in concentrations of no more than 0.03% (300 parts per million, or "300
16 ppm"). Tractor Supply shall comply with the above requirements by obtaining test results
17 showing that the lead and lead compounds content is no more than 0.03%, using a method of
18 sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less
19 than 300 ppm.
20

21 2.2 Warning Alternative. As an alternative to reformulating the Covered Products,
22 within 180 days of the Effective Date, Covered Products that Tractor Supply ships for sale, sells
23 or offers for sale in California that do not meet the Reformulation Option set forth in Section 2.1
24 above shall be accompanied by a warning as described in Section 2.3 below.
25

26 2.3 Warnings. Where required under Section 2.2 above, Tractor Supply shall provide
27 Proposition 65 warnings substantially as follows:
28

1 WARNING: This product can expose you to chemicals including lead, which is known to
2 the State of California to cause cancer and birth defects or other reproductive harm. For more
3 information go to www.P65Warnings.ca.gov.

4 Or

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

7 2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1,
8 Tractor Supply shall provide the warning language set forth in Section 2.3 either with the unit
9 package of the Covered Products or affixed to the Covered Products. Such warning shall be
10 prominently affixed to or printed on each Product's label or package or the Product itself. If
11 printed on the label, the warning shall be contained in the same section that states other safety
12 warnings, if any, concerning the use of the Product.

13 2.5 The requirements for warnings, set forth in Section 2.3 above are imposed
14 pursuant to the terms of this Settlement. The Parties recognize that these are not the exclusive
15 methods of providing a warning under Proposition 65 and its implementing regulations and that
16 they may or may not be appropriate in other circumstances.

17 2.6 If Proposition 65 warnings for lead, or other specified chemicals, should no longer
18 be required, Tractor Supply shall have no further warning obligations pursuant to this Settlement.
19 In the event that a change in the law requires modification of such warnings, Tractor Supply may
20 cease to implement or may modify the warnings required under this Settlement in compliance
21 with the change in the law per Section 11 of this Settlement. In the event that the Office of
22 Environmental Health Hazard Assessment promulgates one or more regulations requiring or
23 permitting warning text and/or methods of transmission different than those set forth above,
24
25
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1 Tractor Supply shall be entitled to use, at its discretion, such other warning text and/or method of
2 transmission without being deemed in breach of this Settlement per Section 11 of this Settlement.

3 3. Entry of Consent Judgment

4 3.1 With regard to all claims that have been raised or which could be raised with
5 respect to failure to warn pursuant to Proposition 65 with regard to lead and lead compounds in
6 the Covered Products and because opportunities for exposure are minimal due to the nature and
7 expected use of the product, Tractor Supply shall pay a civil penalty of \$1,500.00 pursuant to
8 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California
9 Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's
10 Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty
11 remitted to Cheng, as provided by California Health & Safety Code § 25249.12(d) and the
12 instructions directly below.
13
14

15 Tractor Supply shall issue two separate checks for the penalty payment: (a) one
16 check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount
17 representing 75% of the total penalty (i.e., \$1,125.00; and (b) one check in an amount
18 representing 25% of the total penalty (i.e., \$375.00) made payable directly to Cheng. Tractor
19 Supply shall mail these payments within five (5) days after the Effective Date at which time such
20 payments shall be mailed to the following addresses respectively:
21

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA 95812-4010

27 And
28

1 Mr. King Pun Cheng
2 C/O Sy and Smith, PC
3 11622 El Camino Real, Suite 100
4 San Diego, CA 92130

5
6 4. Reimbursement of Fees and Costs

7 The parties reached an accord on the compensation due to Cheng and his counsel
8 under the private attorney general doctrine and principles of contract law. Under these legal
9 principles, Tractor Supply shall reimburse Cheng's counsel for fees and costs incurred as a result
10 of investigaling, bringing this matter to Tractor Supply's attention, and negotiating a settlement.
11 Tractor Supply shall pay Cheng's counsel \$16,000.00 for all attorneys' fees, expert and
12 investigation fees, and related costs associated with this matter and the Notice. Tractor Supply
13 shall wire said monies or send a check payable to "Sy and Smith, PC" within five (5) days of the
14 Effective Date. Sy and Smith, PC will provide Tractor Supply with wire instruction and tax
15 identification information on or before the Effective Date if requested. Other than the payment
16 required hereunder, each side is to bear its own attorneys' fees and costs.
17

18 5. Release of all Claims

19 5.1 Release of Tractor Supply and Downstream Customers

20 Cheng, on behalf of himself and on behalf of the general public, releases Tractor Supply
21 and their respective officers, directors, attorneys, representatives, shareholders, agents, and
22 employees, sister and parent entities, successors, and assigns, and each entity to whom it directly
23 or indirectly distributes or sells the Covered Products including, but not limited to, their
24 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but
25 not limited to, Tractor Supply Co., Inc. and its affiliates and subsidiaries), franchisees, dealers,
26 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,
27
28

1 (collectively "Releasees") from all claims for violations of Proposition 65 up through the
2 Effective Date based on exposure to lead and lead compounds from the Covered Products as set
3 forth in the Notice of Violation. Compliance with the terms of this Settlement constitutes
4 compliance with Proposition 65 with respect to exposures to lead and lead compounds from the
5 Covered Products.
6

7 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,
8 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,
9 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
10 action and releases any other claims that he could make against Tractor Supply or the Releasees
11 arising prior to the Effective Date with respect to violations of Proposition 65 based upon the
12 Covered Products. The Parties acknowledge that the claims released above may include
13 unknown claims, and with respect to the foregoing waivers and releases in this paragraph, Cheng
14 hereby specifically waives any and all rights and benefits which he now has, or in the future may
15 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
16 provides as follows:
17

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

23 Cheng acknowledges and understands the significance and consequences of this specific
24 waiver of California Civil Code section 1542.

25 5.2 Tractor Supply Release of Cheng

26 Tractor Supply waives any and all claims against Cheng, his attorneys and other
27 representatives, for any and all actions taken or statements made (or those that could have been
28

1 taken or made) by Cheng and his attorneys and other representatives in the course of investigating
2 claims or otherwise seeking enforcement of Proposition 65 against it in this matter.

3 6. Severability and Merger

4 If, subsequent to the execution of this Settlement, any of the provisions of this
5 document are held by a court to be unenforceable, the validity of the enforceable provisions
6 remaining shall not be adversely affected.
7

8 This Settlement contains the sole and entire agreement of the Parties and any and
9 all prior negotiations and understandings related hereto shall be deemed to have been merged
10 within it. No representations or terms of agreement other than those contained herein exist or
11 have been made by any Party with respect to the other Party or the subject matter hereof.

12 7. Post Execution Activities

13 Cheng agrees to comply with the reporting form requirements referenced in Health and
14 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and
15 Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the
16 Settlement which Cheng shall draft and file. In furtherance of obtaining such approval, the
17 Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry
18 of this Settlement as judgment, and to obtain judicial approval of the Settlement in a timely
19 manner. For purposes of this Section, "best efforts" shall include at a minimum, supporting the
20 motion for approval, responding to any opposition or objection any third-party may file, and
21 appearing at the hearing before the Court if so requested.
22

23 8. Governing Law

24 The terms of this Settlement shall be governed by the laws of the State of California. In
25 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
26 generally, or as to the Covered Products, then Tractor Supply shall have no further obligations
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28

1 pursuant to this Settlement with respect to the Covered Products to the extent the Covered
2 Products are so affected.

3 9. Notices

4 9.1 Unless specified herein, all correspondence and notices required to be provided
5 pursuant to this Settlement shall be in writing and personally delivered or sent by: electronic mail
6 and either (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight
7 courier on any party by the other party at the following addresses:
8

9 Tractor Supply:

10 Brian M. Ledger
11 Gordon Rees Scully Mansukhani, LLP
12 101 W. Broadway, Suite 200
13 San Diego, CA 92101
bledger@grsm.com

14 and

15 For Cheng:

16 Parker A. Smith
17 Sy and Smith, PC
18 11622 El Camino Real, Suite 100
19 Del Mar, CA 92130
parker@sysmithlaw.com

20 Any party, from time to time, may specify in writing by the means set forth above to the
21 other party a change of address to which all notices and other communications shall be sent.

22 10. Counterparts; Facsimile Signatures

23 10.1 This Settlement may be executed in counterparts and by facsimile, each of which
24 shall be deemed an original, and all of which, when taken together, shall constitute one and the
25 same document.
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11. Modification

This Settlement may be modified only by further written agreement of the Parties with court approval or by noticed motion.

12. Attorney Fees

A Party who unsuccessfully brings or contests an action arising out of this Settlement shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

13. Authorization

The undersigned are authorized to execute this Settlement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certifies that he or she is fully authorized by the Party he or she represents to execute the Settlement on behalf of the Party and legally bind that Party.

IT IS SO STIPULATED:

Dated: _____

Dated: 5-9-18

By: _____

By: Karen S. Quater
Vice President, Legal & Licensing
On Behalf of Tractor Supply Co., Inc.

King Pun Cheng

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court