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CLERK OF THE SUPERIOR COURT

SEP 09 2016

By: Anthony Shirley, Deputy

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

14 Kingpun Cheng,	)	CASE NO.:37-2016-00003730-CU-NP-CTL
)	
15)	
16 Plaintiff,	)	[PROPOSED]
	)	JUDGMENT APPROVING
17 v.	)	PROP 65 STIPULATION AND
	)	CONSENT JUDGMENT
18 Brunton Outdoor, Inc., et al.	)	<i>(Cal. Health & Safety Code § 25249.6 et seq.)</i>
)	
19	)	Date: September 9, 2016
20	)	Time: 11:00 AM
	)	Dept. C-70
21	)	Judge: Hon. Randa Trapp
22 Defendant.	)	Action Filed: February 3, 2016

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

Exhibit 1

1 PARKER SMITH, ESQ. (SBN 290311)
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 KING PUN CHENG,
11 Plaintiff,
12 vs.
13 BRUNTON OUTDOOR, INC.;
14 Defendants.

Case No. 37-2016-0003730-CU-NP-CTL
UNLIMITED JURISDICTION
STIPULATION AND [PROPOSED]
ORDER RE ENTRY OF CONSENT
JUDGMENT AS TO BRUNTON
OUTDOOR, INC.
Complaint Filed: February 3, 2016

17 **1. Introduction**

18 1.1 On November 17, 2015, Kingpun Cheng (“Cheng”) served Brunton Outdoor, Inc.
19 (“Brunton”), Primus North America, Fenix Outdoor International, Wal-Mart Stores, Inc. (“Wal-
20 Mart”) and various public enforcement agencies with a document entitled “Supplemental 60 Day
21 Notice of Violation” (the “Notice”). The Notice provided Brunton and such others, including
22 public enforcers, with notice that alleged that Brunton was in purported violation of California
23 Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”) for failing to warn consumers and
24 customers that Primus® stoves with brass valves, including but not limited to Primus Classic
25 Trail Gas Stove UPC733033224306 (the “Products”), exposed users in California to lead and lead
26 compounds. No public enforcer has prosecuted the allegations set forth in the Notice.
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1 1.2 On February 3, 2016, Cheng filed a Complaint for Civil Penalties and Injunctive
2 Relief ("Complaint") in the San Diego County Superior Court (the "Court"), Case No. 37-2016-
3 00003730-CU-NP-CTL, against Brunton, alleging violations of Proposition 65 with respect to the
4 Products (the "Action").

5 1.3 Brunton is a corporation that employs more than ten persons under California
6 Health and Safety Code § 25249.6 and offered the Products for sale within the State of California.

7 1.4 Cheng's Complaint alleges, among other things, that Brunton sold the Products in
8 California and/or to California citizens, that the Products contain lead and lead compounds, and
9 that the resulting exposure violated provisions of Proposition 65 by knowingly and intentionally
10 exposing persons to a chemical known to the State of California to cause cancer and birth defects
11 or other reproductive harm, without first providing a clear and reasonable warning to such
12 individuals.

13 1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court
14 has jurisdiction over the allegations of violations contained in the Complaint and personal
15 jurisdiction over Brunton as to the acts alleged in the Complaint, that venue is proper in the
16 County of San Diego, and that this Court has jurisdiction to enter this Consent Judgment as a
17 resolution of the allegations contained in the Complaint.

18 1.6 The parties enter into this Consent Judgment pursuant to a full settlement and
19 release of disputed claims between the parties as alleged in the Complaint for the purpose of
20 avoiding prolonged litigation. By execution of this Consent Judgment, Brunton does not admit
21 any violation of Proposition 65 and specifically denies that it has committed any such violation.
22 Nothing in this Consent Judgment shall be construed as an admission by Brunton of any fact,
23 issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be
24 construed as an admission by Brunton of any fact, issue of law, or violation of law. Nothing in
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1 this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that Brunton
2 may have in any other future legal proceeding. However, this paragraph shall not diminish or
3 otherwise affect the obligations, responsibilities and duties of Brunton under this Consent
4 Judgment.

5
6 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
7 date this Consent Judgment is entered as a judgment of this Court.

8 **2. Injunctive Relief**

9 2.1 Commencing ninety (90) days after the Effective Date, and continuing thereafter,
10 Brunton shall only ship, sell, or offer for sale in California, Reformulated Products pursuant to
11 Section 2.2 or Products that are labeled with a Clear and Reasonable Warning pursuant to Section
12 2.3. Brunton, its manufacturers, and its downstream retailers shall have no obligation to
13 reformulate or label Products that entered the stream of commerce before the Effective Date or
14 within ninety (90) days after the Effective Date.

15
16 2.2 "Reformulated Products" shall mean Products, the exposed brass valves or other
17 metal components of which have a lead content by weight of no more than 0.01% (100 parts per
18 million or "100 ppm"). Brunton may comply with the above requirement by relying on
19 information obtained from its suppliers regarding the content of the alloy from which the
20 components are made, provided the reliance is in good faith. Obtaining test results showing that
21 the lead content is no more than 0.01% using a method of sufficient sensitivity to establish a limit
22 of quantification (as distinguished from detection) of less than 100 ppm shall be deemed to
23 establish good faith reliance.

24
25 2.3 "Clear and Reasonable Warning" shall be as set forth in this Section 2.3. The
26 warning shall be prominently placed with such conspicuousness as compared with other words,
27 statements, designs, or devices as to render it likely to be read and understood by an ordinary
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1 individual under customary conditions before purchase or use. Each warning shall be provided in
2 a manner such that the consumer or user is reasonably likely to understand to which specific
3 Products the warning applies so as to minimize the risk of consumer confusion. In the event that
4 the California Office of Environmental Health Hazard Assessment promulgates one or more
5 regulations requiring or permitting warning text and/or methods of transmission different than
6 those set forth herein, Brunton shall be entitled to use, at its discretion, such other warning text
7 and/or methods of transmission without being deemed in breach of this Consent Judgment.
8

9 **(a) Retail Store Sales**

10 **(i) Product Labeling.** Brunton shall affix a warning to the packaging,
11 labeling or directly on each Product that states:

12 **[PROPOSITION 65] WARNING:**

13 This product contains lead and lead compounds known to the State of California to cause
14 cancer, birth defects or other reproductive harm.

15 The bracketed text may, but is not required to be used.

16 **(ii) Point of Sale Warnings.** Alternatively to the Product Labeling set forth in

17 Section 2.3(a)(i) above, Brunton may provide warning signs in the form below to its
18 customers in California with instructions to post the warnings in close proximity to the
19 point of display of the Product. Such instruction sent to Brunton customers shall be sent
20 by certified mail, return receipt requested.

21 **[PROPOSITION 65] WARNING:**

22 This product contains lead and lead compounds known to the State of California to cause
23 cancer, birth defects or other reproductive harm.

24 The bracketed text may, but is not required to be used.

25 **(b) Mail Order Catalog Warning.** In the event that Brunton sells Products via
26 mail order catalog directly to consumers located in California that are not Reformulated Products,
27 Brunton shall provide a warning for such Products sold via mail order catalog to such California
28 residents. A warning that is given in a mail order catalog shall be in the same type size or larger

1 than the Product description text within the catalog. The following warning shall be provided on
2 the same page and in the same location as the display and/or description of the Product:

3 **[PROPOSITION 65] WARNING:**

4 This product contains lead and lead compounds known to the State of California to cause
5 cancer, birth defects or other reproductive harm.

6 The bracketed text may, but is not required to be used. Where it is impracticable to provide the
7 warning on the same page and in the same location as the display and/or description of the
8 Product, Brunton may utilize a designated symbol to cross reference the applicable warning and
9 shall define the term "designated symbol" with the following language on the inside of the front
10 cover of the catalog or on the same page as any order form for the Product:

11
12 **[PROPOSITION 65] WARNING:** Certain products identified with this symbol "▼"
13 and offered for sale in this catalog contain chemicals known to the State of California to
14 cause cancer, birth defects or other reproductive harm.

15 The bracketed text may, but is not required to be used. The designated symbol must appear on
16 the same page and in close proximity to the display and/or description of the Product. On each
17 page where the designated symbol appears, Brunton must provide a header or footer directing the
18 consumer to the warning language and definition of the designated symbol.

19 (c) **Internet Sales Warning.** In the event that Brunton sells Products via the internet
20 directly to consumers located in California that are not Reformulated Products, Brunton shall
21 provide a warning for such Products sold via the internet to such California residents. A warning
22 that is given on the internet shall be in the same type size or larger than the Product description
23 text and shall be given in conjunction with the direct sale of the Product. The warning shall
24 appear either: (a) on the same web page on which the Product is displayed; (b) on the same web
25 page as the order form for the Product; (c) on the same page as the price for the Product; or (d) on
26 one or more web pages displayed to a purchaser during the checkout process. The following
27 warning shall be provided:
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[PROPOSITION 65] WARNING:
This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

The bracketed text may, but is not required to be used.

3. Entry of Consent Judgment

3.1 The parties hereby request that the Court promptly approve and enter this Consent Judgment. Upon entry of this Consent Judgment, Cheng and Brunton waive their respective rights to a hearing or trial on the allegations of the Complaint and Notice which are at issue in the Action.

3.2 In the event that the California Attorney General objects or otherwise comments on one or more provisions of this Consent Judgment, Cheng and Brunton agree to take reasonable steps to satisfy such concerns or objections.

4. Matters Covered By This Consent Judgment

4.1 **Plaintiff's Public Release of Proposition 65 Claims.** This Consent Judgment is a final and binding resolution between Cheng, acting on his own behalf and in the public interest, and Brunton, and shall have preclusive effect such that no other person or entity, whether purporting to act in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought pursuant to the Notice against Brunton and the Releasees as defined in Section 4.3 below ("Proposition 65 Claims"). As to alleged exposures to the Products, compliance with the terms of this Consent Judgment by Brunton resolves any issue, now and in the future, and is deemed sufficient to satisfy all obligations concerning compliance by the Releasees (as defined in Section 4.3 below) with the requirements of Proposition 65 with respect to the Products, and any alleged resulting exposure.

1 **4.2 Plaintiff's Release of Additional Claims.** As to Cheng for and in his individual
2 capacity only, this Consent Judgment shall have preclusive effect such that he shall not be
3 permitted to pursue and/or take any action with respect to any other statutory or common law
4 claim, to the fullest extent that any such claim was or could have been asserted by him against
5 Brunton and the Releasees (as defined in Section 4.3 below) based on their exposure of Cheng to
6 the Products, or their failure to provide a clear and reasonable warning of exposure to Cheng as
7 well as any other claim based in whole or in part on the facts alleged in the Complaint and the
8 Notice based on actions or inaction of the Releasees ("Lead Exposure Claims").
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10 **4.3 Waiver of Rights Under Section 1542 of the California Civil Code.** As to
11 Cheng's public release of Proposition 65 Claims set forth in Section 4.1 ("Public Release") and
12 his individual release of Lead Exposure Claims set forth in Section 4.2 ("Individual Release"),
13 Cheng, acting on his own behalf and in the public interest with respect to the Public Release and
14 acting in his individual capacity with respect to the Individual Release, waives and releases all
15 rights to institute any form of legal action, and releases all claims against Brunton (including its
16 parents, subsidiaries, affiliates, assigns, investors, shareholders and websites) and Brunton's
17 vendors, wholesalers, distributors, dealers, retailers (including, but not limited to Wal-Mart and
18 its affiliates and subsidiaries), commercial users, advertisers, manufacturers and suppliers who
19 may manufacture, supply, use, maintain, distribute or sell any of the Products or any of the
20 Products' components, as well as, for each of the foregoing persons and entities, each of their
21 past, present, or future officers, directors, shareholders, owners, investors, employees, contractors,
22 lawyers, accountants, advisors, representatives, agents, principals, partners, affiliates, members,
23 administrators, legatees, executors, heirs, estates, predecessors, successors, and assigns
24 (collectively, the "Releasees"), for the Proposition 65 Claims and the Lead Exposure Claims
25 (referred to collectively in this Section as "Claims"). In furtherance of the foregoing, as to
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1 alleged exposures to the Products, Cheng, acting in his individual capacity with respect to the
2 Individual Release, waives any and all rights and benefits which he now has, or in the future may
3 have, conferred upon him with respect to the Claims by virtue of the provisions of Section 1542
4 of the California Civil Code, which provides as follows:
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6 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
7 **CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS FAVOR AT**
8 **THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
9 **MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE**
10 **DEBTOR.**

11 4.4 **Brunton's Release of Cheng.** Brunton waives any and all claims against
12 Cheng, his attorneys and other representatives, executors, heirs, estates for any and all actions
13 taken or statements made (or those that could have been taken or made) by Cheng and his
14 attorneys and other representatives, whether in the course of investigating claims or otherwise
15 seeking enforcement of Proposition 65 against it in this matter.
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17 **5. Enforcement of Judgment**

18 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
19 hereto. The parties may, by noticed motion or order to show cause before the Court, giving the
20 notice required by law, enforce the terms and conditions contained herein. In any proceeding
21 brought by either party to enforce this Consent Judgment, such party may seek whatever fines,
22 costs, penalties or remedies as may be provided by law for any violation of Proposition 65 or this
23 Consent Judgment.
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25 **6. Modification of Judgment**
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1 6.1 This Consent Judgment may be modified only by written agreement of the parties
2 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
3 provided by law and upon an entry of a modified Consent Judgment by the Court.

4 6.2 Should any court enter final judgment in a case brought by Cheng or the People
5 involving the Products setting forth formulation or warning standards related to the Products or
6 the California Attorney General provide written endorsement (i.e., a writing that is circulated by
7 the Attorney General that is not intended for the purpose of soliciting further input or comments)
8 of formulation or warning standards applicable to products that are of the same general type as
9 the Products or constructed from the same materials as the Products that implicate Proposition 65
10 (“Alternative Standards”), Brunton shall be entitled to seek a modification of this Consent
11 Judgment on forty-five (45) days’ notice to Cheng so as to be able to utilize and rely on such
12 Alternative Standards in lieu of those set forth in Section 2 of this Consent Judgment. Cheng
13 shall not unreasonably contest any proposed application to effectuate such a modification
14 provided that the Products for which such a modification is sought are of the same general type or
15 constructed from the same materials as the Products that implicate Proposition 65.
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18 7. **Settlement Payment**

19 7.1 In settlement of all the Claims referred to in this Consent Judgment, and without
20 any admission of liability therefore, Brunton shall make the following monetary payments:
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22 7.1.1 Brunton shall pay a total of two-thousand dollars (\$2,000.00) in civil
23 penalties (the “Civil Penalty”) in accordance with this Section. The Civil Penalty will be
24 allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with
25 seventy five percent (75%) of the funds remitted to the California Office of Environmental Health
26 Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) of the funds
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1 Sacramento, CA 95814

2 A copy of the check payable to OEHHA shall be mailed to Sy and Smith, PC at the address set
3 forth above as proof of payment to OEHHA.

4 **8. Notices**

5 8.1 Any and all notices between the parties provided for or permitted under this
6 Consent Judgment or by law shall be in writing and personally delivered or sent by: (i) first-class
7 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
8 party by the other party to the following addresses:
9

10 For Brunton:

11 Brent E. Johnson, Esq.
12 Holland & Hart LLP
13 222 South Main Street, Suite 2200
14 Salt Lake City, UT 84101
T: 801.799.5800

15 For Cheng:

16 Parker A. Smith, Attorney At Law
17 Sy and Smith, PC
18 11622 El Camino Real, Suite 100
19 Del Mar, CA 92130
T: 760.579.7600

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

22 **9. Authority to Stipulate**

23 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
25 the party represented and legally to bind that party.

26 **10. Counterparts and Facsimile**

1 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
2 which shall be deemed an original, and all of which, when taken together, shall constitute one and
3 the same document.

4 **11. Retention of Jurisdiction**

5 11.1 This Court shall retain jurisdiction of this matter to implement and enforce the
6 terms contained in the Consent Judgment.
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8 **12. Service on the California Attorney General**

9 12.1 Cheng shall serve a copy of this Consent Judgment, signed by both parties, on the
10 California Attorney General on behalf of the parties so that the Attorney General may review this
11 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty-five (45)
12 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
13 and in the absence of any written objection by the Attorney General to the terms of this Consent
14 Judgment, the parties may then submit it to the Court for Approval.
15

16 **13. Compliance with Health & Safety Code § 25249.7(f)**

17 13.1 Cheng agrees to comply with the reporting requirements referenced in Health &
18 Safety Code section 25249.7(f).
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20 **14. Entire Agreement**

21 14.1 This Consent Judgment contains the sole and entire agreement and understanding
22 of the parties with respect to the entire subject matter hereof, and any and all discussions,
23 negotiations, commitments and understanding related thereto. No representations, oral or
24 otherwise, express or implied, other than those contained herein have been made by any party
25 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
26 deemed to exist or to bind any of the parties.
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15. Governing Law and Construction

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

16. Court Approval

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

IT IS SO STIPULATED:

Dated: 2016-5-25

Dated: 2016-06-02

By: [Signature]

By: [Signature]

Kingpun Cheng

Brunton Outdoor, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court