

1 Parker A. Smith, Esq. (#290311)  
2 SY AND SMITH, PC  
3 11622 El Camino Real, Suite 100  
4 Del Mar, CA 92130  
5 Phone: 858 746 9554  
6 Facsimile: 858 746 5199

7 *Attorney for Plaintiff, Kingpun Cheng*

**FILED**  
Clerk of the Superior Court

OCT 30 2017

By: H. CHAVARIN, Deputy

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

13 KING PUN CHENG,	)	CASE NO.: 37-2017-00013125-CU-NP-CTL
	)	
	)	
15 Plaintiff,	)	[PROPOSED] ORDER APPROVING
	)	STIPULATION AND ORDER RE:
	)	CONSENT JUDGMENT
17 EUROPEAN HOME DESIGNS, LLC., et al.	)	"IMAGED FILE"
	)	
	)	Date: October 6, 2017
19 Defendant.	)	Time: 10:30 AM
	)	Dept.: C-61
	)	Judge: Hon. John S. Meyer
	)	Action Filed: April 12, 2017

21  
22 Plaintiff, King Pun Cheng and Defendant, European Home Designs, LLC. having  
23 agreed through their respective counsel that judgment be entered pursuant to the terms of the  
24 Stipulation and Order Re: Consent Judgment entered into by the parties, and attached to the  
25 Judgment pursuant to the terms of the Stipulation and Order Re: Consent Judgment as Exhibit 1.  
26 After consideration of the papers submitted and arguments presented, the Court finds that the  
27 settlement agreement set out in the attached Consent Judgment meets the criteria established by  
28 Health & Safety Code §25249.7, in that:

- 1 a) the health hazard warning required by the Stipulation and Order Re: Consent  
2 Judgment complies with Health & Safety Code §25249.7;  
3 b) the reimbursement of fees and costs to be paid pursuant to the parties'  
4 Stipulation and Order Re: Consent Judgment is reasonable under California  
5 law; and  
6 c) the civil penalty amount to be paid pursuant to the parties' Stipulation and  
7 Order Re: Consent Judgment is reasonable  
8

9 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to Code of Civil  
10 Procedure §664.6, judgment is entered in accordance with the Consent Judgment attached hereto  
11 as Exhibit 1.  
12

13 **IT IS SO ORDERED.**

14 **OCT 20 2017**  
15 Dated: \_\_\_\_\_

**JOHN S. MEYER**

\_\_\_\_\_  
16 **JUDGE OF THE SAN DIEGO SUPERIOR COURT**  
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**Exhibit 1**

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

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

10 KING PUN CHENG,  
11 Plaintiff,  
12 vs.  
13 EUROPEAN HOME DESIGNS, LLC  
14 Defendants.  
15  
16

Case No. 37-2017-00013125-CU-PO-CTL  
  
UNLIMITED JURISDICTION  
  
STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO EUROPEAN  
HOME DESIGNS, LLC  
  
Complaint Filed: April 12, 2017

17 1. Introduction

18 1.1 Parties

19 This Consent Judgment is hereby entered into by and between Kingpun Cheng, as an  
20 individual and acting in the interest of the general public, (hereinafter "Cheng") and European  
21 Home Designs, LLC (hereinafter "European Home Designs,"). European Home Designs and  
22 Cheng shall be collectively referred to as the "Parties" and each of them as a "Party." Cheng is  
23 an individual residing in California who seeks to promote awareness of exposures to toxic  
24 chemicals and improve human health by reducing or eliminating hazardous substances contained  
25 in consumer products. European Home Designs is a "person in the course of doing business" for  
26 purposes of Cal. Health & Safety Code §§ 25249.5 *et seq.* ("Proposition 65").  
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1.2 General Allegations

Cheng alleges that European Home Designs offered for sale and sold, including directly or indirectly via retailers or other downstream parties, in the State of California pet rubber dog toys, including but not limited to “Bow Wow Pet Spiked Rubber Bone Dog Toy” UPC856025009715, containing Di(2-Ethylhexyl)phthalate (“DEHP”), a chemical listed under Proposition 65 as known to the State of California to cause cancer, birth defects, and/or other reproductive harm, and that they did so without providing the warning Cheng alleges is required by Proposition 65. Rubber dog toys, including but not limited to, Bow Wow Pet Spiked Rubber Bone Dog Toy, are referred to herein as “Covered Products”.

1.3 Notice of Violation

On or about May 6, 2016, Cheng issued a 60 Day Notice of Violation to European Home Designs, TJX Companies Inc. and public enforcement agencies pursuant to Health & Safety Code §25249.7(d) alleging that European Home Designs and others were in violation of Proposition 65 for failing to warn California consumers that the Covered Products exposed them to DEHP (the “Notice”). No public enforcer has commenced or diligently prosecuted the claims alleged in the Notice.

1.4 Complaint

On or about April 12, 2017 Cheng filed a Complaint against European Home Designs, TJX Companies Inc., and DOES 1-25 for civil penalties and injunctive relief (“Complaint”) in San Diego Superior Court, Case No. 37-2017-0023996-CU-PO-CTL. The Complaint alleges, among other things, that European Home Designs violated Proposition 65 by failing to give clear and reasonable warnings of exposure to DEHP from use of the Covered Products.

1           1.5    Consent to Jurisdiction

2           For purposes of this Consent Judgment, the Parties agree that this Court has jurisdiction  
3 over the allegations of violations contained in the Notice and Complaint and personal jurisdiction  
4 over European Home Designs as to the acts alleged in the Notice and Complaint, that venue is  
5 proper in the County of San Diego and that this Court has jurisdiction to enter this Consent  
6 Judgment as a full settlement and resolution of the allegations contained in the Notice, Complaint,  
7 and of all claims which were or could have been raised by any person or entity based in whole or  
8 in part, directly or indirectly, on the prior conduct of the Parties or on the facts alleged in the  
9 Complaint or arising therefrom or related to.  
10

11           1.6    No Admission

12           Nothing in this Consent Judgment shall be construed as an admission against interest by  
13 European Home Designs of any fact, finding, conclusion of law, issue of law, or violation of law;  
14 nor shall compliance with this Consent Judgment constitute or be construed as an admission  
15 against interest by European Home Designs of any fact, finding, conclusion of law, issue of law,  
16 or violation of law, such being specifically denied by European Home Designs. However, this  
17 section shall not diminish or otherwise affect the obligations, responsibilities and duties under this  
18 Consent Judgment.  
19

20           1.7    For purposes of this Consent Judgment, the term "Effective Date" shall mean the  
21 date that Cheng serves notice on European Home Designs that his Motion to Approve the  
22 Consent Judgment has been granted by the Court.  
23

24           2.     Injunctive Relief

25           Commencing on the Effective Date, European Home Designs shall only sell, offer for  
26 sale, or distribute for sale in California, Covered Products that are either (a) reformulated  
27 pursuant to Section 2.1 or (b) include a warning as provided in Section 2.3.  
28

1           2.1    Reformulation Option

2           The Covered Products shall be deemed to comply with Proposition 65 with regard to  
3 DEHP, and be exempt from any Proposition 65 warning requirements for DEHP, if the exposed  
4 components or surfaces of the Covered Products meet the following criteria: the materials from  
5 which the exposed components or surface materials are made shall have a DEHP content by  
6 weight of no more than 0.10% (1,000 parts per million, or "1,000 ppm"). European Home  
7 Designs may comply with the above requirements by relying on information obtained from its  
8 suppliers or manufacturers regarding the content of the materials from which the components are  
9 made, provided such reliance is in good faith. Obtaining test results showing that the DEHP  
10 content is no more than 0.10%, using a method of sufficient sensitivity to establish a limit of  
11 quantification (as distinguished from detection) of less than 1,000 ppm shall be deemed to  
12 establish good faith reliance. For purposes of this Consent Judgment, Covered Products in  
13 compliance with this standard are "Reformulated Products".  
14

15           2.2    Warning Alternative

16           As an alternative to reformulating the Covered Products, commencing on the Effective  
17 Date, Covered Products that European Home Designs ships for sale, sells or offers for sale in  
18 California that are not Reformulated Products as set forth in Section 2.1 above shall be  
19 accompanied by a clear and reasonable warning as described in Section 2.3 below.  
20

21           2.3    Clear and Reasonable Warnings

22           Where required under Section 2.2 above, European Home Designs shall provide a  
23 Proposition 65 warning on each Covered Product, or its immediate packaging, or label, using one  
24 or more of the options below, as European Home Designs may elect in its sole discretion:  
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26  
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1           WARNING: This product can expose you to chemicals including DEHP, which is known  
2 to the State of California to cause cancer and birth defects or other reproductive harm. For more  
3 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).


4           OR

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


7           OR

8           WARNING: This product contains chemicals, including lead, known to the State of  
9 California to cause cancer, and birth defects or other reproductive harm. Wash hands after  
10 handling.

11           OR

12            WARNING: This product can expose you to chemicals including Di(2-  
13 ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer  
14 and birth defects or other reproductive harm. For more information go to  
15 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

16           OR, if the warning is on the Covered Product (and not its packaging):

17            WARNING: Cancer and Reproductive Harm - [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).  
18 2.3.1 Where utilized as an alternative to meeting the criteria set forth in Section 2.1,  
19

20 European Home Designs shall provide the warning language set forth in Section 2.3 either with  
21 the unit package of the Covered Products or affixed to the Covered Products or on the label. Such  
22 warning shall be prominently affixed to or printed on each Product's label or unit package or the  
23 Product itself. If printed on the label, the warning shall be contained in the same section that  
24 states other safety warnings, if any, concerning the use of the Covered Product. For Covered  
25 Products "in the stream of commerce" prior to the Effective Date, European Home Designs may  
26 use existing Proposition 65 warning text, or such Covered Products may be sold by any person  
27 without a warning. "In the stream of commerce" as used herein means either: (a) the Covered  
28



1 Products have left the possession of European Home Designs, or (b) have been shipped to  
2 distributors or retailers, or (c) are in a distribution warehouse operated by European Home  
3 Designs and are in final, consumer-ready packaging or form and are distributed by European  
4 Home Designs to its customers before December 31, 2017.

5  
6 2.3.2 The requirements for warnings, set forth in Section 2.3 above are imposed  
7 pursuant to the terms of this Consent Judgment. The Parties recognize that these are not the  
8 exclusive methods of providing a warning under Proposition 65 and its implementing regulations  
9 and that they may or may not be appropriate in other circumstances or for other products.

10 2.4 Products in the Stream of Commerce or Manufactured Prior to the Effective  
11 Date

12  
13 Notwithstanding anything else in this Consent Judgment, Covered Products that are or  
14 were in the stream of commerce prior to the Effective Date, or were manufactured prior to the  
15 Effective Date, shall be subject to the release of liability pursuant to Section 5 of this Consent  
16 Judgment, without regard to when such Covered Products were, or are in the future, distributed or  
17 sold to customers or purchased by consumers. As a result, the obligations of European Home  
18 Designs as set forth in this Consent Judgment, including but not limited to Section 2, do not apply  
19 to products that are or were in the stream of commerce or manufactured prior to the Effective  
20 Date.

21  
22 3. Entry of Consent Judgment

23 3.1 With regard to all claims that have been raised or which could be raised with  
24 respect to failure to warn pursuant to Proposition 65 with regard to DEHP in the Covered  
25 Products, European Home Designs shall pay a civil penalty of \$750.00 pursuant to Health and  
26 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
27 Code § 25192, with 75% of these funds remitted to the State of California's Office of  
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1 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty  
2 remitted to Cheng, as provided by California Health & Safety Code § 25249.12(c)(1) and (d) and  
3 the instructions directly below.

4           3.2    Payment Procedures

5           European Home Designs shall issue two separate checks for the penalty payment: (a) one  
6 check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount  
7 representing 75% of the total penalty (i.e., \$562.50); and (b) one check in an amount representing  
8 25% of the total penalty (i.e., \$187.50) made payable directly to Cheng. European Home Designs  
9 shall mail these payments within five (5) business days after the Effective Date to the following  
10 addresses respectively:  
11

12           Mike Gyurics

13           Fiscal Operations Branch Chief

14           Office of Environmental Health Hazard Assessment

15           P.O. Box 4010

16           Sacramento, CA 95812-4010;

17           and  
18

19           Mr. Kingpun Cheng

20           C/O Sy and Smith, PC

21           11622 El Camino Real, Suite 100  
22

23           San Diego, CA 92130.

24           4.    Reimbursement of Fees and Costs

25           The Parties reached an accord on the compensation due to Cheng and his counsel under  
26 the private attorney general doctrine and principles of contract law. Under these legal principles,  
27 European Home Designs shall reimburse Cheng's counsel for fees and costs incurred as a result  
28

1 of investigating, bringing this matter to European Home Designs' attention, and negotiating a  
2 settlement. European Home Designs shall pay Cheng's counsel \$10,000.00 for all attorneys'  
3 fees, expert and investigation fees, and related costs associated with this matter, the Notices and  
4 associated fees and costs European Home Designs shall wire said monies or send a check payable  
5 to "Sy and Smith, PC" within five (5) business days of the Effective Date. Sy and Smith, PC will  
6 provide European Home Designs with wire instruction and tax identification information on or  
7 before the Effective Date. Other than the payment required hereunder, each side is to bear its  
8 own attorneys' fees and costs.

10 5. Release of all Claims

11 5.1 Release of European Home Designs and Downstream Customers, Retailers  
12 and Entities

13 Cheng, acting on behalf of himself and in the public interest, fully waives and releases  
14 European Home Designs and its officers, directors, attorneys, representatives, shareholders,  
15 agents, and employees, sister and parent entities, predecessors, successors, and assigns, and each  
16 entity to whom they directly or indirectly distributed or distribute or sold or sell the Covered  
17 Products including, but not limited to, their downstream distributors, wholesalers, licensors,  
18 licensees, auctioneers, retailers (including, but not limited to TJX Companies Inc., its parent and  
19 all affiliates and subsidiaries thereof), their respective employees, agents and assigns,  
20 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,  
21 subsidiaries, (collectively "Releasees") from all claims for violations of Proposition 65 up  
22 through the Effective Date, based on exposure to DEHP from the Covered Products as set forth in  
23 the Notices and Complaint. Compliance with the terms of this Consent Judgment by European  
24 Home Designs constitutes compliance with Proposition 65 with respect to exposures to DEHP  
25 from the Covered Products after the Effective Date.

1           In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
2 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,  
3 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
4 action and releases any other claims, cause of action, obligation, costs, expenses, attorneys' fees,  
5 damages, losses, liabilities, and demands that he made or could make against European Home  
6 Designs or the Releasees with respect to alleged violations of Proposition 65 arising from the  
7 Covered Products. The Parties acknowledge that the claims released above may include  
8 unknown claims, and with respect to the foregoing waivers and releases in this paragraph, Cheng  
9 hereby specifically waives any and all rights and benefits which he now has, or in the future may  
10 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which  
11 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 AT THE TIME OF  
15 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY  
16 AFFECTED HIS SETTLEMENT WITH THE DEBTOR.  
17

18           Cheng acknowledges and understands the significance and consequences of this specific  
19 waiver of California Civil Code section 1542.  
20

21           5.2     European Home Designs Release of Cheng

22           European Home Designs waives any and all claims against Cheng, and his attorneys, for  
23 any and all actions taken or statements made by Cheng or his attorneys in the course of  
24 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter  
25 up through the Effective Date.

26           6.     Non-Disparagement  
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1           The Parties agree to refrain from taking action or making statements, written, oral or  
2 through any form of media, including social media, which disparage or defame the goodwill or  
3 reputation of the other Party in connection with this Consent Judgment.

4           7.       Severability and Merger

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

8           This Consent Judgment 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           8.       Governing Law

13           The terms of this Consent Judgment shall be governed by the laws of the State of  
14 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
15 reason of law generally, or as to the Covered Products, then European Home Designs shall have  
16 no further obligations pursuant to this Consent Judgment with respect to the Covered Products to  
17 the extent the Covered Products are so affected. This Consent Judgment shall have no application  
18 to Covered Products that are not sold in California.

19           9.       Notices

20           9.1     Unless specified herein, all correspondence and notices required to be provided  
21 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by:  
22 electronic mail and either (i) first-class, (registered or certified mail) return receipt requested; or  
23 (ii) overnight courier on any Party by the other Party at the following addresses:  
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1 European Home Designs:

2 Judith M. Praitis  
3 Sidley Austin LLP  
4 555 West Fifth Street  
5 Los Angeles, CA 90013  
6 [jpraitis@sidley.com](mailto:jpraitis@sidley.com)

7 and

8 For Cheng:

9 Parker A. Smith  
10 Sy and Smith, PC  
11 11622 El Camino Real, Suite 100  
12 Del Mar, CA 92130  
13 [parker@sysmithlaw.com](mailto:parker@sysmithlaw.com)

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

16 **10. Counterparts; Facsimile Signatures**

17 10.1 This Consent Judgment may be executed in counterparts and by facsimile or  
18 exchange by electronic means, each of which shall be deemed an original, and all of which, when  
19 taken together, shall constitute one and the same document.

20 **11. Modification**

21 This Consent Judgment may be modified only by further written agreement of the Parties  
22 with court approval or by noticed motion. A copy of any motion to modify shall be served on the  
23 Office of Attorney General.

24 **12. Attorney Fees**

25 A Party who unsuccessfully brings or contests an action arising out of this Consent  
26 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs if  
27 awarded by court order after application therefor.

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13. Authorization

The undersigned are authorized to execute this Consent Judgment 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 Consent Judgment on behalf of the Party and legally bind that Party.

14. Notice to Attorney General; Motion

Cheng agrees to satisfy all submittal obligations to the Office of the Attorney General under Proposition 65 and to file a motion seeking approval of this consent judgment pursuant to Proposition 65 with the Court.

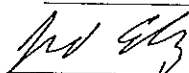
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IT IS SO STIPULATED:

Dated: \_\_\_\_\_

Dated: 7-24-17

By: \_\_\_\_\_

By:  \_\_\_\_\_

Kingpun Cheng

On Behalf of: European Home Designs, LLC

Approved as to Form:

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Parker A. Smith, Attorney for Plaintiff

Judith M. Praitis, Attorney for Defendant

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13. Authorization

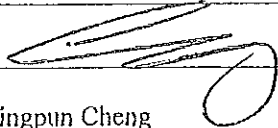
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certifies that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment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

14. Notice to Attorney General; Motion


Cheng agrees to satisfy all submittal obligations to the Office of the Attorney General under Proposition 65 and to file a motion seeking approval of this consent judgment pursuant to Proposition 65 with the Court.

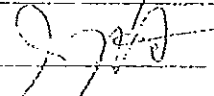
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IT IS SO STIPULATED:

Dated: 2017-7-25.  
By:   
Kingpun Cheng

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
On Behalf of: European Home Designs, LLC

Approved as to Form:  
Dated: 7/25/17  
By:   
Parker A. Smith, Attorney for Plaintiff

Dated: July 24, 2017  
By:   
Judith M. Praitis, Attorney for Defendant



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IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court