

JAN 30 2018

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**
11 **UNLIMITED CIVIL JURISDICTION**
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14	KINGPUN CHENG,)	CASE NO.: 37-2017-00019422-CU-NP-CTL
)	
15)	
	Plaintiff,)	[PROPOSED]
16)	JUDGMENT APPROVING
)	PROP 65 STIPULATION AND
17	v.)	CONSENT JUDGMENT
)	<i>(Cal. Health & Safety Code § 25249.6 et seq.)</i>
18	WRIGHT & MCGILL, CO., et al.)	
)	Date: January 12, 2018
19)	Time: 10:30 AM
)	Dept. C-61
20)	Judge: Hon. John S. Meyer
	Defendant.)	Action Filed: May 30, 2017
21)	"IMAGED FILE"
22)	

23
24 In the above entitled action, Plaintiff, Kingpun Cheng and Defendant, Wright &
25 McGill, Co. 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)
SY AND SMITH, PC.

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6 Attorneys for Plaintiff, King Pun Cheng

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

10 KING PUN CHENG,

11 Plaintiff,

12 vs.

13 WRIGHT & MCGILL CO.; et. al.

14 Defendants.

Case No. 37-2017-00019422-CU-NP-CTL

UNLIMITED JURISDICTION

STIPULATION AND [PROPOSED]
ORDER RE ENTRY OF CONSENT
JUDGMENT AS TO WRIGHT &
MCGILL CO.

Complaint Filed: May 30, 2017

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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 Wright & McGill Co.
20 (hereinafter "Wright & McGill"). Wright & McGill 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. Wright & McGill
24 employs ten or more persons as required for purposes of Cal. Health & Safety Code §§ 25249.5 et
25 seq. ("Proposition 65").
26
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1 1.2 Cheng alleges that Wright & McGill has offered for sale and sold in the State of
2 California complete fishing systems sold by Wright & McGill, including but not limited to “Eagle
3 Claw Complete Fishing Systems” (“Covered Products”) containing DEHP, a chemical listed
4 under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects,
5 or other reproductive harm, and that they did so without providing the warning Cheng alleges is
6 required by Proposition 65.
7

8 1.3 For purposes of this Settlement only, Wright & McGill represents that: Complete
9 fishing systems Eagle Claw Classic Brave Eagle Combo are items it distributed to retailers and
10 consumers (online and storefront) in the state of California.
11

12 1.4 On or about July 15, 2016, Cheng served Wright & McGill, Big 5 Sporting Goods
13 Corp., and various public enforcement agencies with a document entitled "60-Day Notice of
14 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Wright &
15 McGill and Big 5 Sporting Goods Corp. were in violation of Proposition 65 for failing to warn
16 consumers and customers that the Covered Products exposed users in California to DEHP. No
17 public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus
18 service time after service of the Notice to them by Cheng.
19

20 1.5 For purposes of this Settlement only, the Parties stipulate that in the event that
21 enforcement of this Settlement or a dispute arises regarding this Settlement, the Superior Court of
22 California, County of San Diego has proper jurisdiction over Wright & McGill as to the
23 allegations contained in the 60 day notice served on or about July 15, 2016, and that venue is
24 proper in the County of San Diego.
25

26 1.6 Wright & McGill denies the material, factual, and legal allegations made in the
27 Notice and Complaint, and maintains that all of the products it has sold or distributed for sale in
28 California, including the Covered Products, have been, and are, in compliance with all laws.

1 Nothing in this Consent Judgment shall be construed as an admission by Wright & McGill of any
2 fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent
3 Judgment constitute or be construed as an admission by Wright & McGill of any fact, finding,
4 conclusion, issue of law, or violation of law, the same being specifically denied by Wright &
5 McGill. This Section shall not, however, diminish or otherwise affect Wright & McGill's
6 obligations, responsibilities, and duties under this Consent Judgment.
7

8 1.7 For purposes of this Settlement, the term "Effective Date" shall mean the date on
9 which notice of the approval and entry of this Consent Judgment by the Court is received by
10 Wright & McGill.

11 **2. Injunctive Relief**

12 Commencing on the Effective Date, Wright & McGill shall only sell, offer for sale, or
13 distribute for sale in California, Covered Products that are either (a) reformulated pursuant to
14 Section 2.1 or (b) include a warning as provided in Section 2.3.
15

16 2.1 Reformulation Option. The Covered Products shall be deemed to comply with
17 Proposition 65 with regard to DEHP and be exempt from any Proposition 65 warning
18 requirements for DEHP if the exposed components that are part of the Covered Products meet the
19 following criteria: the Covered Products shall have a DEHP content in concentrations of no more
20 than 0.1% (1,000 parts per million, or "1,000 ppm"). Wright & McGill shall comply with the
21 above requirements by obtaining test results showing that the DEHP content is no more than
22 0.1%, using a method of sufficient sensitivity to establish a limit of quantification (as
23 distinguished from detection) of less than 1,000 ppm and providing a copy of said results to
24 Plaintiff.
25

26 2.2 Warning Alternative. As an alternative to reformulating the Covered Products,
27 within 180 days of the Effective Date, Covered Products that Wright & McGill ships for sale,
28

1 sells or offers for sale in California that do not meet the Reformulation Option set forth in Section
2 2.1 above shall be accompanied by a warning as described in Section 2.3 below.

3 2.3 Warnings. Where required under Section 2.2 above, Wright & McGill shall
4 provide Proposition 65 warnings substantially as follows:
5

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

9 Or

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

12 2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1,
13 Wright & McGill shall provide the warning language set forth in Section 2.3 either with the unit
14 package of the Covered Products or affixed to the Covered Products. Such warning shall be
15 prominently affixed to or printed on each Product's label or package or the Product itself. If
16 printed on the label, the warning shall be contained in the same section that states other safety
17 warnings, if any, concerning the use of the Product.
18

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

24 2.6 If Proposition 65 warnings for DEHP, or other specified chemicals, should no
25 longer be required, Wright & McGill shall have no further warning obligations pursuant to this
26 Settlement. In the event that a change in the law requires modification of such warnings, Wright
27 & McGill may cease to implement or may modify the warnings required under this Settlement in
28

1 compliance with the change in the law per Section 11 of this Settlement. In the event that the
2 Office of Environmental Health Hazard Assessment promulgates one or more regulations
3 requiring or permitting warning text and/or methods of transmission different than those set forth
4 above, Wright & McGill shall be entitled to use, at its discretion, such other warning text and/or
5 method of transmission without being deemed in breach of this Settlement per Section 11 of this
6 Settlement.
7

8 **3. Entry of Consent Judgment**

9 3.1 With regard to all claims that have been raised or which could be raised with
10 respect to failure to warn pursuant to Proposition 65 with regard to DEHP in the Covered
11 Products and because opportunities for exposure are minimal due to the nature and expected use
12 of the product, Wright & McGill shall pay a civil penalty of \$1,560.00 pursuant to Health and
13 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
14 Code § 25192, with 75% of these funds remitted to the State of California's Office of
15 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
16 Cheng, as provided by California Health & Safety Code § 25249.12(d) and the instructions
17 directly below.
18

19 Wright & McGill shall issue two separate checks for the penalty payment: (a) one
20 check made payable to "OEHHHA" (tax identification number: 68-0284486) in an amount
21 representing 75% of the total penalty (i.e., \$1,170.00; and (b) one check in an amount
22 representing 25% of the total penalty (i.e., \$390.00) made payable directly to Cheng. Wright &
23 McGill shall mail these payments within five (5) days after the Effective Date at which time such
24 payments shall be mailed to the following addresses respectively:
25

26 Mike Gyurics

27 Fiscal Operations Branch Chief
28

1 Office of Environmental Health Hazard Assessment

2 P.O. Box 4010

3 Sacramento, CA 95812-4010

4 And

5 Mr. King Pun Cheng

6 C/O Sy and Smith, PC

7 11622 El Camino Real, Suite 100

8 San Diego, CA 92130

9
10 4. Reimbursement of Fees and Costs

11 The parties reached an accord on the compensation due to Cheng and his counsel
12 under the private attorney general doctrine and principles of contract law. Under these legal
13 principles, Wright & McGill shall reimburse Cheng's counsel for fees and costs incurred as a
14 result of investigating, bringing this matter to Wright & McGill's attention, and negotiating a
15 settlement. Wright & McGill shall pay Cheng's counsel \$16,000 for all attorneys' fees, expert and
16 investigation fees, and related costs associated with this matter and the Notice. Wright & McGill
17 shall wire said monies or send a check payable to "Sy and Smith, PC" within five (5) days of the
18 Effective Date. Sy and Smith, PC will provide Wright & McGill with wire instruction and tax
19 identification information on or before the Effective Date if requested. Other than the payment
20 required hereunder, each side is to bear its own attorneys' fees and costs.
21
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23 5. Release of all Claims

24 5.1 Release of Wright & McGill and Downstream Customers

25 Cheng, on behalf of himself and on behalf of the general public, releases Wright & McGill
26 and their respective officers, directors, attorneys, representatives, shareholders, agents, and
27 employees, sister and parent entities, successors, and assigns, and each entity to whom it directly
28

1 or indirectly distributes or sells the Covered Products including, but not limited to, their
2 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but
3 not limited to, Big 5 Sporting Goods and its affiliates and subsidiaries), franchisees, dealers,
4 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,
5 (collectively "Releasees") from all claims for violations of Proposition 65 up through the
6 Effective Date based on exposure to DEHP from the Covered Products as set forth in the Notice
7 of Violation. Compliance with the terms of this Settlement constitutes compliance with
8 Proposition 65 with respect to exposures to DEHP from the Covered Products.
9

10 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,
11 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,
12 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
13 action and releases any other claims that he could make against Wright & McGill or the
14 Releasees arising prior to the Effective Date with respect to violations of Proposition 65 based
15 upon the Covered Products. The Parties acknowledge that the claims released above may include
16 unknown claims, and with respect to the foregoing waivers and releases in this paragraph, Cheng
17 hereby specifically waives any and all rights and benefits which he now has, or in the future may
18 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
19 provides as follows:
20

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

26 Cheng acknowledges and understands the significance and consequences of this specific
27 waiver of California Civil Code section 1542.
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5.2 Wright & McGill Release of Cheng

Wright & McGill waives any and all claims against Cheng, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Cheng and his attorneys and other representatives in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter.

6. Severability and Merger

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

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

7. Post Execution Activities

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

8. Governing Law

1 The terms of this Settlement shall be governed by the laws of the State of California. In
2 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
3 generally, or as to the Covered Products, then Wright & McGill shall have no further obligations
4 pursuant to this Settlement with respect to the Covered Products to the extent the Covered
5 Products are so affected.
6

7 **9. Notices**

8 9.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Settlement shall be in writing and personally delivered or sent by: electronic mail
10 and either (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight
11 courier on any party by the other party at the following addresses:
12

13 Wright & McGill:

14 James A. Geocaris, Esq.
15 Lewis Brisbois Bisgaard & Smith LLP
16 650 Town Center Drive, Suite 1400
17 Costa Mesa, CA 92626
18 james.geocaris@lewisbrisbois.com

19 and

20 For Cheng:

21 Parker A. Smith
22 Sy and Smith, PC
23 11622 El Camino Real, Suite 100
24 Del Mar, CA 92130
25 parker@sysmithlaw.com

26 Any party, from time to time, may specify in writing by the means set forth above to the
27 other party a change of address to which all notices and other communications shall be sent.
28

29 **10. Counterparts; Facsimile Signatures**

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

4 **11. Modification**

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

7 **12. Attorney Fees**

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

10 **13. Authorization**

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

15 **IT IS SO STIPULATED:**

16 Dated: 2017-10-24

17 Dated: _____

18 By: *Eddie Cheng*

19 By: _____

20 King Pun Cheng

21 On Behalf of Wright & McGill Co.

22 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

23 Dated: _____

24 _____

25 Judge of the Superior Court

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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: 10/24/17

By: _____

By: [Signature]

King Pun Cheng

President
On Behalf of Wright & McGill Co.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court