

FILED
Clerk of the Superior Court

MAY 26 2017

By: K. BRECKENRIDGE

1 Parker A. Smith, Esq. (#290311)
2 SY AND SMITH, PC
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4 Del Mar, CA 92130
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7 *Attorney for Plaintiff, Kingpun Cheng*

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

13 **KING PUN CHENG,**)
14)
15 **Plaintiff,**)
16)
17 **HAIER US APPLIANCE SOLUTIONS, INC.)**
18)
19 **Defendant.**)
20)
21)

2017
CASE NO.: 37-~~2016~~-00010838-CU-NP-CTL

**[PROPOSED] ORDER APPROVING
STIPULATION AND ORDER RE:
CONSENT JUDGMENT
"IMAGED FILE"**

**Date: May 26, 2017
Time: 1:30 PM
Dept. C-72
Judge: Hon. Timothy Taylor
Action Filed: March 24, 2017**

22 Plaintiff, King Pun Cheng and Defendant, Haier US Appliance Solutions, Inc.
23 having agreed through their respective counsel that judgment be entered pursuant to the terms of
24 the 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
15 **Dated:** 26 MAY 2017

Timothy B. Taylor

16 **JUDGE OF THE SAN DIEGO SUPERIOR COURT**
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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 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 HAIER US APPLIANCE SOLUTIONS, INC.
14 Defendants.

Case No. 37-2017-00010838-CU-NP-CTL

UNLIMITED JURISDICTION

STIPULATION AND [PROPOSED]
ORDER RE ENTRY OF CONSENT
JUDGMENT AS TO HAIER US
APPLIANCE SOLUTIONS, INC.

Complaint Filed: March 24, 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 public, (hereinafter "Cheng") and Haier US Appliance
21 Solutions, Inc. (hereinafter "HAIER"). HAIER and Cheng shall be collectively referred to as the
22 "Parties" and each of them as a "Party." Cheng is an individual residing in California who seeks
23 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
24 eliminating hazardous substances contained in consumer products. HAIER employs ten or more
25 persons as required for purposes of Cal. Health & Safety Code §§ 25249.5 et seq. ("Proposition
26 65").
27

1 **1.2 General Allegations**

2 Cheng alleges that HAIER has offered for sale and sold in the State of California icemaker
3 water line connection sets, including but not limited to “Haier Improved GE Appliances Icemaker
4 Water Line” WX08X10006 UPC084691805625 (“Covered Products”), containing lead , a
5 chemical listed under Proposition 65 as a chemical known to the State of California to cause
6 cancer, birth defects, or other reproductive harm, and that they did so without providing the
7 warning Cheng alleges is required by Proposition 65.
8

9 **1.3 Notice of Violation**

10 On or about September 26, 2016, Cheng served HAIER, Home Depot, Inc., and various
11 public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to
12 Health & Safety Code §25249.7(d) alleging that HAIER and Home Depot, Inc. were in violation
13 of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed
14 users in California to lead. The 60 Day Notice is referred to herein as “Notice”. No public
15 enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service
16 time after service of the Notice to them by Cheng.
17

18 **1.4 Complaint**

19 On or about March 24, 2017 Cheng filed a Complaint against HAIER for civil penalties
20 and injunctive relief (“Complaint”) in San Diego Superior Court, Case No. 37-2017-00010838-
21 CU-NP-CTL. The Complaint alleges, among other things, that HAIER violated Proposition 65
22 by failing to give clear and reasonable warnings of exposure to lead from the Covered Products.
23

24 **1.5 Consent to Jurisdiction**

25 For purposes of this Consent Judgment, the Parties consent that this Court has jurisdiction
26 over the allegations of violations contained in the Complaint and personal jurisdiction over the
27 named Defendant as to the acts alleged in the Complaint, that venue is proper in the County of
28

1 San Diego and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
2 and resolution of the allegations contained in the Notices, Complaint, and of all claims which
3 were or could have been raised by any person or entity based in whole or in part, directly or
4 indirectly, on the prior conduct of the Parties or on the facts alleged in the Complaint or arising
5 therefrom or related to.
6

7 **1.6 No Admission**

8 HAIER denies the material, factual, and legal allegations contained in Cheng's Notice and
9 maintain that they have not violated Proposition 65. Nothing in this Consent Judgment shall be
10 construed as an admission by HAIER of any fact, finding, conclusion of law, issue of law, or
11 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
12 an admission by HAIER of any fact, finding, conclusion of law, issue of law, or violation of law,
13 such being specifically denied. However, this section shall not diminish or otherwise affect the
14 obligations, responsibilities, and duties of HAIER under this Consent Judgment.
15

16 **1.7 Effective Date**

17 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
18 Court approves and enters this Consent Judgment.
19

20 **2. Injunctive Relief**

21 Except for those Covered Products described in Section 2.4 of this Consent Judgment,
22 commencing on the Effective Date, HAIER shall only sell, offer for sale, or distribute for sale in
23 California, Covered Products that are either (a) reformulated pursuant to Section 2.1 or (b)
24 include a warning as provided in Section 2.3.

25 **2.1 Reformulation Option.**

26 The Covered Products shall be deemed to comply with Proposition 65 with regard to lead
27 and be exempt from any Proposition 65 warning requirements for lead if the exposed brass or
28

1 other metal components that are part of the Covered Products meet the following criteria: the
2 alloy from which the components are made shall have a lead content by weight of no more than
3 0.03% (300 parts per million, or "300 ppm"). HAIER may comply with the above requirements
4 by relying on information obtained from its suppliers regarding the content of the alloy from
5 which the components are made, provided such reliance is in good faith. Obtaining test results
6 showing that the lead content is no more than 0.03%, using a method of sufficient sensitivity to
7 establish a limit of quantification (as distinguished from detection) of less than 100 ppm shall be
8 deemed to establish good faith reliance.

10 **2.2 Warning Alternative.**

11 As an alternative to reformulating the Covered Products, Covered Products that HAIER
12 ships for sale, sells or offers for sale in California that do not meet the Reformulation Option set
13 forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below.

15 **2.3 Clear and Reasonable Warnings.**

16 Where required under Section 2.2 above, HAIER shall provide Proposition 65 warnings
17 substantially as follows:

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

22 OR

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

25 **2.3.1** Where utilized as an alternative to meeting the criteria set forth in Section 2.1,
26 HAIER shall provide the warning language set forth in Section 2.3 either with the unit package of
27 the Covered Products or affixed to the Covered Products. Such warning shall be prominently
28

1 affixed to or printed on each Covered Product's label or package or the Covered Product itself. If
2 printed on the label, the warning shall be contained in the same section that states other safety
3 warnings, if any, concerning the use of the Covered Product.
4

5 2.3.2 The requirements for warnings set forth in Section 2.3 above are imposed pursuant
6 to the terms of this Consent Judgment. The Parties recognize that these are not the exclusive
7 methods of providing a warning under Proposition 65 and its implementing regulations and that
8 they may or may not be appropriate in other circumstances. HAIER may use other warning text
9 and/or method of transmission deemed "clear and reasonable" under regulations promulgated by
10 the Office of Environmental Health Hazard Assessment without being in breach of this Consent
11 Judgment.

12 **2.4 Sell-Through**

13
14 Notwithstanding any other Section in this Consent Judgment, Covered Products that are
15 manufactured prior to June 30, 2017 shall be subject to the release of liability pursuant to Section
16 5 of this Consent Judgment, without regard to when such Covered Products were, or are in the
17 future, distributed or sold to customers. As a result, the obligations of HAIER as set forth in this
18 Consent Judgment, including but not limited to Section 2, do not apply to the Covered Products
19 manufactured prior to June 30, 2017.
20

21 **3. Entry of Consent Judgment**

22 **3.1 Civil Penalty**

23 With regard to all claims that have been raised or which could be raised with respect to
24 failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products, HAIER
25 shall pay a civil penalty of \$3,500 pursuant to Health and Safety Code section 25249.7(b), to be
26 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these
27 funds remitted to the State of California's Office of Environmental Health Hazard Assessment
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1 and the remaining 25% of the penalty remitted to Cheng, as provided by California Health &
2 Safety Code § 25249.12(d) and the instructions directly below.

3 **3.2 Payment Procedures**

4 HAIER shall issue two separate checks for the penalty payment: (a) one check made
5 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of
6 the total penalty (i.e., \$2,625; and (b) one check in an amount representing 25% of the total
7 penalty (i.e., \$875) made payable directly to Cheng. HAIER shall mail these payments within
8 five (5) days after the Effective Date at which time such payments shall be mailed to the
9 following addresses respectively:
10

11 Office of Environmental Health Hazard Assessment

12 Attn: Mike Gyurics

13 1001 I Street

14 Mail Stop 12-B

15 Sacramento, CA 95814

16 and

17 Mr. Kingpun Cheng

18 C/O Sy and Smith, PC

19 11622 El Camino Real, Suite 100

20 San Diego, CA 92130

21 **4. Reimbursement of Fees and Costs**

22 The parties reached an accord on the compensation due to Cheng and his counsel under
23 the private attorney general doctrine and principles of contract law. Under these legal principles,
24 HAIER shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating,
25 bringing this matter to HAIER's attention, and negotiating a settlement. HAIER shall pay
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1 Cheng's counsel \$35,000 for all attorneys' fees, expert and investigation fees, and related costs
2 associated with this matter and the Notice. HAIER shall wire said monies or send a check
3 payable to "Sy and Smith, PC" within five (5) days of the Effective Date. Sy and Smith, PC will
4 provide HAIER with wire instruction and tax identification information on or before the Effective
5 Date if requested. Other than the payment required hereunder, each side is to bear its own
6 attorneys' fees and costs.
7

8 **5. Release of all Claims**

9 **5.1 Release of HAIER and Downstream Customers, Suppliers, Retailers**
10 **and Entities**

11 Cheng, acting on behalf of himself and on behalf of the general public and in the public
12 interest, releases HAIER and its respective officers, directors, attorneys, representatives,
13 shareholders, agents, employees, sister and parent entities, affiliates, subsidiaries, successors, and
14 assigns, its suppliers and vendors, and each entity to whom it directly or indirectly distributes or
15 sells the Covered Products including, but not limited to, their downstream distributors,
16 wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Home
17 Depot, Inc. and its respective officers, directors, attorneys, representatives, shareholders, agents,
18 employees, sister and parent entities, affiliates, subsidiaries, successors, and assigns), franchisees,
19 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, and
20 subsidiaries(collectively "Releasees") from all claims for violations of Proposition 65 up through
21 the Effective Date based on exposure to lead from the Covered Products as set forth in the Notice
22 of Violation. This Consent Judgment is a final and binding resolution between Cheng, acting on
23 his own behalf, and on behalf of the public and in the public interest, and HAIER, and shall have
24 preclusive effect such that no other person or entity, whether purporting to act in his, her, or its
25 interests or the public interest shall be permitted to pursue and/or take any action with respect to
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1 any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought
2 pursuant to the Notice against HAIER or Releasees. Compliance with the terms of this Consent
3 Judgment constitutes compliance by HAIER and Releasees with Proposition 65 with respect to
4 exposures to lead from the Covered Products.
5

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

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

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

24 **5.2 HAIER Release of Cheng**

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

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

3 **6. Non-Disparagement**

4 The Parties agree to refrain from taking action or making statements, written, oral or
5 through any form of social media, which disparage or defame the goodwill or reputation of the
6 other Party.
7

8 **7. Severability and Merger**

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

12 This Consent Judgment contains the sole and entire agreement of the Parties and any and
13 all prior negotiations and understandings related hereto shall be deemed to have been merged
14 within it. No representations or terms of agreement other than those contained herein exist or
15 have been made by any Party with respect to the other Party or the subject matter hereof.
16

17 **8. Governing Law**

18 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by
20 reason of law generally, or as to the Covered Products, then HAIER shall have no further
21 obligations pursuant to this Consent Judgment with respect to the Covered Products to the extent
22 the Covered Products are so affected.
23

24 **9. Notices**

25 9.1 Unless specified herein, all correspondence and notices required to be provided
26 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by:
27
28

1 electronic mail and either (i) first-class, (registered or certified mail) return receipt requested; or
2 (ii) overnight courier on any party by the other party at the following addresses:

3 HAIER:

4 Shelby Miller
5 George Gigounas
6 DLA Piper LLP
7 555 Mission Street, Suite 2400
8 San Francisco, CA 94105
9 shelby.miller@dlapiper.com
10 george.gigounas@dlapiper.com

11 and

12 For Cheng:

13 Parker A. Smith
14 Sy and Smith, PC
15 11622 El Camino Real, Suite 100
16 Del Mar, CA 92130
17 parker@sysmithlaw.com

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

20 **10. Counterparts; Facsimile Signatures**

21 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
22 which shall be deemed an original, and all of which, when taken together, shall constitute one and
23 the same document.

24 **11. Court Approval**

25 This Consent Judgment is not effective until it is approved and entered by the Court and
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one (1)
27 year after it has been fully executed by the Parties.

28 **12. Compliance with Health & Safety Code § 25249.7(f)**

1 Cheng agrees to comply with the requirements set forth in California Health & Safety
2 Code §25249.7(f).

3 **13. Modification**

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

7 **14. Attorney Fees**

8 A Party who unsuccessfully brings or contests an action arising out of this Consent
9 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs.
10

11 **15. Authorization**

12 The undersigned are authorized to execute this Consent Judgment on behalf of their
13 respective Parties and have read, understood and agree to all of the terms and conditions of this
14 document and certifies that he or she is fully authorized by the Party he or she represents to
15 execute the Consent Judgment on behalf of the Party and legally bind that Party.
16

IT IS SO STIPULATED:

17 Dated: 4/5/17

Dated: _____

18 By: [Signature]

By: _____

19 Parker A. Smith, Attorney for Plaintiff

20 Shelby Miller, Attorney for Defendant

21
22 Dated: 2017 4 5

Dated: 4/10/17

23 By: [Signature]

By: [Signature]

24 Kingpun Cheng

25 On Behalf of HAIER
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IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court

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Cheng agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f).

13. Modification

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

14. Attorney Fees

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

15. 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.

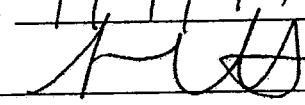
IT IS SO STIPULATED:

Dated: _____

By: _____

Parker A. Smith, Attorney for Plaintiff

Dated: 4/7/17

By: 

Shelby Miller, Attorney for Defendant

Dated: _____

By: _____

Kingpun Cheng

Dated: _____

By: _____

On Behalf of HAIER