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

Attorney for Plaintiff, Kingpun Cheng

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

UNLIMITED CIVIL JURISDICTION

KINGPUN CHENG,	**CASE NO.: 37-2017-00043063-CU-NP-CTL**
Plaintiff,	**[PROPOSED] ORDER APPROVING STIPULATION AND ORDER RE: CONSENT JUDGMENT "IMAGED FILE"**
MORRIS ROTHENBERG & SON, INC.	
Defendant.	**Date: March 9, 2018** **Time: 11:00 AM** **Dept.: C-70** **Judge: Hon. Randa Trapp** **Action Filed: November 9, 2017**

Plaintiff, Kingpun Cheng and Defendant, Morris Rothenberg & Son, Co. having agreed through their respective counsel that judgment be entered pursuant to the terms of the Stipulation and Order Re: Consent Judgment entered into by the parties, and attached to the Judgment pursuant to the terms of the Stipulation and Order Re: Consent Judgment as Exhibit 1. After consideration of the papers submitted and arguments presented, the Court finds that the settlement agreement set out in the attached Consent Judgment meets the criteria established by Health & Safety Code §25249.7, in that:

a) the health hazard warning required by the Stipulation and Order Re: Consent Judgment complies with Health & Safety Code §25249.7;

b) the reimbursement of fees and costs to be paid pursuant to the parties' Stipulation and Order Re: Consent Judgment is reasonable under California law; and

c) the civil penalty amount to be paid pursuant to the parties' Stipulation and Order Re: Consent Judgment is reasonable

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

IT IS SO ORDERED.

Dated: Feb 1, 2018

Randa Trapp

JUDGE OF THE SAN DIEGO SUPERIOR COURT
RANDA TRAPP

Exhibit 1

PARKER SMITH, ESQ. (SBN 290311)
SY AND SMITH, PC.
11622 El Camino Real, Suite 100
Del Mar, CA 92130
Telephone: (858) 746-9554
Facsimile: (858)746-5199

Attorneys for Plaintiff, Kingpun Cheng

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

KINGPUN CHENG, Plaintiff, vs. MORRIS ROTHENBERG & SON, INC.; et. al. Defendants.	Case No. UNLIMITED JURISDICTION **STIPULATION AND [PROPOSED] ORDER RE ENTRY OF CONSENT JUDGMENT AS TO MORRIS ROTHENBERG & SON, INC.** Complaint Filed: October 30, 2017

1. Introduction

1.1 This Settlement Agreement is hereby entered into by and between Kingpun Cheng, as an individual, (hereinafter "Cheng") and Morris Rothenberg & Son, Inc. (hereinafter "Rothco"). Rothco and Cheng shall be collectively referred to as the "Parties" and each of them as a "Party." Cheng is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.2 Cheng alleges that Rothco has offered for sale and sold in the State of California Brass Cavalry Bugle sold by Rothco, including but not limited to "Rothco Brass Cavalry Bugle" ("Covered Products") containing lead, a chemical listed under Proposition 65 as a chemical

known to the State of California to cause cancer, birth defects, or other reproductive harm, and that they did so without providing the warning Cheng alleges is required by Proposition 65.

1.3 For purposes of this Settlement only, Rothco represents that: Brass Cavalry Bugle SKU R10405 is an item it distributed to retailers and consumers (online and storefront) in the state of California.

1.4 On or about April 21, 2017, Cheng served Rothco, Walmart Stores, Inc. ("Walmart"), and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Rothco and Walmart were in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time after service of the Notice to them by Cheng.

1.5 Rothco denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products it has sold and distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Settlement constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Rothco's obligations, responsibilities, and duties under this Settlement.

1.6 For purposes of this Settlement only, the Parties stipulate that in the event that enforcement of this Settlement or a dispute arises regarding this Settlement, the Superior Court of California, County of San Diego has proper jurisdiction over Rothco as to the allegations

contained in the 60 day notice served on or about April 21, 2017, and that venue is proper in the County of San Diego.

1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on which notice of the approval and entry of this Consent Judgment by the Court is received by Rothco.

2. Injunctive Relief

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

2.1 Reformulation Option. The Covered Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the exposed brass or other metal components that are part of the Covered Products meet the following criteria: the alloy from which the components are made shall have a lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). Rothco shall comply with the above requirements by obtaining test results showing that the lead content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300 ppm and providing a copy of said results to Plaintiff.

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

2.3 Warnings. Where required under Section 2.2 above, Rothco shall provide Proposition 65 warnings substantially as follows:

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

Or

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

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

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

2.6 If Proposition 65 warnings for lead or lead compounds, or other specified chemicals, should no longer be required, Rothco shall have no further warning obligations pursuant to this Settlement. In the event that a change in the law requires modification of such warnings, Rothco may cease to implement or may modify the warnings required under this Settlement in compliance with the change in the law per Section 11 of this Settlement. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Rothco shall be entitled to use, at its discretion, such other warning text

and/or method of transmission without being deemed in breach of this Settlement per Section 11 of this Settlement.

3. Entry of Consent Judgment

3.1 With regard to all claims that have been raised or which could be raised with respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products and because opportunities for exposure are minimal due to the nature and expected use of the product, Rothco shall pay a civil penalty of $800.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Cheng, as provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

Rothco shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the total penalty (i.e., $600); and (b) one check in an amount representing 25% of the total penalty (i.e., $200) made payable directly to Cheng. Rothco shall mail these payments within five (5) days after the Effective Date at which time such payments shall be mailed to the following addresses respectively:

Office of Environmental Health Hazard Assessment

Attn: Mike Gyurics

1001 I Street

Mail Stop 12-B

Sacramento, CA 95814

And

Mr. Kingpun Cheng

C/O Sy and Smith, PC

11622 El Camino Real, Suite 100

San Diego, CA 92130

4. Reimbursement of Fees and Costs

The parties reached an accord on the compensation due to Cheng and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Rothco shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Rothco's attention, and negotiating a settlement. Rothco shall pay Cheng's counsel $7,200 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. Rothco shall wire said monies or send a check payable to "Sy and Smith, PC" within five (5) days of the Effective Date. Sy and Smith, PC will provide Rothco with wire instruction and tax identification information on or before the Effective Date if requested. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

5. Release of all Claims

5.1 Release of Rothco and Downstream Customers

Cheng, on behalf of himself and on behalf of the general public, releases Rothco and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, sister and parent entities, successors, and assigns, and each entity to whom it directly or indirectly distributes or sells the Covered Products including, but not limited to, their downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Walmart and their affiliates and subsidiaries), franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, (collectively "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure

to lead from the Covered Products as set forth in the Notice of Violation. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead from the Covered Products.

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

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

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

5.2 Rothco Release of Cheng

Rothco 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 Consent Judgment, 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. Governing Law

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

8. Notices

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

Rothco:

Meredith Jones-McKeown, Esq.
Hannah Worek
Perkins Coie LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105
mjonesmckeown@perkinscoie.com
hworek@perkinscoie.com

and

For Cheng:

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

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

9. Counterparts; Facsimile Signatures

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

10. Compliance with Health & Safety Code § 25249.7(f)

Cheng agrees to comply with the requirements set forth in California Health & Safety Code §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 motion Cheng shall draft and file. Rothco shall reasonably cooperate with Cheng in connection with such noticed motion.

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: 11/27/17

By: _____

Parker A. Smith, Attorney for Plaintiff

Dated: 2017-11-24

By: Eddie Cheng

Kingpun Cheng

Dated: _____

By: _____

Meredith Jones-McKeown, Attorney for Defendant

Dated: _____

By: _____

On Behalf of Rothco

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

_____

Judge of the Superior Court

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: _____

By: _____

Parker A. Smith, Attorney for Plaintiff

Dated: 10/27/17

By: _____

Meredith Jones-McKeown, Attorney for Defendant

Dated: _____

By: _____

Kingpun Cheng

Dated: 10/27/17

By: _____

On Behalf of Rothco

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court