

1 Parker A. Smith, Esq.  
LAW OFFICE OF PARKER A. SMITH, PC  
2 2173 Salk Ave., Suite 250  
Carlsbad, CA 92008  
3 Phone: 760 579 7600

4 Attorney for Plaintiff, King Pun Cheng  
5  
6  
7

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

10  
11 KING PUN\_CHENG,  
12 Plaintiff,  
13 v.  
14 True Value Company, Belwith Products, LLC  
ET AL.,  
15 Defendant.  
16

Case No. 37-2014-0006285-CU-NP-CTL  
[PROPOSED] SETTLEMENT PURSUANT  
TO C.C.P. SECTION 664.6

[Assigned for All Purposes to Hon. XXX, Dept. XX]

CMC: 5/8/15 at 1:30 PM  
Hearing on Demurrer: 5/8/15 at 1:30 PM  
Trial Date: None Set

17 1. INTRODUCTION

18 1.1 The Parties  
19

20 This Settlement Agreement ("Private Settlement") is hereby entered into by and between King Pun  
21 Cheng acting (hereinafter "Cheng") and Belwith Products, L.L.C., (hereinafter "Belwith") and True Value Company  
22 (hereinafter "True Value"). Belwith, True Value, and Cheng shall be collectively referred to as the "Parties" and each  
23 of them as a "Party." Cheng is an individual residing in California who seeks to promote awareness of exposures to  
24 toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer  
25 products. Defendants employ ten or more persons and each is a person in the course of doing business for purposes of  
26 Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

27 1.2 Allegations and Representations

28 Cheng alleges that Defendants have offered for sale in the State of California and have sold in

1 California, an Interlocking Deadbolt containing lead and that such sales have not been accompanied by Proposition 65  
2 warnings. Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer and birth  
3 defects or other reproductive harm. Cheng has cited "First Watch Interlocking Deadbolt" (UPC078555011253)  
4 (hereafter "Deadbolt") as a specific example of the Brass deadbolt that are the subject of his allegations.

5 Belwith denies that a consumer is exposed to lead from the Deadbolt in an amount that mandates a warning.  
6 True Value denies that it is related to the store from which the Deadbolt was purchased, and further denies that it has  
7 any involvement in the chain of commerce related to the Deadbolt. Belwith and True Value further deny that this  
8 Court has jurisdiction over any consumer product which has not been both a) explicitly set forth in the 60-Day Notice,  
9 and b) has been tested by Plaintiff and supported by a Certificate of Merit.

10 Belwith and True Value further deny the material, factual, and legal allegations contained in the 60-Day  
11 Notice and the Complaint, and maintain that all products they have sold, imported and/or distributed in California, and  
12 all products manufactured, imported, sold, or distributed by others, including the Deadbolt, have been and are in  
13 compliance with all laws, including but not limited to Proposition 65. Nothing herein shall be construed as an  
14 admission by Belwith or by True Value of any fact, finding, issue of law, or violation of law, nor shall compliance  
15 with this settlement constitute or be construed as an admission by Belwith or by True Value of any fact, finding,  
16 conclusion, issue of law, or violation of law.

### 17 1.3 Product Description

18 The products that are covered by this Settlement are defined as brass hardware products, containing  
19 exposed brass or other metals that may contain lead that are distributed by Belwith to True Value stores (hereinafter  
20 "Stores") and others, and which are sold in California. All such items shall be referred to herein as the "Products."  
21 Belwith affirmatively represents that less than a dozen of the Deadbolts have been sold in California that lacked a  
22 warning pursuant to Article 6 (§§ 25601 et seq.) of Title 27 C.C.R.

### 23 1.4 Notices of Violation

24 On or about November 26, 2013, Cheng served Belwith, True Value, and various public enforcement  
25 agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the  
26 "Notice"), alleging that Belwith and True Value were in violation of Proposition 65 for failing to warn consumers that  
27 the Products exposed users in California to lead. No public enforcer diligently prosecuted the claims set forth in the  
28 Notice within sixty days plus service time relative to the provision of the Notice to them by Cheng.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1.5 Stipulation as to Jurisdiction/No Admission

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 the Parties as to the terms and conditions of this Settlement Pursuant to Section 664.6 C.C.P. , that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Settlement.

Nothing in this Settlement shall be construed as an admission by Belwith or True Value of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendants.

1.6 Effective Date

For purposes of this Private Settlement, the term "Effective Date" shall mean the date this Settlement is approved by the Superior Court.

For purposes of this Settlement, the term "Execution Date" shall mean the date this Settlement is signed by all parties in Para. 14 hereinbelow.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, Belwith shall not ship, sell, or offer to sell in California any Products that is/are manufactured, distributed or sold by Belwith that either a) contain more than 100 ppm lead, or b) do not have a warning as provided by Article 6 (§§ 25601 et seq.) of Title 27 C.C.R. .

2.1 Reformulation Option. The 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 Products meet the following criteria: (a) the alloy from which the components are made shall have no additional lead as an intentionally added constituent; and, (b) the alloy from which the components are made shall have a lead content by weight of no more than 0.01% (100 parts per million, or "100 ppm"). Defendant(s) may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the alloy from which the components are made, provided such reliance is in good faith.

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 100 ppm shall be deemed to establish

1 good faith reliance.

2                   2.2       Warning Alternative. Commencing on the Effective Date, Products that Belwith ships,  
3 sells or offers for sale in California that do not meet the reformulation standard set forth in Section 2.1 above shall be  
4 accompanied by a warning as provided by Article 6 (§§ 25601 et seq.) of Title 27 C.C.R.. Belwith affirmatively  
5 represents that it has already implemented this requirement, including locating all unsold Products in California and  
6 placing thereon a warning compliant with Article 6 (§§ 25601 et seq.) of Title 27 C.C.R.

7                   3.       PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §251249.7(b)

8                   With regard to all claims that have been raised or which could be raised with respect to failure to warn  
9 pursuant to Proposition 65 with regard to lead in the Products, Defendant(s) shall pay a civil penalty of \$250.00  
10 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &  
11 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health  
12 Hazard Assessment and the remaining 25% of the penalty remitted to Cheng, as provided by California Health &  
13 Safety Code § 25249.12(d) and the instructions directly below.

14                   Defendant(s) shall issue two separate checks for the penalty payment: (a) one check made payable  
15 to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the total penalty (i.e.,  
16 \$187.50); and (b) one check in an amount representing 25% of the total penalty (i.e., \$62.50) made payable directly to  
17 Cheng. Defendant(s) shall mail these payments by May 15, 2015, to be held in trust by Cheng's counsel, until the  
18 Effective Date, at which time such payments shall be mailed to the following addresses respectively:

19                   Proposition 65 Settlement Coordinator  
20                   California Department of Justice  
21                   1515 Clay Street, 20th Floor  
22                   Oakland, CA 94612-1413

23                   Mr. King Pun Cheng  
24                   C/O Parker A. Smith, Attorney at Law  
25                   2173 Salk Ave., Suite 250  
26                   Carlsbad, CA 92008

27                   4.       REIMBURSEMENT OF FEES AND COSTS

28                   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, Defendant(s) shall reimburse  
Cheng's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Defendant(s) attention,

1 and negotiating a settlement in the public interest. Defendant(s) shall pay Cheng's counsel \$8,750.00 for all  
2 attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.  
3 Defendant(s) shall wire said monies to the "Parker A. Smith, Attorney at Law" (tax identification number 47-  
4 2991443) by May 22, 2015. Parker A. Smith, Attorney at Law will provide Defendant(s) with wire instruction and tax  
5 identification information on or before the Execution Date. Other than the payment required hereunder, each side is to  
6 bear its own attorneys' fees and costs.

7 5. RELEASE OF ALL CLAIMS

8 5.1. Cheng, suing in the public interest, hereby releases Belwith and True Value; all entities that  
9 supplied or distributed the Products to Belwith and/or True Value; all entities that manufactured the Products that  
10 were directly or indirectly supplied to Belwith or True Value; all distributors and retailers of the Products; and, the  
11 affiliates and subsidiaries of each of these aforementioned entities; all entities served with a 60-day notice, and, the  
12 divisions, successors, subsidiaries, parent corporations, related entities, affiliates, agents, contractors, experts,  
13 consultants, counsel, service providers, officers, directors, and employees of Belwith and True Value; and, the  
14 aforementioned entities described or named in this Para., of any liability whatsoever under Proposition 65 related to  
15 the Products and the alleged failure to warn California consumers of an alleged exposure to lead from any of the  
16 Products sold in California on or before the date the Court approves this settlement.

17 5.2. Additionally, Cheng in his individual capacity and not in his representative capacity, hereby  
18 waives any and all rights and benefits which he now has, or in the future may have, conferred upon him with respect  
19 to any and all legal or equitable actions that arise from or are related to this litigation, the Products, or by virtue of the  
20 provisions of Section 1542 of the California Civil Code, which provides as follows:

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

25 Cheng understands and acknowledges the significance and consequence of this waiver pursuant to California  
26 Civil Code Section 1542, and understands and acknowledges that the waiver applies to any and all legal or equitable  
27 actions that arise from or are related directly or indirectly, in whole or in part, to the Products, the litigation,  
28 statements made regarding Cheng or the litigation, and the underlying facts of the lawsuit or claims made in the  
litigation. Furthermore, Cheng acknowledges that he intends these consequences for any such claims related to the

1 Products which may exist as of the date of this release but which Cheng does not know exist, and which, if known,  
2 would materially affect his decision to enter into this Agreement, regardless of whether the lack of knowledge is the  
3 result of ignorance, oversight, error, negligence or any other cause. Cheng further waives all rights to institute any  
4 form of legal or equitable action or defense (including without limit contribution, indemnity, set-off and by right of  
5 subrogation) against the any entity released herein for any and all acts or omissions or statements made or activities  
6 directed to be undertaken or activities that were undertaken by Belwith or True Value or by any party released herein.

7 5.3. Belwith and True Value, on behalf of themselves, their past and current agents, representatives,  
8 attorneys, successors, and/or assignees, hereby waive any and all claims against Cheng his attorneys and other  
9 representatives, for any and all actions taken or statements made (or those that could have been taken or made) by  
10 Cheng and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to  
11 enforce Proposition 65 against them in this matter with respect to the Products.

12 5.4. The Parties agree, understand, and acknowledge that this settlement represents a compromise  
13 of this action, and the release of claims as set forth herein, and neither the fact nor the terms of this settlement is to be  
14 construed as an admission of liability or wrongdoing on the part of the Parties.

#### 15 6. SEVERABILITY AND MERGER

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

19 This Settlement Agreement contains the sole and entire agreement of the Parties and any and all  
20 prior negotiations and understandings related hereto shall be deemed to have been merged within it. No  
21 representations or terms of agreement other than those contained herein exist or have been made by any Party with  
22 respect to the other Party or the subject matter hereof.

#### 23 7. GOVERNING LAW

24 The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply  
25 within the State of California. Compliance with the terms of this Settlement resolves any issue, now or in the future,  
26 with the requirements of Proposition 65 with respect to alleged exposures to lead arising from the Products. In the  
27 event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the  
28 Products, then Defendant(s) shall provide written notice to Cheng of any asserted change in the law, and shall have no

1 further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so  
2 affected.

3 8. NOTICES

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

7 For Belwith:

8 Thomas H. Clarke, Jr.  
9 Attn.: Roxana Riedell  
10 RMKB  
1001 Marshall Street, Suite 500  
Redwood City 94063-2052

11 and

12 For Cheng:

13 Parker A. Smith, Attorney at Law  
14 2173 Salk Ave., Suite 250  
Carlsbad, CA 92008

15 For all notices and correspondence required to be provided pursuant to this settlement in writing, the Parties  
16 shall also send a courtesy notice by electronic mail to counsel with the correspondence or notice attached thereto. The  
17 provision of such courtesy notice shall not lessen, diminish, or void the requirement noted herein regarding how actual  
18 notices and correspondence are to be sent. Further, any party, from time to time, may specify in writing to the other  
19 party a change of address to which all notices and other communications shall be sent.

20 9. COUNTERPARTS; FACSIMILE SIGNATURES

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

23 10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

24 Cheng agrees to comply with the requirements set forth in California Health & Safety Code  
25 §25249.7(f).

26 11. MODIFICATION

27 This settlement may be modified only: (1) by written agreement of the Parties and upon entry of a  
28 modified settlement by the Court thereon; or (2) upon a successful noticed motion of any Party and entry of a

1 modified settlement by the Court.

2 12. ATTORNEY'S FEES

3 12.1 A party who unsuccessfully brings or contests an action arising out of this Settlement  
4 Agreement shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the unsuccessful  
5 party has acted with substantial justification. For purposes of this Settlement Agreement, the term "substantial  
6 justification" shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure  
7 Section 2016, et seq.

8 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant  
9 to law.

10 13. RETENTION OF JURISDICTION

11 The Superior Court of California, County of San Diego shall have jurisdiction to enforce this Settlement Agreement.

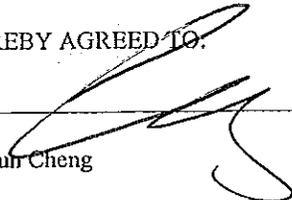
12 14. AUTHORIZATION

13 14.1, Each of the Parties acknowledges that they had the right and ability to consultation with and  
14 the advice of counsel of their choice and each voluntarily has entered into this settlement.

15 14.2 The undersigned affirmatively represent are authorized to execute this Settlement Agreement  
16 on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this  
17 document and certifies that he or she is fully authorized by the Party he or she represents to execute the Settlement  
18 Agreement on behalf of the Party represented and legally bind that Party.

19 14.3. Except to the extent otherwise noted, each of the Parties shall bear its own costs and fees.

20 IT IS HEREBY AGREED TO:

21 By:   
22 King Pun Cheng

Date: 6-17-2015.

23  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS HEREBY AGREED TO:

By: Robert Budge

Date: \_\_\_\_\_

On Behalf of: True Value Company

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

Date: \_\_\_\_\_

On Behalf of: Belwith Products, LLC

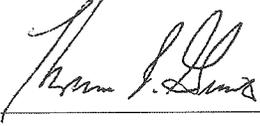
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS HEREBY AGREED TO:

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

Date: \_\_\_\_\_

On Behalf of: True Value Company

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

Date: 6-9-15

On Behalf of: Belwith Products, LLC