

SETTLEMENT AGREEMENT

1. General

1.1 The Parties

This Settlement Agreement (“Agreement”) is hereby entered into by and between King Pun Cheng (hereinafter “Cheng”) and The Howard Berger Co., LLC, (hereinafter “HBC”). HBC 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. HBC employs ten or more persons and each is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 Allegations and Representations

Cheng alleges that HBC has offered for sale in the State of California and has sold in California, hardware locks, namely “Jimmy-Proof Deadlock” UPC 07587716880, containing lead, and that such sale has not been accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. Cheng has cited Jimmy-Proof Deadlock as a specific example of hardware locks that are the subject of his allegations.

1.3 Product Description

The products that are covered by this Agreement are defined as hardware locks, such as Jimmy-Proof Deadlock, containing exposed brass or other metals containing lead that are distributed by HBC for sale in California. All such items shall be referred to herein as the “Products.”

1.4 Notice of Violation

On or about December 19, 2013, Cheng served HBC, Ross Stores, Inc., 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 HBC and Ross Stores were in

violation of Proposition 65 for failing to warn consumers and customers that the Product exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Cheng.

1.5 Stipulation as to Jurisdiction/No Admission

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

HBC denies the material, factual and legal allegations contained in the Notice and maintains that all of the products it has sold and distributed in California, including the Products, have been, and are, in compliance with all applicable laws, including Proposition 65. Nothing in this Agreement shall be construed as an admission by HBC of any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by HBC of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by HBC. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of HBC under this Agreement.

1.6 Effective Date

For purposes of this Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

2. Injunctive Relief: Warnings and Reformulation

Commencing on the Effective Date, HBC shall not ship, sell, or offer to sell in California a Product(s) that is/are manufactured, distributed or sold by HBC, unless such Product(s) either (a) are reformulated pursuant to Section 2.1 or (b) include a warning as provided in Section 2.3.

2.1 Reformulation Option

The Product(s) shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if exposure to lead to the average

user of the Product(s) resulting from the exposed brass or other metal components that are part of the Products does not exceed 0.5 micrograms per day as determined in accordance with 27 Cal. Code Regs. §25821. HBC 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.

2.2 Warning Alternative

Commencing on the Effective Date, Products that HBC ships, sells or offers for sale in California that do not meet the reformulation standard 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, HBC shall provide Proposition 65 warnings as follows:

California Prop. 65 WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

OR

California Prop. 65 WARNING: This product contains one or more chemicals known to the State of California to cause [cancer and] birth defects or other reproductive harm.

The inclusion in the warning of the term “cancer” shall be required only if exposure to lead, as determined in accordance with 27 Cal. Code Regs. §25721, exceeds 15 micrograms per day.

2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1, the 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; HBC may continue to utilize, on an ongoing basis, unit packaging containing substantively the same Proposition 65 warnings as those set forth in Section 2.3 above, but only to the extent such packaging materials have already been printed within ninety days of the Effective Date.

2.5 The requirements for warnings, set forth in Section 2.3 above are imposed pursuant to the terms of this Agreement. 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. However, to the extent that regulations under Proposition 65 are revised to require more detailed or expanded warnings, and such requirements do not apply to settlements entered into before the effective date of those regulations, compliance with the warning requirements set forth above in Section 2.3 and 2.4 shall constitute compliance with this Agreement.

2.6 If Proposition 65 warnings for lead or lead compounds or other specified chemicals should no longer be required, HBC shall have no further warning obligations pursuant to this Agreement.

3. Payments Under Health & Safety Code §25249.7(b)

In settlement of 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 Products, HBC shall pay a civil penalty of \$500 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.

HBC 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., \$375); and (b) one check in an amount representing 25% of the total penalty (i.e., \$125) made payable directly to King Pun Cheng. HBC shall mail these payments, within ten (10) business days after the Effective Date, to:

Mr. King Pun Cheng
c/o Parker A. Smith, Attorney at Law
2173 Salk Ave., Suite #250
Carlsbad, CA 92008

Cheng shall forward the payment to OEHHA within ten (10) days of receipt from HBC, and at such time provide to HBC confirmation that payment was submitted to OEHHA.

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, HBC shall reimburse Cheng's counsel for fees and costs, incurred as a result of investigating, bringing this matter to HBC's attention, and negotiating a settlement. HBC shall pay Cheng's counsel \$6,500 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. HBC shall make a check payable to "Parker A. Smith, Attorney at Law" and deliver said payment within ten (10) business days after the Effective Date to the address for Cheng's counsel referenced above. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

5. Release of All Claims

5.1 Full, Final and Binding Agreement

This Agreement is a full, final, and binding resolution between Cheng and HBC of any violation of Proposition 65 that was or could have been asserted by Cheng on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against HBC, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom HC directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, including, without limitation, Ross Stores, Inc., and as to each respectively their present and former agents, attorneys, representatives, shareholders, directors, officers and employees, and their respective predecessors, successors, parent, affiliates, and subsidiaries, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged failure to warn about exposures to lead in Products sold or distributed for sale by HBC prior to the Effective Date.

5.2 Release of Defendant(s) and Downstream Customers

Cheng releases each Releasee from all claims for violations of Proposition 65 up through the Effective Date based on exposure to lead from the Products as set forth in his Notice of Violation. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to lead from the 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 HBC or its Releasees arising up to the Effective Date with respect to violations of Proposition 65 based upon the Products. 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 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

5.3 HBC's Release of Cheng

HBC waives any and all claims against Cheng, his attorneys and other representatives, for any and all actions taken or statements made by Cheng and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

6. Severability and Merger

If, subsequent to the execution of this Agreement, 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 but only so long as the deletion of the provisions deemed

unenforceable do not materially affect, or otherwise result in the effect of the Agreement being contrary to, the intent of the Parties entering into this Agreement.

This Agreement 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 Agreement shall be governed by the laws of the State of California and apply within the State of California. Compliance with the terms of this Private Settlement resolves any issue, now or in the future, with the requirements of Proposition 65 with respect to alleged exposures to lead arising from the Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then HBC shall provide written notice to Cheng of any asserted change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Products are so affected.

8. Notices

Unless specified herein, all correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (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:

For HBC:

Joshua Bloom
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94104

and

For Cheng:

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

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

9. Counterparts; Facsimile Signatures

This Agreement 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).

11. Modification

This Agreement may be modified only by further agreement of the Parties.

12. Attorneys' Fees

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

12.2 Nothing in this Section 12 shall preclude a Party from seeking an award of sanctions pursuant to law.


13. Retention of Jurisdiction

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

14. Authorization

The undersigned are authorized to execute this Agreement 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 Agreement on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

IT IS HEREBY AGREED TO:

By: 
Date: 2-3-2015

King Pun Cheng

By: 
Date: 1/26/15

On Behalf of:
Howard Berger Co., LLC