

Settlement Agreement (1189086).DOCX AND 1154

1. INTRODUCTION

1.1 The Parties

This Private Settlement Agreement ("Private Settlement") is hereby entered into by and between King Pun Cheng acting on behalf of the public interest (hereinafter "Cheng") and Frenway Products Inc. and AmPro North America Corp., (hereinafter collectively, "Frenway"). Frenway 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. Frenway employ 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 Frenway has offered for sale in the State of California and has sold in California, brass coupler and brass accessories containing lead, and that such sale have 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 "5 pc Quick Coupler Set A2570" UPC 795609025706, hereafter ("Quick Coupler") as a specific example of the air accessories/hardware that are the subject of his allegations.

For purposes of this private settlement only, Frenway represents that: 1) UPC 795609025706 is an item manufactured for and distributed the said product to retailers (online and storefront) that sold the products to the citizens residing in the state of California and had no reason to believe that the item contained lead and lead compounds until receiving Cheng's 60-Day Notice on or about January 27, 2014.

1.3 Product Description

The products that are covered by this Private Settlement are defined as Brass Coupler and Brass Air/Hardware Accessories, containing exposed brass or other metals containing lead that are distributed by Frenway to Amazon.com, Inc. ("Amazon") and others and sold in California. All such items shall be referred to herein as the "Products."

1.4 Notices of Violation

A) On or about January 27, 2014, Cheng served Frenway, Amazon, 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 Frenway and Amazon were in violation of Proposition 65 for failing to warn consumers and customers that the Products in Category A 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.

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1.5 Stipulation as to Jurisdiction/No Admission

For purposes of this Private Settlement only, the Parties stipulate that in the event that enforcement of this Private Settlement or a dispute arises regarding this Private Settlement, the Superior Court of California, County of San Diego has proper jurisdiction over Frenway as to the allegations contained in the in the 60 day notice served on the Frenway on or about January 27, 2014, 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 Private Settlement.

Frenway deny the material allegations contained in Cheng's Notice and maintain that it has not violated Proposition 65. Nothing in this Private Settlement shall be construed as an admission by Frenway 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 Frenway of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Frenway. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Frenway under this Settlement Agreement.

1.6 Effective Date

For purposes of this Private Settlement, the term "Effective Date" shall mean the date of this Private Settlement.

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

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, Frenway shall not ship, sell, or offer to sell in California a Product(s) that is/are manufactured, distributed or sold by Frenway containing more than 100ppm lead. On the Effective Date in California shall either be (a) reformulated pursuant to Section 2.1 or (b) include a warning as provided in Section 2.3.

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 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"). Frenway 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

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quantification (as distinguished from detection) of less than 100 ppm shall be deemed to establish good faith reliance.

2.2 Warning Alternative. Commencing on the Effective Date, Products that Frenway ships, sells or offers for sale in California that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. Where warnings are utilized, Frenway shall date stamp or otherwise identify on the product packaging when the Products were produced and shall provide copies of Purchase Orders or production documentation to Cheng sufficient to demonstrate when the warning language was implemented.

2.3 Warnings. Where required under Section 2.2 above, Frenway 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.

2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1, Frenway shall provide the warning language set forth in Section 2.3 either:

(a) With the unit package of the Products or affixed to the 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; Frenway 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, or

(b) In the owner's manual of another product in which the Product is a component, but only if the other product: (i) may cause serious injury or bodily harm unless used as directed; (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has one or more features a consumer must read about in order to know how to program or use the Product. If the warning is given in the owner's manual pursuant to this subsection, it shall be located in one of the following places in the manual: the outside of the front cover; the inside of the front cover; the first page other than the cover; or the outside of the back cover. The warning shall be printed or stamped in the manual or contained in a durable label or sticker affixed to the manual in a font no smaller than the font used for other chemically-related safety warnings in the manual. Alternatively, the warning may be included in a safety warning section of the owner's manual. Frenway may continue to utilize, on an ongoing basis, owner's

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manuals containing substantively the same Proposition 65 warnings and without the additional admonitions as those set forth in Section 2.3 above, but only to the extent such manuals have already been printed within ninety days of the Effective Date. Owner's manual warnings may only be allowed if the owner's manual is sold in the same package and at the same time as the other product and not for Products sold separately.

2.5 The requirements for warnings, set forth in Section 2.3 above are imposed pursuant to the terms of this Settlement 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.

2.6 If Proposition 65 warnings for lead or lead compounds or other specified chemicals should no longer be required, Frenway shall have no further warning obligations pursuant to this Settlement Agreement. Except in the event that a change in the law requires modification or ceases to require such warnings in the event that Frenway ceases to implement or modifies the warnings required under this Settlement Agreement, Frenway shall provide written notice to Cheng (through counsel) of its intent to do so, and of the basis for its intent, no less than thirty (30) days in advance.

3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)

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 Products, Frenway shall pay a civil penalty of \$1,000.00 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.

Frenway 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., \$750.00); and (b) one check in an amount representing 25% of the total penalty (i.e., \$250.00) made payable directly to King Pun Cheng. Frenway shall mail these payments to the respective addresses below by April 22, 2014:

Proposition 65 Settlement Coordinator

California Department of Justice

1515 Clay Street, 20th Floor

Oakland, CA 94612-1413

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Mr. King Pun Cheng

C/O Parker A. Smith, Attorney at Law

3456 Castle Glen Dr., Suite 158

San Diego, CA 92123

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, AmPro North America, on behalf of Frenway shall reimburse Cheng's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Frenway's attention, and negotiating a settlement in the public interest. AmPro North America, on behalf of Frenway shall pay Cheng's counsel \$22,500.00 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. AmPro North America, on behalf of Frenway, shall make a check payable to the "Parker A. Smith, Attorney at Law" and deliver said payment by April 22, 2014. AmPro North America shall mail the check, via certified mail to 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 Release of Defendant(s) and Downstream Customers

Cheng, on behalf of himself and in the public interest, releases Frenway and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, including, but not limited to Amazon.com, Inc. and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") 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.

The Parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products for Frenway or any component parts thereof or to any distributors or suppliers who sold Products or any component parts thereof to Frenway ("Upstream Entities").

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 Frenway 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

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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.

5.2 Frenway's Release of Cheng

Frenway 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, 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 Settlement 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.

This Settlement 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 Settlement 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 Frenway shall provide written notice to Cheng of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

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8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement 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 Frenway:

Michael R. Hickman
Cummins & White, LLP
2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660

and

For Cheng:

Parker A. Smith, Attorney at Law
3456 Castle Glen Dr. #158
San Diego, CA 92123

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

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12. ATTORNEY'S FEES

12.1 A party who unsuccessfully brings or contests an action arising out of this Settlement 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 Settlement 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 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 Settlement Agreement.

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14. AUTHORIZATION

The undersigned are authorized to execute this Settlement 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 Settlement 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.

[Signatures Follow]

APPROVED:

By: 

Date: 4-10-2014

Michael Hickman

Attorney for Defendant, Frenway Product Inc.
and AmPro North America, Corp.

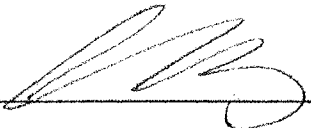
By: 

Date: 4/10/2014

Parker A. Smith

Attorney for Plaintiff, King Pun Cheng

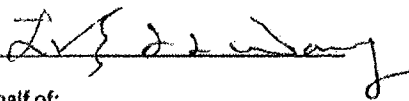
IT IS HEREBY AGREED TO:

By: 

4/12/2014

King Pun Cheng

IT IS HEREBY AGREED TO:

By: 

Date: 4/10/2014

On Behalf of:

Frenway Products Inc. and
AmPro North America, Corp.