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

11 Kingpun Cheng,
12 Plaintiff,
13 v.
14 Dorman Products, Inc.
15 Defendant.

Case No. 37-2015-00035432-CU-NP-CTL
**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

Trial Date: None Set

16
17 **1. PARTIES**

18 1.1 The parties to this [Proposed] Stipulated Consent Judgment (“Consent Judgment”)
19 are plaintiff Kingpun Cheng (“Plaintiff”) and defendant Dorman Products, Inc. (“Defendant”).

20 Plaintiff and Defendant are referred to collectively as the “Parties” and each of them as a “Party.”

21 1.2 Plaintiff is an individual residing in California acting as a citizen enforcer of
22 California Health and Safety Code § 25249.5 *et seq.* (“Proposition 65”).

23 1.3 Defendant is a Pennsylvania corporation that employs ten (10) or more persons
24 and, for the purpose of Proposition 65, is a person doing business in California.

25 **2. ALLEGATIONS**

26 2.1 On or about March 13, 2014, Plaintiff served Defendant, Autozone, Inc., and public
27 enforcement agencies with two (2) 60-Day Notices of Violation under Proposition 65 (“March
28 2014 Notices”). The March 2014 Notices allege that Defendant and Autozone, Inc. manufactured,

1 distributed, and/or offered for sale in California, automotive accessories and tools, including
2 without limitation Brass Tee Connector Assortment, #55109, UPC037495551090, and
3 Compression Unions, #799-090, UPC019495056188, that expose consumers to lead and lead
4 compounds without requisite warnings in violation of California Health and Safety Code §
5 25249.6. The March 2014 Notices are attached hereto as Exhibit A.

6 2.2 On or about December 4, 2015, Plaintiff served Defendant and public enforcement
7 agencies with a Supplemental Notice of Violation under Proposition 65 (“Supplemental Notice”),
8 which alleges that Defendant manufactured, distributed, and/or offered for sale in California the
9 following:

10 2.2.1 With respect to allegations of exposures to di(2-ethylhexyl) phthalate
11 (“DEHP”) and/or diisononyl phthalate (“DINP”) (DEHP and DINP collectively “Phthalate
12 Compounds”):

13 (i) Caps/grommets with PVC/vinyl components, including without
14 limitation Item # 650-015 (3/8 in black vinyl vacuum cap) and Item # 650-101 (3/16 in ID x 5/16
15 in OD Vinyl Grommet); and

16 (ii) Hand tools with vinyl/PVC handles, including without limitation
17 Item # 86263 (Cutter/Crimper Tool – Heavy duty) and Item # 75490 (Emergency Door Lock
18 Opener, Unlock-Folding Tool – 22 In. Overall Length with Hand Grip and Hook End).

19 2.2.2 With respect to allegations of exposures to lead and lead compounds:

20 (i) Brass connectors and fittings, including without limitation Item #
21 43071 (Fuel Hose Fitting – brass tee connector 5/16 in.), Item # 800-145 (fuel line compression
22 union that adapts nylon to nylon tubes), and Item # 43100 (Pipe fitting – brass bushing 1/8 in
23 FNPT x 1/4 in MNPT);

24 (ii) Brass plugs, including without limitation Item # 565-023 (Expansion
25 Plug – brass cub expansion plug 1-1/4 in, height 0.400);

26 (iii) Brass automotive accessories and tools, including without limitation
27 Item # 86915 (Starter Switch – push button brass); and

28 (iv) Brass household and decorative hardware, including without

1 limitation Item # 4-1753 (Symmetry brass-plated coat hooks).

2 The Supplemental Notice alleges that Defendant manufactured, distributed, and/or offered
3 for sale in California the aforementioned categories of products that expose consumers to lead and
4 lead compounds or Phthalate Compounds, as applicable, without requisite warnings in violation of
5 California Health and Safety Code § 25249.6. The Supplemental Notice is attached hereto as
6 Exhibit B. (The March 14 Notices and the Supplemental Notice are collectively referred to as the
7 “Notices.”)

8 2.2.3 The products and product categories identified in the Notices and set forth
9 in Sections 2.2.1 and 2.2.2 above are the products covered under this Consent Judgment (the
10 “Covered Products”).

11 2.3 Lead and Phthalate Compounds are listed under Proposition 65 as chemicals known
12 to the State of California to cause cancer, birth defects, and other reproductive harm.

13 2.4 On or about October 20, 2015, Plaintiff filed the action entitled *Kingpun Cheng v.*
14 *Dorman Products, Inc.*, Case No. 37-2015-00035432-CU-NP-CTL, in the Superior Court of
15 California for San Diego County, which alleges violations of Proposition 65 based upon the March
16 2014 Notices (“Complaint”). In filing the Complaint, Plaintiff is acting in the interest of the
17 general public of the State of California. No public enforcement agency has commenced and is
18 diligently prosecuting an action against Defendant for such alleged violations.

19 2.5 If the date for hearing on Plaintiff’s Motion to Approve this Consent Judgment is
20 scheduled for a date that is more than sixty (60) days after Plaintiff’s service of the Supplemental
21 Notice, Plaintiff shall on the sixty-first (61st) day after Plaintiff’s service of the Supplemental
22 Notice file an Amended Complaint to incorporate the violations alleged in the Supplemental
23 Notice, provided that no public enforcement agency has commenced and is diligently prosecuting
24 any of the allegations set forth in the Supplemental Notice. However, if the date for hearing on
25 Plaintiff’s Motion to Approve this Consent Judgment is scheduled for a date that is less than sixty
26 (60) days after Plaintiff’s service of the Supplemental Notice, the Complaint shall be deemed
27 amended *nunc pro tunc* to include the allegations set forth in the Supplemental Notice, provided
28 that no public enforcement agency has commenced and is diligently prosecuting any of the

1 allegations set forth in the Supplemental Notice. Reference herein to the “Complaint” shall mean
2 either the Complaint or Amended Complaint, as may be the case.

3 2.6 Defendant denies the material, factual, and legal allegations contained in the
4 Complaint and maintains that all Covered Products that Defendant has manufactured, distributed,
5 sold, and/or offered for sale in California have been and are in compliance with all laws, including
6 Proposition 65.

7 2.7 The Parties have expended effort and resources in investigating and evaluating the
8 allegations set forth in the Complaint, including exchanging information regarding the Covered
9 Products and engaging in a negotiation and technical dialogue regarding settlement.

10 2.8 To avoid prolonged and costly litigation, the Parties therefore enter into this
11 Consent Judgment to resolve and settle all Proposition 65 claims concerning the Covered
12 Products, including without limitation any disputes, obligations, claims and/or causes of action
13 that were or could have been asserted in the Complaint.

14 2.9 This Consent Judgment is the direct result of a compromise of disputed allegations
15 and claims. As such, it is the Parties’ intent that nothing in this Consent Judgment shall be
16 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation
17 of law, nor shall compliance with this Consent Judgment constitute or be construed as an
18 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.

19 2.10 Except as otherwise expressly provided herein, nothing in this Consent Judgment
20 shall prejudice, waive or impair any right, remedy, argument or defense either Party may have in
21 any other legal proceeding.

22 **3. JURISDICTION AND VENUE**

23 3.1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper
25 in the County of San Diego, and that this Court has jurisdiction to enter this Consent Judgment.

26 **4. EFFECTIVE DATE**

27 4.1 The Effective Date of this Consent Judgment shall be the date on which this
28 Consent Judgment is entered by the Court.

1 **5. INJUNCTIVE RELIEF**

2 5.1 Commencing ninety (90) calendar days after the Effective Date (the “Compliance
3 Date”), Defendant shall not manufacture, distribute, sell or offer for sale in California any Covered
4 Product, unless the Covered Product either (a) is a Reformulated Product as set forth in Section
5 6.2; or (b) includes a warning pursuant to Section 6.3.

6 5.2 Reformulated Products. Reformulated Products are those Covered Products for
7 which (a) the average user’s exposure to lead from any accessible component of the Covered
8 Product(s) does not exceed 0.5 micrograms per day, as determined in accordance with 27 Cal.
9 Code Regs. §25821, and (b) any accessible component contains no more than 0.1 percent (1,000
10 parts per million) of Phthalate Compounds, when analyzed pursuant to U.S. Environmental
11 Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by
12 state or federal agencies for the purpose of determining phthalate content in a solid substance.
13 Defendant may comply with the above requirements by relying on information obtained from its
14 suppliers regarding the lead and phthalate concentrations in any accessible component of the
15 Covered Product(s), provided such reliance is in good faith.

16 5.3 Warning Option. As of the Compliance Date, Defendant shall provide clear and
17 reasonable warnings for any Covered Product that is not a Reformulated Product. Such warnings
18 shall be provided as followed:

19 a. To the extent the warning is affixed or printed on the Covered Product’s
20 label or unit package, the following warning statement shall be applied, with reference to lead or
21 Phthalate Compounds as applicable:

22 **“WARNING: This product contains [lead] [phthalate
23 compounds], chemicals known to the State of California to
24 cause cancer and birth defects or other reproductive harm.”**

25 b. Each warning shall be prominently affixed to or printed on the Covered
26 Product’s label or unit package, with such conspicuousness as compared with other words,
27 statements, designs, or devices on the labeling as to render it likely to be read and understood by
28 an ordinary individual under customary conditions of purchase or use. The warning shall also be
contained in the same section of the labeling that states other safety warnings concerning the use

1 of the Covered Product.

2 c. To the extent one or more warning signs are displayed at the retail store, the
3 warning sign shall contain a statement similar to the following, provided that any statement be
4 reasonably calculated to ensure that the consumer understands which product(s) is/are subject to
5 the warning:

6 **“CALIFORNIA PROPOSITION 65 WARNING: The following**
7 **products listed below contain [lead] [phthalate compounds], chemicals known**
8 **to the State of California to cause cancer and birth defects or other**
9 **reproductive harm.”**

10 d. To the extent any Covered Products are sold via the Internet, then the
11 warning stated in Section 6.3(a) shall be provided in conjunction with the online sale of the
12 Covered Product to a California address. The warning must be made available to the consumer at
13 any point prior to payment.

14 **6. PAYMENTS**

15 6.1 In full and complete satisfaction of all civil penalties and reasonable attorney’s fees
16 and costs incurred by Plaintiff that have or could have been claimed in connection with this action
17 up to and including the Effective Date of this Consent Judgment, Defendant shall pay the total
18 sum of twenty-five thousand dollars \$25,000. Payment shall be made within fifteen (15) calendar
19 days after the Effective Date in three separate checks to be allocated and payable as follows:

20 a. Two thousand dollars \$2,000 as a civil penalty pursuant to California
21 Health and Safety Code § 25249.7(b)(1). Of this amount, 75% (\$1,500) shall be allocated to the
22 Office of Environmental Health Hazard Assessment (“OEHHA”) in a check made payable to
23 “OEHHA,” and 25% (\$500) shall be allocated to Plaintiff in a check made payable to “Kingpun
24 Cheng.”

25 b. Twenty-two thousand dollars \$23,000 as reimbursement for Plaintiff’s
26 reasonable attorney’s fees and costs, in a check made payable to “Parker A. Smith, Attorney at
27 Law.”

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1 6.2 All payments shall be delivered to the following address:

2 Parker A. Smith, Attorney at Law
3 2173 Salk Avenue, Suite 250
 Carlsbad, CA 92008

4 6.3 Plaintiff shall be responsible for forwarding the civil penalty check to OEHHA.

5 6.4 The Parties agree to bear their own costs and attorney's fees in connection with the
6 preparation, support, and execution of this Consent Judgment.

7 **7. PLAINTIFF'S RELEASE OF ALL CLAIMS**

8 7.1 This Consent Judgment is a full, final, and binding resolution between Plaintiff on
9 behalf of himself *and* the public interest, and (a) Defendant and Defendant's respective
10 shareholders, parents, divisions, subdivisions, subsidiaries, partners, affiliated entities, and each of
11 their respective directors, officers, employees, attorneys, and any and all successors and assigns
12 ("Releasees"), and (b) all entities to whom Releasees directly or indirectly distribute or sell the
13 Covered Products, or have directly or indirectly distributed or sold the Covered Products,
14 including but not limited to distributors, wholesalers, customers, retailers (including, without
15 limitation, Autozone, Inc. and O'Reilly Auto Parts, Inc.), franchisees, cooperative members,
16 licensors and licensees (collectively, "Downstream Releasees"), regarding any violations of
17 Proposition 65 that have or could have been asserted against Releasees and Downstream
18 Releasees, with respect to the failure to warn about exposures to lead and Phthalate Compounds,
19 as applicable, from any Covered Products manufactured, distributed, sold or offered for sale by
20 Releasees or Downstream Releasees prior to the Effective Date of this Consent Judgment.

21 7.2 In further consideration of the promises and agreements herein contained, Plaintiff,
22 on his own behalf and not on behalf of the public, and on behalf of his past and current agents,
23 representatives, attorneys, successors, and/or assigns, hereby covenants not to sue and waives any
24 right to institute or participate in, directly or indirectly, any form of legal action and releases all
25 claims that he may have, including without limitation, all actions and causes of action in law and
26 in equity, all suits, costs, fines, penalties, losses, or expenses, including but not exclusively,
27 investigation fees, expert fees, and attorneys' fees, liabilities, obligations, and demands of any
28 nature, whether known or unknown, suspected or unsuspected, arising out of alleged or actual

1 exposures to lead, lead compounds, and/or phthalate compounds contained in the Covered
2 Products manufactured, distributed, sold, or offered for sale by Defendant before the Effective
3 Date.

4 7.3 Material compliance with the terms of this Consent Judgment constitutes
5 compliance with Proposition 65 by any Releasee or Downstream Releasee with respect to any
6 alleged failure to warn about lead, lead compounds, and/or Phthalate Compounds, as applicable, in
7 the Covered Products manufactured, distributed, sold, or offered for sale by Defendant after the
8 Effective Date.

9 7.4 Liability for Covered Products that were manufactured, distributed, sold, or offered
10 for sale in California prior to the Effective Date shall be subject to the release of liability pursuant
11 to this Section 7, without regard to when such Covered Products were, or are in the future, sold to
12 customers or users.

13 **8. DEFENDANT'S RELEASE OF PLAINTIFF**

14 8.1 Defendant waives any and all claims against Plaintiff, its attorneys, consultants,
15 and representatives, for any and all actions or statements made or undertaken by Plaintiff in the
16 course of this action or otherwise seeking enforcement of Proposition 65 against them in this
17 matter, and/or with respect to the Covered Products.

18 **9. NOTICES**

19 9.1 All notices, requests, demands and other correspondence (collectively, "Notice")
20 that the Parties are required or desire to serve upon or deliver to the other Party shall be in writing
21 and sent by first class and electronic mail as follows:

22 For Plaintiff Kingpun Cheng:

23 Parker A. Smith, Attorney at Law
24 2173 Salk Avenue, Suite 250
25 Carlsbad, CA 92008
26 parkerasmith@gmail.com

27 For Defendant Dorman Products, Inc.:

28 Thomas J. Knoblauch
 Vice President and General Counsel
 Dorman Products, Inc.
 3400 East Walnut Street

1 Colmar, PA 18915
tknoblach@dormanproducts.com

2 With a copy to:

3 Joshua A. Bloom
4 Meyers, Nave, Riback, Silver & Wilson
5 555 12th Street, Suite 1500
6 Oakland, CA 94607
jbloom@meyersnave.com

7 9.2 Any Notice sent by first class mail shall be deemed received five (5) calendar days
8 after the date of mailing. Any Notice sent by electronic mail shall be deemed received upon
9 electronic transmission thereof, provided sender does not receive electronic notice of non-delivery.
10 Any Notice sent by overnight courier service shall be deemed received on the day of actual
11 delivery as shown by the confirmation of delivery by the messenger or courier service. If the date
12 of receipt of any Notice to be given hereunder falls on a weekend or legal holiday, then such date
13 of receipt shall be automatically extended to the next business day.

14 9.3 The foregoing addresses may be changed by Notice given in accordance with this
15 Section 9 without requiring modification of the Consent Judgment pursuant to Section 16.

16 **10. COURT APPROVAL**

17 10.1 This Consent Judgment shall become effective upon approval and entry by the
18 Court. Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and
19 Defendant shall support entry of this Consent Judgment.

20 10.2 In the event that the Court fails to approve and order entry of this Consent
21 Judgment within one (1) year of the Consent Judgment being filed, this Consent Judgment shall
22 become null and void and shall not be introduced into evidence or otherwise used in any
23 proceeding for any purpose.

24 **11. ENFORCEMENT AND PREVAILING PARTY**

25 11.1 In the event any dispute between the Parties arises out of this Consent Judgment,
26 the Parties shall meet and confer in an attempt to resolve the dispute informally. Should such
27 attempts at informal resolution fail, the disputing party may, by motion or application for an order
28 to show cause before the Court, file a motion or application to enforce the terms of this Consent

1 Judgment. The prevailing party shall be entitled to recover its reasonable attorney's fees and costs
2 incurred as a result of such motion or application. This Consent Judgment may only be enforced
3 by the Parties.

4 **12. SUCCESSORS AND ASSIGNS**

5 12.1 This Consent Judgment shall be binding upon and inure to the benefit of the Parties
6 hereto and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns
7 of any of them.

8 **13. GOVERNING LAW**

9 13.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California.

11 13.2 In the event that Proposition 65 is repealed or otherwise rendered inapplicable or
12 limited by reason of law generally, as to Defendant specifically as a result of a statutory
13 exemption, or as to the Covered Products, then Defendant may provide written notice to Plaintiff
14 of any asserted change in the law, or its applicability to Defendant or the Covered Products, and
15 Defendant shall have no further obligations pursuant to this Consent Judgment to the extent that
16 Defendant or the Covered Products are so affected. Furthermore, to the extent that the maximum
17 available dose level(s) or no significant risk level(s) for lead or phthalate compounds is/are
18 decreased from levels applicable as of the Effective Date, such decrease shall have no effect on, or
19 otherwise act to revise, the standards set forth in Section 5.2 herein for the establishment of
20 Reformulated Products.

21 **14. DRAFTING AND INTERPRETATION**

22 14.1 This Consent Judgment is a result of the joint efforts of the Parties. The Parties,
23 including their counsel, have each been given a full opportunity to participate in the preparation of
24 this Consent Judgment. Each of the Parties agrees and represents that no promise, inducement or
25 agreement not expressed in this Consent Judgment has been made to effectuate this Consent
26 Judgment. The Parties' counsel have reviewed and approved this Consent Judgment.
27 Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting
28 party shall not be employed in the interpretation of this Consent Judgment.

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2 **15. SEVERABILITY**

3 15.1 In the event that any of the provisions of this Consent Judgment are held by a court
4 to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely
5 affected, but only to the extent the deletion of the provision deemed unenforceable does not
6 materially affect or otherwise result in the effect of the Consent Judgment being contrary to the
7 Parties' intent in entering into this Consent Judgment.

8 **16. MODIFICATION**

9 16.1 This Consent Judgment or any of its provisions may be modified only by express
10 written agreement of the Parties, or by an order of this Court upon motion and in accordance with
11 law.

12 16.2 A Party seeking to modify this Consent Judgment shall attempt in good faith to
13 meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

14 **17. ENTIRE AGREEMENT**

15 17.1 This Consent Judgment contains the entire integrated agreement and understanding
16 of the Parties and supersedes any and all prior written or oral agreements, negotiations,
17 commitments or understandings concerning the subject matter of this Consent Judgment.

18 **18. COUNTERPARTS**

19 18.1 This Consent Judgment may be executed in counterparts, each of which shall be
20 deemed an original, and all of which, when taken together, shall constitute one and the same
21 document.

22 **19. AUTHORIZATION**

23 19.1 The undersigned hereby represent and warrant that they are authorized to execute
24 this Consent Judgment on behalf of the entity or individual for which they are signing and may
25 bind that entity or individual to the promises and obligations of this Consent Judgment.

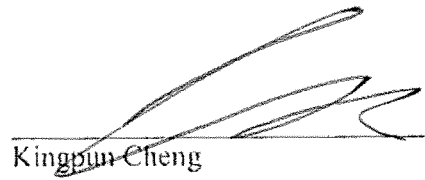
26 **20. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)**

27 20.1 Plaintiff agrees to comply with the reporting form requirements referenced in
28 California Health and Safety Code Section 25249.7(f).

1 20. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(f)

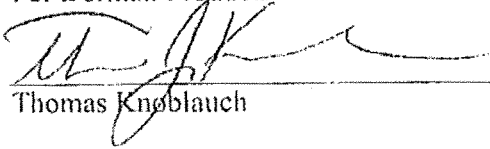
2 20.1 Plaintiff agrees to comply with the reporting form requirements referenced in
3 California Health and Safety Code Section 25249.7(f).

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5 DATED: December 16, 2015

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Kingpin Cheng

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11 DATED: December 4, 2015

12 For Dorman Products

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Thomas Knoblauch

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