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

10 KING PUN CHENG,

11 Plaintiff,

12 vs.

13 MUELLER STREAMLINE CO.; AND
14 DOES 1-25

15 Defendants.

Case No.

UNLIMITED JURISDICTION
STIPULATION RE ENTRY OF
CONSENT JUDGMENT AS TO
MUELLER STREAMLINE CO.

Complaint Filed: Oct XX, 2014

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1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Stipulation and [Proposed] Order Re Consent Judgment ("Consent Judgment") is
4 hereby entered into by and between King Pun Cheng acting on behalf of the public interest
5 (hereinafter "Cheng") and Mueller Streamline Co., (hereinafter "Mueller" or "Defendant").
6 Collectively Mueller and Cheng shall be referred to hereafter as the "Parties" and each of them as
7 a "Party." Cheng is an individual residing in California who seeks to promote awareness of
8 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances contained in consumer products. Defendant employs ten or more persons and is a
10 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
11 §§ 25249.6 et seq.

12 **1.2 Allegations and Representations**

13 Cheng alleges that Defendant has offered for sale in the State of California and has sold in
14 California, brass plumbing and hose products, including valves, fittings, connectors, nipples, and
15 accessories, specified as "No Lead", "(NL)" or "Lead Free Compliant" products which contain
16 lead, and that such sales have not been accompanied by Proposition 65 warnings. Lead is listed
17 under Proposition 65 as a chemical known to the State of California to cause cancer and birth
18 defects or other reproductive harm. Cheng has cited Mueller "Lead Free Complaint 101-
19 503NL", hereafter ("Lead Free") as a specific example of "lead free" plumbing hardware that is
20 the subject of his allegations.

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22 **1.3 Covered Products Description**

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24 The products that are covered by this Consent Judgment are defined as , brass plumbing
25 and hose products, including valves, fittings, connectors, nipples, and accessories, specified as
26 "No Lead", "(NL)" or "Lead Free Compliant" products in conformity with California Health &
27 Safety Code §116875 (and equivalent Federal law) which contain statutorily proscribed low
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1 levels of lead and that are distributed and/or sold in California by Defendant, Releasees and/or
2 Downstream Releasees (as defined in Section 5.1 below). All such items shall be referred to
3 herein as the "Covered Products."
4

5 **1.4 Notices of Violation/Complaint**

6 A) On or about March 18, 2014, Cheng served Home Depot USA, Inc. ("Home Depot"),
7 Mueller and various public enforcement agencies with a document entitled "60-Day Notice of
8 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Mueller
9 and Home Depot were in violation of Proposition 65 for failing to warn consumers and customers
10 that the Covered Products exposed users in California to lead. No public enforcer diligently
11 prosecuted the claims threatened in the Notice within sixty days plus service time relative to the
12 provision of the Notice to them by Cheng.

13 B) On October 31, 2014, Cheng, acting in the interest of the general public in the State of
14 California, filed a complaint in the Superior Court of San Diego County alleging violations of
15 Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of
16 exposures to lead contained in Covered Products manufactured, distributed, or sold by Home
17 Depot or Mueller.

18 **1.5 Stipulation as to Jurisdiction/No Admission**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Defendant as to the allegations contained in the complaint filed in this matter,
21 that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve,
22 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
23 of all claims which were or could have been raised in the Complaint based on the facts alleged
24 therein and/or in the Notices.

25 Defendant denies the material allegations contained in Cheng's Notice and Complaint and
26 maintains that it has not violated Proposition 65 and did not fraudulently or deliberately mislead
27 consumers regarding the Covered Products or their designation as "lead free" pursuant to
28 California Health & Safety Code §116875. Nothing in this Consent Judgment shall be construed

1 as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall
2 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
3 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied
4 by Defendant. However, this section shall not diminish or otherwise affect the obligations,
5 responsibilities, and duties of Defendant under this Consent Judgment.

6 **1.6 Effective Date**

7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
8 Consent Judgment is entered as a judgment of the Court. All Covered Products already shipped
9 on or before the "Effective Date" or within 120 days thereafter are deemed to be covered by the
10 waiver and release provisions of Paragraph 5.1 of this Consent Judgment and shall not be subject
11 to any future enforcement action by Cheng hereunder. The reformulation and warning
12 requirements of Paragraphs 2.1 and 2.2 shall apply to any Covered Product shipped later than 120
13 days after the Effective Date.

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

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17 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

18 Commencing 120 days after the Effective Date, Mueller shall not ship, sell, or offer to sell
19 in California a Covered Product(s) that is/are manufactured, distributed or sold by Mueller
20 containing more than 300 ppm lead. One Hundred Twenty days after the Effective Date in
21 California, Covered Products manufactured, distributed or sold by Mueller shall either be (a)
22 reformulated pursuant to Section 2.1 or (b) include a warning as provided in Section 2.3.
23

24 **2.1 Reformulation Option.** The Covered Products shall be deemed to comply with
25 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements
26 for lead if the exposed brass or other metal components that are part of the Covered Products
27 meet the following criteria: (a) the alloy from which the components are made shall have no lead
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1 as an intentionally added constituent; and (b) the alloy from which the components are made shall
2 have a lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm").
3 Defendants and the Releasees (as defined in Section 5.1 below) may comply with the above
4 requirements by relying on information obtained from their manufacturers, suppliers distributors,
5 official product certification organizations (such as IAPMO) or any other person in the course of
6 doing business that manufacturers, supplies or otherwise distributes the reformulated Covered
7 Products to the Defendants, provided that the Defendants' and Releasees' reliance is in good
8 faith. Although good faith reliance regarding the content of the brass alloy may also be
9 established by other means, Cheng agrees that obtaining test results showing that the lead content
10 is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of
11 quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish
12 good faith reliance.
13
14

15 **2.2 Warning Alternative.** Commencing on the Effective Date, Covered Products that
16 Mueller ships, sells or offers for sale in California that do not meet the warning exemption
17 standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section
18 2.3 below no later than 120 days after the Effective Date. The warning requirements set forth in
19 paragraph 2.3 below, apply only to Covered Products Defendant manufactures, distributes,
20 markets, sells or ships for distribution 120 days after the Effective Date for sale or use inside the
21 State of California.
22

23 **2.3 Warnings.** Where required under Section 2.2 above, Mueller shall provide either
24 of the Proposition 65 warnings as follows:

25 **WARNING:** This product contains lead, a chemical known to the State of California
26 to cause cancer and birth defects or other reproductive harm. [Wash hands after
27 handling.]

28 **OR**

1 **WARNING: This product contains [one or more] chemicals known to the State of**
2 **California to cause cancer and birth defects or other reproductive harm. [Wash**
3 **hands after handling.]**

4 Bracketed language may be omitted at Defendant's or Releasees' option. Defendant or
5 Releasees may add additional listed chemicals to the warning unless the Attorney General
6 advises that the inclusion of such additional chemicals would render the warning
7 misleading or constitute an over warning. The word "WARNING" shall be in bold and
8 may be preceded by the words "CALIFORNIA," "PROP 65," or "CALIFORNIA PROP
9 65" at Mueller's option.

10 2.4 Where utilized as an alternative to meeting the reformulation criteria set forth in
11 Section 2.1, Defendant shall provide the warning language set forth in Section 2.3 either:

12 (a) With the unit package of the Covered Products or affixed to the Covered Products. Such
13 warning shall be prominently affixed to or printed on each Covered Product's label or package or
14 the Covered Product itself. If printed on the label, the warning shall be contained in the same
15 section that states other safety warnings, if any, concerning the use of the Covered Product;
16 Mueller may continue to utilize, on an ongoing basis, unit packaging containing substantively the
17 same Proposition 65 warnings as those set forth in Section 2.3 above, but only to the extent such
18 packaging materials have already been printed within one hundred twenty days of the Effective
19 Date, or

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

1 manual. Alternatively, the warning may be included in a safety warning section of the owner's
2 manual. Mueller may continue to utilize, on an ongoing basis, owner's manuals containing
3 substantively the same Proposition 65 warnings and without the additional admonitions as those
4 set forth in Section 2.3 above, but only to the extent such manuals have already been printed
5 within ninety days of the Effective Date. Owner's manual warnings may only be allowed if the
6 owner's manual is sold in the same package and at the same time as the other product and not for
7 Covered Products sold separately.
8

9 **2.5** The requirements for warnings, set forth in Section 2.3 above are imposed
10 pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the
11 exclusive methods of providing a warning under Proposition 65 and its implementing regulations
12 and that they may or may not be appropriate in other circumstances.
13

14 **2.6** If Proposition 65 warnings for lead or lead compounds or other specified
15 chemicals should no longer be required, Defendant and Releasees shall have no further warning
16 obligations pursuant to this Settlement Agreement. Except in the event that a change in the law
17 requires modification or ceases to require such warnings in the event that Defendant or Releasees
18 cease(s) to implement or modifies the warnings required under this Settlement Agreement,
19 Defendant and Releasees shall provide written notice to Cheng (through counsel) of its intent to
20 do so, and of the basis for its intent, no less than thirty (30) days in advance.
21

22 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE**

23 **§25249.7(b)**

24 With regard to all claims that have been raised or which could be raised with respect to
25 failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products, Defendant
26 shall pay a civil penalty of \$1000.00 pursuant to Health and Safety Code section 25249.7(b), to be
27 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these
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1 funds remitted to the State of California's Office of Environmental Health Hazard Assessment
2 and the remaining 25% of the penalty remitted to Cheng, as provided by California Health &
3 Safety Code § 25249.12(d) and the instructions directly below.

4 Defendant shall issue two separate checks for the penalty payment: (a) one check made
5 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of
6 the total penalty (i.e., \$750.00); and (b) one check in an amount representing 25% of the total
7 penalty (i.e., \$250.00) made payable directly to Cheng. Defendant shall mail these payments
8 within fourteen days following the Execution Date, to be held in trust by Cheng's counsel, until
9 the Effective Date, at which time such payments shall be mailed to the following addresses
10 respectively:

11 Proposition 65 Settlement Coordinator
12 California Department of Justice
13 1515 Clay Street, 20th Floor
14 Oakland, CA 94612-1413

15 Mr. King Pun Cheng
16 C/O Parker A. Smith, Attorney at Law
17 2173 Salk Ave., Suite 250
18 Carlsbad, CA 92008

19 **4. REIMBURSEMENT OF FEES AND COSTS**

20 The parties reached an accord on the compensation due to Cheng and his counsel under
21 the private attorney general doctrine and principles of contract law. Under these legal principles,
22 Defendant shall reimburse Cheng's counsel for fees and costs, incurred as a result of
23 investigating, bringing this matter to Defendant attention, and negotiating a settlement in the
24 public interest. Defendant shall pay Cheng's counsel \$13,500.00 for all attorneys' fees, expert
25 and investigation fees, and related costs associated with this matter and the Notice. Defendant
26 shall mail a check payable to "Parker A. Smith, Attorney at Law", via certified mail to the
27 address for Cheng's counsel referenced above within fourteen days following the Execution Date.
28 Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Cheng's Release of Defendant, Releasees and Downstream Releasees**

3 As to those matters raised in the Complaint and in the Notice, Cheng, on behalf of himself
4 and on behalf of the public interest, hereby waives and releases any and all claims against
5 Defendant, its parent companies, corporate affiliates (including but not limited to B & K, LLC),
6 subsidiaries, predecessors, successors and assigns (collectively "Releasees") and each of its
7 distributors, wholesalers, licensors, licensees, auctioneers, retailers (including but not limited to
8 Home Depot), franchisees, dealers, customers, owners, purchasers, users (collectively
9 "Downstream Releasees") and their respective officers, directors, attorneys, representatives,
10 shareholders, agents, and employees, and sister and parent entities for injunctive relief or
11 damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and
12 others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of
13 Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable
14 warnings under Proposition 65 and/or under Business and Professions Code §17200, *et seq.* about
15 exposure to lead arising from the sale, distribution, or use of any Covered Products sold,
16 manufactured or distributed by Defendant, Releasees or Downstream Releasees in California
17 prior to 120 days after the Effective Date. Compliance with the Consent Judgment by Defendant,
18 a Releasee or a Downstream Releasee shall constitute compliance with Proposition 65 by that
19 Defendant, Releasee or Downstream Releasee with respect to the presence of lead in the Covered
20 Products. Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by
21 this Consent Judgment.

22 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,
23 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,
24 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
25 action and releases any other Claims that he could make against Defendant, Releasees or
26 Downstream Releasees arising up to 120 days after the Effective Date with respect to violations
27 of Proposition 65 and/or Business and Professions Code §17200 based upon the Covered
28 Products. With respect to the foregoing waivers and releases in this paragraph, Cheng hereby

1 specifically waives any and all rights and benefits which he now has, or in the future may have,
2 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
3 provides as follows:

4
5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
6 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
7 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
8 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
9 THE DEBTOR.

8 **5.2 Defendant's Release of Cheng**

9 Defendant waives any and all claims against Cheng, his attorneys and other
10 representatives, for any and all actions taken or statements made (or those that could have been
11 taken or made) by Cheng and his attorneys and other representatives, in the course of
12 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
13 matter, and/or with respect to the Covered Products.

14 **6. SEVERABILITY AND MERGER**

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

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

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and apply within the State of California. Compliance with the terms of this Consent
25 Judgment resolves any issue, now or in the future, as to the requirements of Proposition 65 with
26 respect to alleged exposures to lead arising from the Covered Products. In the event that
27 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as
28 to the Covered Products, then Defendant shall provide written notice to Cheng of any asserted

1 change in the law, and shall have no further obligations pursuant to this Consent Judgment with
2 respect to, and to the extent that, the Covered Products are so affected.

3 **8. NOTICES**

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

8
9 For Mueller Streamline Co.:

10 M. Taylor Florence
11 Locke Lord LLP
12 500 Capitol Mall, Suite 1800
13 Sacramento, California 95814

14 and

15 For Cheng:

16 Parker Smith, Esq.
17 Parker A. Smith, Attorney at Law
18 2173 Salk Ave. , Suite 250
19 Carlsbad, CA 92008

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

22 **9. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES**

23 This Consent Judgment may be executed in counterparts and by email or facsimile, each
24 of which shall be deemed an original, and all of which, when taken together, shall constitute one
25 and the same document.

26 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
27 **APPROVAL**

28 Cheng agrees to comply with the requirements set forth in California Health & Safety
Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and
Defendant shall support approval of such Motion.

This Consent Judgment shall not be effective until it is approved and entered by the Court

1 and shall be null and void if, for any reason, it is not approved and entered by the Court within
2 twelve months after it has been fully executed by the Parties.

3 **11. MODIFICATION**

4 This Consent Judgment may be modified only by further stipulation of the Parties and the
5 approval of the Court or upon the granting of a motion brought to the Court by either Party.

6 **12. ATTORNEY'S FEES**

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

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

14 **13. RETENTION OF JURISDICTION**

15 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
16 Judgment.

17 **14. AUTHORIZATION**

18 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
19 Parties and have read, understood and agree to all of the terms and conditions of this document
20 and certifies that he or she is fully authorized by the Party he or she represents to execute the
21 Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
22 explicitly provided herein each Party is to bear its own fees and costs.

23 [Signatures Follow]
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APPROVED AS TO FORM:

Dated: ^{Feb.} November 19, 2015

By: M. Florence
M. Taylor Florence, Esq.
Attorneys for Defendant
Mueller Streamline Co.

Dated: ^{Feb} November 23, 2015 PARKER A. SMITH, ATTORNEY AT LAW

By: Parker Smith
Parker Smith, Esq.
Attorneys for Plaintiff,
King Pun Cheng

IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: [Signature]

Date: 02/11/2015

By: 2-25-2015

By: [Signature] (Nicholas Hoss)

KING PUN CHENG

On Behalf of:
MUELLER STREAMLINE CO.