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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN DIEGO

12 KING PUN CHENG,  
13 Plaintiff,  
14 vs.  
15 MUELLER STREAMLINE CO.; AND  
16 DOES 1-25  
17 Defendants.

Case No.  
  
UNLIMITED JURISDICTION  
  
STIPULATION RE ENTRY OF  
MODIFIED 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**

23             The products that are covered by this Consent Judgment are defined as , brass plumbing  
24 and hose products, including valves, fittings, connectors, nipples, and accessories, specified as  
25 “No Lead”, “(NL)” or “Lead Free Compliant” products in conformity with California Health &  
26 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 60 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 60  
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 60 days after the Effective Date, Mueller shall not ship, sell, or offer to sell  
19 in California any Covered Product that is not (a) reformulated pursuant to Section 2.1 or (b)  
20 accompanied by a warning as provided in Section 2.3.

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22 **2.1 Reformulation Option.** The Covered Products shall be deemed to comply with  
23 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements  
24 for lead if the exposed brass or other metal components that are part of the Covered Products  
25 meet the following criteria: (a) the alloy from which the components are made shall have no lead  
26 as an intentionally added constituent; and (b) the alloy from which the components are made shall  
27 have a lead content of not more than a weighted average of 0.25% in compliance with the "lead  
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1 free” standard established under California Health & Safety Code §116875 (e) . Defendants and  
2 the Releasees (as defined in Section 5.1 below) may comply with the above requirements by  
3 relying on information obtained from their manufacturers, suppliers distributors, official product  
4 certification organizations (such as IAPMO) or any other person in the course of doing business  
5 that manufacturers, supplies or otherwise distributes the reformulated Covered Products to the  
6 Defendants, provided that the Defendants’ and Releasees’ reliance is in good faith. Although  
7 good faith reliance regarding the content of the brass alloy may also be established by other  
8 means, Cheng agrees that obtaining test results showing that the lead content is no more than  
9 0.25%, using a method of sufficient sensitivity to establish a limit of quantification (as  
10 distinguished from detection) of less than 2,500 ppm shall be deemed to establish good faith  
11 reliance.  
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14 **2.2 Warning Alternative.** Commencing on the Effective Date, Covered Products that  
15 Mueller ships, sells or offers for sale in California that do not meet the warning exemption  
16 standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section  
17 2.3 below no later than 60 days after the Effective Date. The warning requirements set forth in  
18 paragraph 2.3 below, apply only to Covered Products Defendant manufactures, distributes,  
19 markets, sells or ships for distribution 60 days after the Effective Date for sale or use inside the  
20 State of California.  
21

22 **2.3 Warnings.** Where required under Section 2.2 above, Mueller shall provide either  
23 of the Proposition 65 warnings as follows:

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

27 **OR**  
28

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.

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.

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.

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, 20<sup>th</sup> Floor  
Oakland, CA 94612-1413

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

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

18 The parties reached an accord on the compensation due to Cheng and his counsel under  
19 the private attorney general doctrine and principles of contract law. Under these legal principles,  
20 Defendant shall reimburse Cheng's counsel for fees and costs, incurred as a result of  
21 investigating, bringing this matter to Defendant attention, and negotiating a settlement in the  
22 public interest. Defendant shall pay Cheng's counsel \$13,500.00 for all attorneys' fees, expert  
23 and investigation fees, and related costs associated with this matter and the Notice. Defendant  
24 shall mail a check payable to "Parker A. Smith, Attorney at Law", via certified mail to the  
25 address for Cheng's counsel referenced above within fourteen days following the Execution Date.  
26 Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.  
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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 60 days after the Effective Date. Compliance with the Consent Judgment by Defendant, a  
18 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 60 days after the Effective Date with respect to violations of  
27 Proposition 65 and/or Business and Professions Code §17200 based upon the Covered Products.  
28 With respect to the foregoing waivers and releases in this paragraph, Cheng hereby specifically

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

3  
4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR  
6 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY  
7 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH  
8 THE DEBTOR.

7 **5.2 Defendant's Release of Cheng**

8 Defendant waives 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  
10 taken or made) by Cheng and his attorneys and other representatives, in the course of  
11 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this  
12 matter, and/or with respect to the Covered Products.

13 **6. SEVERABILITY AND MERGER**

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

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

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of  
23 California and apply within the State of California. Compliance with the terms of this Consent  
24 Judgment resolves any issue, now or in the future, as to the requirements of Proposition 65 with  
25 respect to alleged exposures to lead arising from the Covered Products. In the event that  
26 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as  
27 to the Covered Products, then Defendant shall provide written notice to Cheng of any asserted  
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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  
13 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
14 pursuant to law.

15 **13. RETENTION OF JURISDICTION**

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

18 **14. AUTHORIZATION**

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

24 **[Signatures Follow]**

1 APPROVED AS TO FORM:

2  
3 Dated: Sept. 15, 2014

4  
5 By: M. Florence  
6 M. Taylor Florence, Esq.  
7 Attorneys for Defendant  
8 Mueller Streamline Co.

9 Dated: Sept 9, 2014

10 PARKER A. SMITH, ATTORNEY AT LAW

11 By: P. Smith  
12 Parker Smith, Esq.  
13 Attorneys for Plaintiff,  
14 King Pun Cheng

15 IT IS HEREBY SO STIPULATED:

16 AGREED TO:

16 AGREED TO:

17 Date: 2015-9-23

17 Date: 8/14/2015

18 By: [Signature]

18 By: [Signature]

19 KING PUN CHENG

19 On Behalf of:  
20 MUELLER STREAMLINE CO.