

**Private Settlement Agreement: Cheng and WaterSource, LLC dba ProPlumber
ProPlumber ¼' NPT 100 psi Pressure Gauge**

1. INTRODUCTION

1.1 The Parties

This Private Settlement Agreement (hereinafter "Private Settlement") is hereby entered into by and between Kingpun Cheng (hereinafter "Cheng") and Watersource, LLC dba ProPlumber (hereinafter "ProPlumber"). ProPlumber 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 claims to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. ProPlumber employs ten or more persons and 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 ProPlumber has offered for sale and sold in the State of California Pressure Gauges containing lead, and that such sales 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, birth defects, or other reproductive harm. Cheng has cited "ProPlumber ¼' NPT 100 psi Pressure Gauge" (hereinafter "Gauge"), as an example of Pressure Gauges that are the subject of his allegations.

For purposes of this Private Settlement only, ProPlumber represents that the Gauge with the code of UPC659647910830 is an item which ProPlumber distributed to retailers and consumers (online and storefront) in the state of California.

1.3 Product Description

The products that are covered by this Private Settlement are defined as Pressure Gauges, including but not limited to, the Gauge, containing exposed brass or other metals containing lead that are distributed by ProPlumber, including but not limited to Products which were distributed to Lowe's Home Centers LLC (hereinafter "Lowe's"). All such items shall be referred to herein as the "Products."

1.4 Notices of Violation

On or about August 21, 2014, Cheng served ProPlumber, Lowe's, 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 ProPlumber and Lowe's were in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time after service of the Notice to them by Cheng.

**Private Settlement Agreement: Cheng and WaterSource, LLC dba ProPlumber
ProPlumber ¼' NPT 100 psi Pressure Gauge**

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 Sacramento has proper jurisdiction over ProPlumber as to the allegations contained in Notice served on ProPlumber on or about August 21, 2014, and that venue is proper in the County of Sacramento.

ProPlumber and Lowe's deny the material allegations contained in Cheng's Notice and maintain that they have not violated Proposition 65. Nothing in this Private Settlement shall be construed as an admission by ProPlumber or Lowe's of any fact, finding, issue of law, or violation of law; nor shall compliance with this Private Settlement constitute or be construed as an admission by ProPlumber or Lowe's of any fact, finding, conclusion, issue of law, or violation of law, all such being specifically denied by ProPlumber and Lowe's. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of ProPlumber under this Private Settlement.

1.6 Effective Date

For purposes of this Private Settlement, the term "Effective Date" shall mean the date by which this Private Settlement is signed by all parties.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, ProPlumber shall not ship for sale, sell, or offer for sale in California Products that are manufactured, distributed or sold by ProPlumber containing more than 300 ppm lead unless they comply with this Section 2. Commencing on the Effective Date, ProPlumber shall ship for sale, sell, or offer for sale in California Products that are either (a) reformulated pursuant to Section 2.1 or (b) include a warning as provided in Sections 2.2 and 2.3, below.

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 components or other metal components that are part of the Products (the "Metal") meet the following criteria: the Metal shall have a lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). ProPlumber may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the alloy from which the Metal is made, provided such reliance is in good faith. Obtaining test results showing that the lead content is no more than 0.03% (or 300 ppm), using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 100 ppm shall be deemed to establish good faith reliance.

**Private Settlement Agreement: Cheng and WaterSource, LLC dba ProPlumber
ProPlumber ¼' NPT 100 psi Pressure Gauge**

2.2 Warning Alternative.

As an alternative to reformulating the Products, commencing on the Effective Date, Products that ProPlumber ships for sale, sells or offers for sale in California that contain lead but which do not meet the Reformulation Option set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below.

2.3 Warnings.

Where required under Section 2.2 above, ProPlumber 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 cancer, 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, birth defects or other reproductive harm. "

2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1, ProPlumber shall provide the warning language set forth in Section 2.3 in the form of a label which is either affixed to or printed on the unit package of the Products or affixed to the Products. The warning may be included in the same section that states other safety warnings, if any, concerning the use of the Product. ProPlumber 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 after the Effective Date.

2.5 The requirements for warnings described in Section 2.3 above are imposed pursuant to the terms of this Private Settlement. The Parties recognize that these warnings 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, ProPlumber shall have no further warning obligations pursuant to this Private Settlement. In the event that a change in the law requires modification or ceases to require such warnings and ProPlumber ceases to implement or modifies the warnings required under this Private Settlement, ProPlumber 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 of shipping the Products.

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, ProPlumber shall pay a civil penalty in

**Private Settlement Agreement: Cheng and WaterSource, LLC dba ProPlumber
ProPlumber ¼' NPT 100 psi Pressure Gauge**

the amount of one thousand dollars (\$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 percent (\$750.00) of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25 percent (\$250.00) of the penalty remitted to Cheng, as provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

ProPlumber shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" (tax identification number: 68-0284486) in the amount of seven hundred fifty dollars (\$750.00); and (b) one check in the amount of two hundred fifty dollars (\$250.00) made payable directly to Cheng. ProPlumber shall mail these payments within 15 court days after the Effective Date at which time such payments shall be mailed to the following addresses respectively:

Check in the Amount of \$750.00:

Mike Gyurics

OEHHA

Fiscal Operations Branch

P. O. Box 4010

Sacramento, CA 95812-4010

Check in the Amount of \$250.00:

Mr. Kingpun Cheng

C/O Parker A. Smith, Attorney at Law

Sy and Smith, PC

11622 El Camino Real, Suite 100

Del Mar, CA 92130

4. REIMBURSEMENT OF FEES AND COSTS

The parties reached an agreement on the compensation due to Cheng and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, ProPlumber shall reimburse Cheng's counsel for fees and costs, incurred as a result of investigating, bringing this matter to ProPlumber's attention, and negotiating a settlement in the public interest. ProPlumber shall pay to Cheng's counsel ten thousand dollars (\$10,000.00) for all attorneys' fees, expert and investigation fees, and costs associated with this matter and the Notice. ProPlumber shall mail said

**Private Settlement Agreement: Cheng and WaterSource, LLC dba ProPlumber
ProPlumber ¼' NPT 100 psi Pressure Gauge**

monies to "Parker A. Smith, Attorney at Law" (tax identification number 68-0284486) within 10 days after the Effective Date at which time such payment shall be mailed to the following address:

Parker A. Smith, Attorney at Law

Sy and Smith, PC

11622 El Camino Real, Suite 100

Del Mar, CA 92130

Other than the payment required in this Section 4, each side is to bear its own attorneys' fees and costs.

5. RELEASE OF ALL CLAIMS

5.1 Release of ProPlumber and Downstream Customers

Cheng, on behalf of himself and in the public interest, releases ProPlumber, its parents, subsidiaries, affiliates, directors, officers, agents, employees, managers, members, attorneys, and each and every person, individual or entity to whom ProPlumber directly or indirectly has distributed or sold Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, and licensees (including but not limited to Lowe's Home Centers, LLC, their parent and all subsidiaries, and affiliates, thereof, their respective employees, agents, and assigns) ("Released Parties") from any and all claims for violations of Proposition 65 up through the Effective Date based on any unwarned exposure to lead and lead compounds from the Products as set forth in his Notice of Violation. Compliance with the terms of this Private Settlement constitutes compliance with Proposition 65 with respect to exposures to lead and lead compounds from the Products.

In addition to the foregoing, Cheng, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and not in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other claims that he could make against the Released Parties arising prior to the Effective Date with respect to any and all alleged violations of Proposition 65 based upon the Products. Plaintiff, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of any alleged or actual exposure to lead in the Products regarding the Released Parties.

With respect to the foregoing waivers and releases in this Section 5, 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:

**Private Settlement Agreement: Cheng and WaterSource, LLC dba ProPlumber
ProPlumber 1/4" NPT 100 psi Pressure Gauge**

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 OR HER SETTLEMENT WITH THE DEBTOR.

5.2 ProPlumber's Release of Cheng

ProPlumber 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.

6. SEVERABILITY AND MERGER

If, subsequent to the execution of this Private Settlement, 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 Private Settlement 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 Private Settlement shall be governed by the laws of the State of California. Compliance with the terms of this Private Settlement resolves any issue, now or in the future, with respect to any alleged exposures to lead arising from the Products or any alleged violation of Proposition 65. Compliance with the terms of Section 2 as provided therein constitutes compliance with Proposition 65. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then ProPlumber shall provide written notice to Cheng of any asserted change in the law, and shall have no further obligations pursuant to this Private Settlement with respect to the Products to the extent the Products are so affected.

8. NOTICES

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

**Private Settlement Agreement: Cheng and WaterSource, LLC dba ProPlumber
ProPlumber 1/4' NPT 100 psi Pressure Gauge**

For Watersource:

T. Craig Bodell
P. O. Box 3795
Mansfield, OH 44907

and

For Cheng:

Parker A. Smith, Attorney at Law
Sy and Smith, PC
11622 El Camino Real, Suite 100
Del Mar, CA 92130

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 Private Settlement 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 Private Settlement may be modified only by further written agreement of all the Parties.

12. ATTORNEY'S FEES

12.1 A Party who unsuccessfully brings or contests an action arising out of this Private Settlement shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

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

Private Settlement Agreement: Cheng and WaterSource, LLC dba ProPlumber
ProPlumber 1/4" NPT 100 psi Pressure Gauge

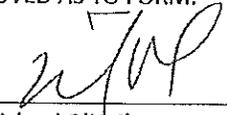
13. AUTHORIZATION

The undersigned are authorized to execute this Private Settlement 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 Private Settlement on behalf of the Party and legally bind that Party.

14. CONFIDENTIALITY

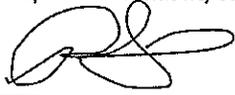
The Parties agree to keep confidential and not disclose any information relating to this Settlement Agreement without the prior written approval of all the Parties, except that each Party may make reasonably necessary disclosures to their respective attorneys, accountants, bankers, insurers, and other advisors; and each Party may make disclosures as required by law.

APPROVED AS TO FORM:

By: 
Michael O'Neil
Murphy Austin Adams Schoenfeld LLP

Date: 4/8/2016

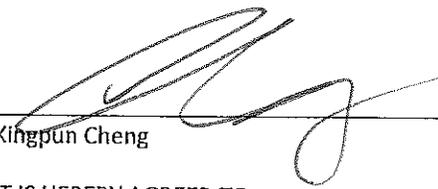
Attorneys for Defendant, Watersource, LLC dba ProPlumber

By: 
Parker A. Smith, Sy and Smith, PC

Date: 4/8/16

Attorneys for Plaintiff, Kingpun Cheng

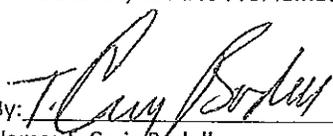
IT IS HEREBY AGREED TO:


Kingpun Cheng

Date: 4-18-16

IT IS HEREBY AGREED TO:

Watersource, LLC dba ProPlumber

By: 
Name: T. Craig Bodell
Title: President

Date: 4-5-16