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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 VALENCIA PIPE COMPANY, INC.; AND  
14 DOES 1-25

15 Defendants.

Case No.

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO VALENCIA  
PIPE COMPANY, INC.**

Complaint Filed: November \_\_, 2015

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 Valencia Pipe Company, Inc., (hereinafter “Valencia” or “Defendant”).  
6 Collectively Valencia and Cheng shall be referred to hereafter as the “Parties” and each of them  
7 as 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 piping, tubing, fitting and connector products made from leaded brass, stainless steel,  
15 plastic, vinyl and /or PVC which contain lead and/or phthalates, including di(2-  
16 ethylhexyl)phthalate (“DEHP”), and that such sales have not been accompanied by Proposition 65  
17 warnings. Lead and DEHP are listed under Proposition 65 as chemicals known to the State of  
18 California to cause cancer and birth defects or other reproductive harm. Cheng has cited Valencia  
19 “Home Flex Male X CSST Gas Line Fitting 811000114365”, hereafter (“Home Flex”) as a  
20 specific example of products that are the subject of his allegations.

21             **1.3     Covered Products Description**

22             The products that are covered by this Consent Judgment are defined as piping, tubing,  
23 fitting and connector products made from leaded brass, stainless steel, plastic, vinyl and/or PVC,  
24 or for which leaded brass, stainless steel, plastic, vinyl and/or PVC is a component, that are  
25 manufactured, sold, or distributed for sale in California by Valencia and/or Releasees (as defined  
26 in Section 5.1 below). All such items shall be referred to herein as the “Covered Products.”  
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1           **1.4 Notices of Violation/Complaint**

2           A) On or about April 14, 2015, Cheng served Valencia, Home Depot, Inc., Home Depot  
3 USA, Inc., and various public enforcement agencies with a document entitled "60-Day Notice of  
4 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Valencia,  
5 Home Depot, Inc., and Home Depot USA, Inc. were in violation of Proposition 65 for failing to  
6 warn consumers and customers that the Covered Products exposed users in California to listed  
7 chemicals.. No public enforcer diligently prosecuted the claims threatened in the Notice within  
8 sixty days plus service time relative to the provision of the Notice to them by Cheng.

9           B) On November \_\_\_\_, 2015, Cheng, acting in the interest of the general public in the  
10 State of California, filed a complaint in the Superior Court of San Diego County alleging  
11 violations of Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to  
12 warn of exposures to lead and/or DEHP contained in Covered Products manufactured, distributed,  
13 or sold by Valencia.

14           **1.5 Stipulation as to Jurisdiction/No Admission**

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

21           Defendant denies the material allegations contained in Cheng's Notice and Complaint and  
22 maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be  
23 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor  
24 shall compliance with this Consent Judgment constitute or be construed as an admission by  
25 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
26 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the  
27 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

1           **1.6     Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this  
3           Consent Judgment is entered as a judgment of the Court. All Covered Products already shipped  
4           on or before the “Effective Date” or within 90 days thereafter are deemed to be covered by the  
5           waiver and release provisions of Section 5.1 of this Consent Judgment and shall not be subject to  
6           any future enforcement action by Cheng hereunder. The warning requirements of Sections 2.1  
7           and 2.2 shall apply to any Covered Product shipped later than 90 days after the Effective Date.

8           For purposes of this Consent Judgment, the term “Execution Date” shall mean the date  
9           this Consent Judgment is signed by all parties in Section 14 below.

10           **2.     INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS**

11           **2.1     Commitment to Warn**

12           Commencing Ninety (90) days after the Effective Date, Valencia shall not ship, sell, or  
13           offer to sell in California a Covered Product(s) that is/are manufactured, distributed or sold by  
14           Valencia containing more than 300 parts per million lead or 1,000 parts per million DEHP  
15           without a warning as set forth in Section 2.2. Ninety (90) days after the Effective Date in  
16           California, Covered Products manufactured, distributed or sold by Valencia shall include a  
17           warning as provided in Section 2.2.

18           **2.2     Health Hazard Warning**

19           Where required under Section 2.1 above, Valencia shall provide a Proposition 65 warning  
20           as follows:

21           **WARNING: This product contains chemicals known to the State of California to**  
22           **cause cancer and birth defects or other reproductive harm.**

23           **2.3     Placement of Health Hazard Warning**

24           Defendant shall provide the warning language set forth in Section 2.2 either:

25           (a)     With the unit package of the Covered Products or affixed to the Covered Products.

26           Such warning shall be prominently affixed to or printed on each Covered Product’s label or  
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1 package or the Covered Product itself. If printed on the label, the warning shall be contained in  
2 the same section that states other safety warnings, if any, concerning the use of the Covered  
3 Product; Valencia may continue to utilize, on an ongoing basis, unit packaging containing  
4 substantively the same Proposition 65 warnings as those set forth in Section 2.2 above, but only  
5 to the extent such packaging materials have already been printed within one hundred twenty days  
6 of the Effective Date, or

7 (b) In the owner's manual of another product in which the Covered Product is a  
8 component, but only if the other product: (i) may cause serious injury or bodily harm unless used  
9 as directed; (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has  
10 one or more features a consumer must read about in order to know how to program or use the  
11 Covered Product. If the warning is given in the owner's manual pursuant to this subsection, it  
12 shall be located in one of the following places in the manual: the outside of the front cover; the  
13 inside of the front cover; the first page other than the cover; or the outside of the back cover. The  
14 warning shall be printed or stamped in the manual or contained in a durable label or sticker  
15 affixed to the manual in a font no smaller than the font used for other chemically-related safety  
16 warnings in the manual. Alternatively, the warning may be included in a safety warning section  
17 of the owner's manual. Valencia may continue to utilize, on an ongoing basis, owner's manuals  
18 containing substantively the same Proposition 65 warnings and without the additional  
19 admonitions as those set forth in Section 2.2 above, but only to the extent such manuals have  
20 already been printed within ninety days of the Effective Date. Owner's manual warnings may  
21 only be allowed if the owner's manual is sold in the same package and at the same time as the  
22 other product and not for Covered Products sold separately.

23 The requirements for warnings set forth above are imposed pursuant to the terms of this  
24 Consent Judgment. The Parties recognize that these are not the exclusive methods of providing a  
25 warning under Proposition 65 and its implementing regulations and that they may or may not be  
26 appropriate in other circumstances.

1           **2.4     Changes in Law Affecting Health Hazard Warnings**

2           If Proposition 65 warnings for lead, lead compounds, phthalates, DEHP or other specified  
3 chemicals should no longer be required, Defendant and Releasees shall have no further warning  
4 obligations pursuant to this Consent Judgment. Except in the event that a change in the law  
5 requires modification or ceases to require such warnings in the event that Defendant or Releasees  
6 cease(s) to implement or modifies the warnings required under this Consent Judgment, Defendant  
7 and Releasees shall provide written notice to Cheng (through counsel) of its intent to do so, and  
8 of the basis for its intent, no less than thirty (30) days in advance.

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

10           **§25249.7(b)**

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

18           Defendant shall issue two separate checks for the penalty payment: (a) one check made  
19 payable to “OEHHA” (tax identification number: 68-0284486) in an amount representing 75% of  
20 the total penalty (i.e., \$750.00); and (b) one check in an amount representing 25% of the total  
21 penalty (i.e., \$250.00) made payable directly to Cheng. Defendant shall mail these payments  
22 within fourteen days following the Execution Date, to be held in trust by Cheng’s counsel, until  
23 the Effective Date, at which time such payments shall be mailed to the following addresses  
24 respectively:

25                           Proposition 65 Settlement Coordinator  
26                           California Department of Justice  
27                           1515 Clay Street, 20<sup>th</sup> Floor  
28                           Oakland, CA 94612-1413

1 Mr. King Pun Cheng  
2 C/O Parker A. Smith, Attorney at Law  
3 2173 Salk Ave., Suite 250  
4 Carlsbad, CA 92008

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

5 The parties reached an accord on the compensation due to Cheng and his counsel under  
6 the private attorney general doctrine and principles of contract law. Under these legal principles,  
7 Defendant shall reimburse Cheng's counsel for fees and costs, incurred as a result of  
8 investigating, bringing this matter to Defendant attention, and negotiating a settlement in the  
9 public interest. Defendant shall pay Cheng's counsel \$16,500.00 for all attorneys' fees, expert  
10 and investigation fees, and related costs associated with this matter and the Notice. Defendant  
11 shall mail a check payable to "Parker A. Smith, Attorney at Law", via certified mail to the  
12 address for Cheng's counsel referenced above within fourteen days following the Execution Date.  
13 Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

14 **5. RELEASE OF ALL CLAIMS**

15 **5.1 Cheng's Release of Defendant, Releasees, and Downstream Releasees**

16 As to those matters raised in the Complaint and in the Notice of Violation, Cheng, on  
17 behalf of himself *and on behalf of the public interest*, hereby waives and releases any and all  
18 claims against Defendant its parent companies, corporate affiliates, subsidiaries, predecessors,  
19 successors and assigns (collectively "Releasees") and each of its distributors, wholesalers,  
20 licensors, licensees, auctioneers, retailers (including but not limited to the Home Depot, Inc.,  
21 Home Depot, USA, Inc.), franchisees, dealers, customers, owners, purchasers, users (collectively  
22 "Downstream Releasees") and their respective officers, directors, attorneys, representatives,  
23 shareholders, agents, and employees, and sister and parent entities for injunctive relief or  
24 damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and  
25 others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of  
26 Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable  
27 warnings under Proposition 65 and/or under Business and Professions Code §17200, *et seq.* about  
28 exposure to listed chemicals arising from the sale, distribution, or use of any Covered Products

1 sold, manufactured or distributed by Defendant, Releasees or Downstream Releasees in  
2 California prior to Ninety (90) days after the Effective Date. Compliance with the Consent  
3 Judgment by Defendant or a Releasee shall constitute compliance with Proposition 65 by that  
4 Defendant, Releasee, or Downstream Releasee with respect to the presence of listed chemicals in  
5 the Covered Products. Plaintiff agrees that any and all claims in the Complaint are resolved with  
6 prejudice by this Consent Judgment.

7 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
8 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity,  
9 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
10 action and releases any other Claims that he could make against Defendant, Releasees or  
11 Downstream Releasees arising up to Ninety (90) days after the Effective Date with respect to  
12 violations of Proposition 65 and/or Business and Professions Code §17200 based upon the  
13 Covered Products. With respect to the foregoing waivers and releases in this paragraph, Cheng  
14 hereby specifically waives any and all rights and benefits which he now has, or in the future may  
15 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which  
16 provides as follows:

17  
18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR  
20 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.

21 **5.2 Defendant's Release of Cheng**

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

27 **6. SEVERABILITY AND MERGER**

28 If, subsequent to the execution of this Consent Judgment, any of the provisions of this



1 document are held by a court to be unenforceable, the validity of the enforceable provisions  
2 remaining shall not be adversely affected.

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

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of  
9 California and apply within the State of California. Compliance with the terms of this Consent  
10 Judgment resolves any issue, now or in the future, as to the requirements of Proposition 65 with  
11 respect to alleged exposures to lead arising from the Covered Products. In the event that  
12 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as  
13 to the Covered Products, then Defendant shall provide written notice to Cheng of any asserted  
14 change in the law, and shall have no further obligations pursuant to this Consent Judgment with  
15 respect to, and to the extent that, the Covered Products are so affected.

16 **8. NOTICES**

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

21 For Valencia Pipe Company, Inc.:

22 Roger A. Cerda, Esq.  
23 Alston & Bird LLP  
24 333 South Hope Street, 16<sup>th</sup> Floor  
Los Angeles, California 90071

25 and

26 For Cheng:

27 Parker Smith, Esq.  
28 Law Office of Parker A. Smith, PC  
2173 Salk Ave., Suite 250  
Carlsbad, CA 92008

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

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

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

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

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

12 This Consent Judgment shall not be effective until it is approved and entered by the Court  
13 and shall be null and void if, for any reason, it is not approved and entered by the Court within  
14 twelve months after it has been fully executed by the Parties.

15 **11. MODIFICATION**

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

18 **12. ATTORNEY'S FEES**

19 **12.1** A party who unsuccessfully brings or contests an action arising out of this Consent  
20 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
21 unless the unsuccessful party has acted with substantial justification. For purposes of this  
22 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
23 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

24 **12.2** Nothing in this Section shall preclude a Party from seeking an award of sanctions  
25 pursuant to law.

26 **13. RETENTION OF JURISDICTION**

27 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
28

1 Judgment.

2 14. **AUTHORIZATION**

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

8

9

**[Signatures Follow]**

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11

**APPROVED AS TO FORM:**

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Dated: November 2, 2015

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By: 

Roger A. Cerda, Esq.  
Attorneys for Defendant  
Valencia Pipe Company, Inc.

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Dated: November 5, 2015

PARKER A. SMITH, ATTORNEY AT LAW

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By: 

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

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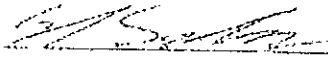
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AGREED TO:

Date: 11-6-2015.

Date: 11/2/2015

By: 

By: 

KING PUN CHENG

On Behalf of:  
VALENCIA PIPE COMPANY, INC.