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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

KING PUN CHENG, Plaintiff, vs. VALENCIA PIPE COMPANY, INC.; AND DOES 1-25 Defendants.	Case No. UNLIMITED JURISDICTION **MODIFIED STIPULATION AND [PROPOSED] ORDER RE ENTRY OF CONSENT JUDGMENT AS TO VALENCIA PIPE COMPANY INC.** Complaint Filed: October 20, 2015

1. INTRODUCTION

1.1 The Parties

This Stipulation and [Proposed] Order Re Consent Judgment ("Consent Judgment") is hereby entered into by and between King Pun Cheng acting on behalf of the public interest (hereinafter "Cheng") and Valencia Pipe Company, Inc., (hereinafter "Valencia" or "Defendant"). Collectively Valencia and Cheng shall be referred to hereafter as the "Parties" and each of them as a "Party." Cheng is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Defendant 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 Defendant has offered for sale in the State of California and has sold in California piping, tubing, fitting and connector products made from leaded brass, stainless steel, plastic, vinyl and /or PVC which contain lead and/or phthalates, including di(2-ethylhexyl)phthalate ("DEHP"), and that such sales have not been accompanied by Proposition 65 warnings. Lead and DEHP are listed under Proposition 65 as chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. Cheng has cited Valencia "Home Flex Male X CSST Gas Line Fitting 811000114365", hereafter ("Home Flex") as a specific example of products that are the subject of his allegations.

1.3 Covered Products Description

The products that are covered by this Consent Judgment are defined as piping, tubing, fitting and connector products made from leaded brass, stainless steel, plastic, vinyl and/or PVC, or for which leaded brass, stainless steel, plastic, vinyl and/or PVC is a component, that are manufactured, sold, or distributed for sale in California by Valencia and/or Releasees (as defined in Section 5.1 below). All such items shall be referred to herein as the "Covered Products."

1.4 **Notices of Violation/Complaint**

A) On or about April 14, 2015, Cheng served Valencia, Home Depot, Inc., Home Depot USA, Inc., 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 Valencia, Home Depot, Inc., and Home Depot USA, Inc. were in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to listed chemicals.. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Cheng.

B) On October 20, 2015, Cheng, acting in the interest of the general public in the State of California, filed a complaint in the Superior Court of San Diego County alleging violations of Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of exposures to lead and/or DEHP contained in Covered Products manufactured, distributed, or sold by Valencia.

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

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

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

1.6 **Effective Date**

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

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

2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS

2.1 Commitment to Warn

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

2.2 Health Hazard Warning

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

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

2.3 Placement of Health Hazard Warning

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

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

(b) In the owner's manual of another product in which the Covered Product is a component, but only if the other product: (i) may cause serious injury or bodily harm unless used as directed; (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has one or more features a consumer must read about in order to know how to program or use the Covered Product. If the warning is given in the owner's manual pursuant to this subsection, it shall be located in one of the following places in the manual: the outside of the front cover; the inside of the front cover; the first page other than the cover; or the outside of the back cover. The warning shall be printed or stamped in the manual or contained in a durable label or sticker affixed to the manual in a font no smaller than the font used for other chemically-related safety warnings in the manual. Alternatively, the warning may be included in a safety warning section of the owner's manual. Valencia may continue to utilize, on an ongoing basis, owner's manuals containing substantively the same Proposition 65 warnings and without the additional admonitions as those set forth in Section 2.2 above, but only to the extent such manuals have already been printed within ninety days of the Effective Date. Owner's manual warnings may

only be allowed if the owner's manual is sold in the same package and at the same time as the other product and not for Covered Products sold separately.

The requirements for warnings set forth above are imposed pursuant to the terms of this Consent Judgment. The Parties recognize that these 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.

2.4 Changes in Law Affecting Health Hazard Warnings

If Proposition 65 warnings for lead, lead compounds, phthalates, DEHP or other specified chemicals should no longer be required, Defendant and Releasees shall have no further warning obligations pursuant to this Consent Judgment. Except in the event that a change in the law requires modification or ceases to require such warnings in the event that Defendant or Releasees cease(s) to implement or modifies the warnings required under this Consent Judgment, Defendant and Releasees 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.

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 the Covered Products, Defendant shall pay a civil penalty of $1000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Cheng, as provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

Defendant shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of

the total penalty (i.e., $750.00); and (b) one check in an amount representing 25% of the total penalty (i.e., $250.00) made payable directly to Cheng. Defendant shall mail these payments within fourteen days following the Execution Date, to be held in trust by Cheng's counsel, until the Effective Date, at which time such payments shall be mailed to the following addresses respectively:

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

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

4. REIMBURSEMENT OF FEES AND COSTS

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

5. RELEASE OF ALL CLAIMS

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

As to those matters raised in the Complaint and in the Notice of Violation, Cheng, on behalf of himself *and on behalf of the public interest*, hereby waives and releases any and all claims against Defendant its parent companies, corporate affiliates, subsidiaries, predecessors, successors and assigns (collectively "Releasees") and each of its distributors, wholesalers,

licensors, licensees, auctioneers, retailers (including but not limited to the Home Depot, Inc., Home Depot, USA, Inc.), franchisees, dealers, customers, owners, purchasers, users (collectively "Downstream Releasees") and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65, *et seq.* about exposure to listed chemicals arising from the sale, distribution, or use of any Covered Products sold, manufactured or distributed by Defendant, Releasees or Downstream Releasees in California prior to Ninety (90) days after the Effective Date. Compliance with the Consent Judgment by Defendant or a Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee, or Downstream Releasee with respect to the presence of listed chemicals in the Covered Products. Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.

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 Defendant, Releasees or Downstream Releasees arising up to Ninety (90) days after the Effective Date with respect to violations of Proposition 65 based upon the Covered Products. With respect to the foregoing waivers and releases in this paragraph, 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:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS 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 Defendant's Release of Cheng

Defendant 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, in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered Products.

6. SEVERABILITY AND MERGER

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

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment 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:

For Valencia Pipe Company, Inc.:

Roger A. Cerda, Esq.
Alston & Bird LLP
333South Hope Street, 16th Floor
Los Angeles, California 90071

and

For Cheng:

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

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; EMAIL OR FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by email or 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)/COURT APPROVAL

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 Defendants shall support approval of such Motion.

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

11. MODIFICATION

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

12. ATTORNEY'S FEES

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

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

13. RETENTION OF JURSIDICTION

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

14. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment 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 Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

[Signatures Follow]

APPROVED AS TO FORM:

Dated: 3.29, 2016

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

Dated: March 29, 2016

PARKER A. SMITH, ATTORNEY AT LAW

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

IT IS HEREBY SO STIPULATED:

AGREED TO:

Date: 3.30.2016

By: _____

KING PUN CHENG

AGREED TO:

Date: 3/29/2016

By: _____

On Behalf of:
VALENCIA PIPE COMPANY, INC.