

1 PARKER SMITH, ESQ. (SBN 290311)  
SY AND SMITH, PC.  
2 11622 El Camino Real, Suite 100  
Del Mar, CA 92130  
3 Telephone: (858) 746-9554  
Facsimile: (858)746-5199  
4 Attorneys for Plaintiff, King Pun Cheng  
5  
6  
7

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

10 KING PUN CHENG,  
11 Plaintiff,

12 vs.

13 CHAMPION IRRIGATION PRODUCTS,  
14 ARROWHEAD BRASS AND PLUMBING, LLC,  
CHAMPION-ARROWHEAD, LLC, GANAHL  
15 LUMBER & CO., AND DOES 1-25 INCLUSIVE,  
16 Defendants.

Case No. 37-2016-00030150-CU-NP-CTL

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO ARROWHEAD  
BRASS & PLUMBING, LLC**

Complaint Filed: August 30, 2016

17 **1. Introduction**

18 1.1 This Stipulation Re Entry of Consent Judgment as to Arrowhead Brass &  
19 Plumbing, LLC ("Consent Judgment") is hereby entered into by and between King Pun Cheng, as  
20 an individual, (hereinafter "Cheng") and Arrowhead Brass & Plumbing, LLC, sued here  
21 incorrectly as "Arrowhead Brass and Plumbing, LLC" (hereinafter "Arrowhead"). Arrowhead and  
22 Cheng shall be collectively referred to as the "Parties" and each of them as a "Party." Cheng is an  
23 individual residing in California who seeks to promote awareness of exposures to toxic chemicals  
24 and improve human health by reducing or eliminating hazardous substances contained in  
25 consumer products. Arrowhead employs ten or more persons as required for purposes of Cal.  
26 Health & Safety Code §§ 25249.5 *et seq.* ("Proposition 65").

27 1.2 Cheng alleges that Arrowhead has offered for sale and sold in the State of  
28 California certain R/B Sprinkler Wrenches containing lead, including "R/B Sprinkler Wrench

1 42064-4TLWR," UPC7790541866, containing lead ("Covered Products"), a chemical listed under  
2 Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, or  
3 other reproductive harm, and that they did so without providing the warning Cheng alleges is  
4 required by Proposition 65.

5 1.3 For purposes of this Consent Judgment only, Arrowhead represents that: the  
6 Covered Products are items it distributed to retailers and consumers in the state of California.

7 1.4 On or about April 21, 2015, Cheng served Arrowhead, Ganahl Lumber Co., and  
8 various public enforcement agencies with a document entitled "60-Day Notice of Violation"  
9 pursuant to Cal. Health & Safety Code § 25249.7(d) (the "Notice"), alleging that Arrowhead and  
10 Ganahl Lumber Co. were in violation of Proposition 65 for failing to warn consumers and  
11 customers that the Covered Products exposed users in California to lead. No public enforcer  
12 diligently prosecuted the claims threatened in the Notice within sixty days plus service time after  
13 service of the Notice to them by Cheng.

14 1.5 For purposes of this Consent Judgment only, the Parties stipulate that for purposes  
15 of enforcement of this Consent Judgment and/or in the event a dispute arises regarding this  
16 Consent Judgment, the Superior Court of California, County of San Diego has proper jurisdiction  
17 over Arrowhead as to the allegations contained in the Notice, and that venue is proper in the  
18 County of San Diego.

19 1.6 Arrowhead denies the material, factual, and legal allegations contained in Cheng's  
20 Notice and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment  
21 shall be construed as an admission by Arrowhead of any fact, finding, conclusion of law, issue of  
22 law, or violation of law; nor shall compliance with this Consent Judgment constitute or be  
23 construed as an admission by Arrowhead of any fact, finding, conclusion of law, issue of law, or  
24 violation of law, such being specifically denied. However, this section shall not diminish or  
25 otherwise affect the obligations, responsibilities, and duties of Arrowhead under this Consent  
26 Judgment.

27 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the  
28 date this Court approves and enters this Consent Judgment by Court Order.

1           **2.     Injunctive Relief**

2           Commencing on the Effective Date, Arrowhead shall only sell, offer for sale, or distribute  
3 for sale in California, Covered Products that are either (a) reformulated pursuant to Section 2.1, or  
4 (b) include a warning as provided in Section 2.3.

5           2.1     Compliance Standards. The Covered Products shall be deemed to comply with  
6 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements  
7 for lead if the exposed brass or other metal components that are part of the Covered Products meet  
8 the following criteria: the alloy from which the components are made shall have a lead content by  
9 weight of no more than 0.03% (300 parts per million, or “300 ppm”). Arrowhead may comply  
10 with the above requirements by relying on information obtained from its suppliers regarding the  
11 content of the alloy from which the components are made, provided such reliance is in good faith.  
12 Obtaining test results showing that the lead content is no more than 0.03%, using a method of  
13 sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less  
14 than 300 ppm, shall be deemed to establish good faith reliance.

15           2.2     Warning Requirement. As an alternative to reformulating the Covered Products,  
16 commencing on the Effective Date, Covered Products that Arrowhead ships for sale, sells or offers  
17 for sale in California that do not meet the Reformulation Option set forth in Section 2.1 above  
18 shall be accompanied by a warning as described in Section 2.3 below (“Warning”).

19           2.3     Warnings. Where required under Section 2.2 above, Arrowhead shall provide  
20 Proposition 65 warnings substantially as follows:

21           WARNING: This product can expose you to chemicals including lead, which is known to  
22 the State of California to cause cancer and birth defects or other reproductive harm. For more  
23 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

24           OR

25           WARNING: This product contains a chemical known to the State of California to cause  
26 cancer and birth defects or other reproductive harm.

27           2.4     Warning Placement. Where utilized as an alternative to meeting the criteria set  
28 forth in Section 2.1, Arrowhead shall provide the Warning language set forth in Section 2.3 either

1 with the unit package of the Covered Products or affixed to the Covered Products. Such Warning  
2 shall be prominently affixed to or printed on each Product's label or package or the Product itself.  
3 If printed on the label, the Warning shall be contained in the same section that states other safety  
4 warnings, if any, concerning the use of the Product; Arrowhead may continue to utilize, on an  
5 ongoing basis, unit packaging containing substantively the same Proposition 65 warnings as those  
6 set forth in Section 2.3 above, but only to the extent such packaging materials have already been  
7 printed within ninety days after the Effective Date.

8       2.5    Non-exclusive Warnings. The requirements for Warnings set forth in Section 2.3  
9 above are imposed pursuant to the terms of this Consent Judgment. The Parties recognize that  
10 these are not the exclusive methods of providing a warning under Proposition 65 and its  
11 implementing regulations and that they may or may not be appropriate in other circumstances.

12       3.       Entry of Consent Judgment

13       3.1       With regard to all claims that have been raised or which could be raised with  
14 respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products,  
15 Arrowhead shall pay a civil penalty of \$1,000 pursuant to Cal. Health and Safety Code §  
16 25249.7(b), to be apportioned in accordance with Cal. Health & Safety Code § 25192, with 75%  
17 of these funds remitted to the State of California's Office of Environmental Health Hazard  
18 Assessment and the remaining 25% of the penalty remitted to Cheng, as provided by Cal. Health  
19 & Safety Code § 25249.12(d) and the instructions directly below.

20       Arrowhead shall issue two separate checks for the penalty payment: (a) one check made  
21 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of  
22 the total penalty (i.e., \$750); and (b) one check in an amount representing 25% of the total penalty  
23 (i.e., \$250) made payable directly to Cheng. Arrowhead shall mail these payments within five (5)  
24 days after the Effective Date to the following addresses respectively:

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

and

1 Mr. King Pun Cheng  
2 C/O Sy and Smith, PC  
3 11622 El Camino Real, Suite 100  
4 San Diego, CA 92130

4 **4. Reimbursement of Fees and Costs**

5 The parties reached an accord on the compensation due to Cheng and his counsel under the  
6 private attorney general doctrine and principles of contract law. Under these legal principles,  
7 Arrowhead shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating,  
8 bringing this matter to Arrowhead's attention, and negotiating a settlement. Arrowhead shall pay  
9 Cheng's counsel \$19,000 for all attorneys' fees, expert and investigation fees, and related costs  
10 associated with this matter and the Notice. Arrowhead shall wire said monies or send a check  
11 payable to "Sy and Smith, PC" within five (5) days of the Effective Date. Sy and Smith, PC will  
12 provide Arrowhead with wire instruction and tax identification information on or before the  
13 Effective Date. Other than the payment required hereunder, each side is to bear its own attorneys'  
14 fees and costs.

15 **5. Release of all Claims**

16 5.1 Release of Arrowhead and Downstream Customers. Cheng, on behalf of himself  
17 and on behalf of the general public, releases Arrowhead and their respective officers, directors,  
18 attorneys, representatives, shareholders, agents, and employees, sister and parent entities,  
19 successors, and assigns, and each entity to whom it directly or indirectly distributes or sells the  
20 Covered Products including, but not limited to, their downstream distributors, wholesalers,  
21 licensors, licensees, auctioneers, retailers (including, but not limited to, Ganahl Lumber Co. and  
22 Orgill, Inc., and their affiliates and subsidiaries), franchisees, dealers, customers, owners,  
23 purchasers, users, parent companies, corporate affiliates, subsidiaries, (collectively "Releasees")  
24 from all claims for violations of Proposition 65 up through the Effective Date based on exposure  
25 to lead from the Covered Products as set forth in the Notice of Violation. The Parties further agree  
26 and expressly acknowledge that compliance with the terms of this Consent Judgment constitutes  
27 compliance with Proposition 65 with respect to exposures to lead from the Covered Products.  
28

1 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
2 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,  
3 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action  
4 and releases any other claims that he could make against Arrowhead or the Releasees arising prior  
5 to the Effective Date with respect to violations of Proposition 65 based upon the Covered  
6 Products. The Parties acknowledge that the claims released above may include unknown claims,  
7 and with respect to the foregoing waivers and releases in this paragraph, Cheng hereby specifically  
8 waives any and all rights and benefits which he now has, or in the future may have, conferred by  
9 virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:

10  
11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
12 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT  
13 TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING  
14 THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
15 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
16 DEBTOR.

17  
18 Cheng acknowledges and understands the significance and consequences of this specific  
19 waiver of Cal. Civil Code § 1542.

20 5.2 Arrowhead Release of Cheng. Arrowhead waives any and all claims against  
21 Cheng, his attorneys and other representatives, for any and all actions taken or statements made  
22 (or those that could have been taken or made) by Cheng and his attorneys and other  
23 representatives in the course of investigating claims or otherwise seeking enforcement of  
24 Proposition 65 against it in this matter.

25 5.3 Dismissal of Other Named Defendants with Prejudice. Upon or before the  
26 Effective Date, Plaintiff shall dismiss Champion Irrigation Products and Champion Arrowhead,  
27 LLC with prejudice from this lawsuit.

28

1           6.       Non-Disparagement

2           The Parties agree to refrain from taking action or making statements, written, oral or  
3 through any form of social media, which disparage or defame the goodwill or reputation of the  
4 other Party.

5           7.       Severability and Merger

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

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

13          8.       Governing Law

14          The terms of this Consent Judgment shall be governed by the laws of the State of  
15 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
16 reason of law generally, or as to the Covered Products, then Arrowhead shall have no further  
17 obligations pursuant to this Consent Judgment with respect to the Covered Products to the extent  
18 the Covered Products are so affected.

19          9.       Notices

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

24           Arrowhead:

25           Stephen J. O'Neil  
26           Sheppard, Mullin, Richter & Hampton  
27           333 South Hope Street  
28           Forty-Third Floor  
              Los Angeles, CA 90071

              Arrowhead Brass & Plumbing, LLC  
              c/o Cory Chen  
              5147 Alhambra Avenue  
              Los Angeles, CA 90032

1 For Cheng:  
2 Parker A. Smith  
3 Sy and Smith, PC  
4 11622 El Camino Real, Suite 100  
5 Del Mar, CA 92130

6 Any party, from time to time, may specify in writing by the means set forth above to the  
7 other party a change of address to which all notices and other communications shall be sent.

8 **10. Counterparts; Facsimile Signatures**

9 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be  
10 deemed an original, and all of which, when taken together, shall constitute one and the same  
11 document.

12 **11. Compliance with Health & Safety Code § 25249.7(f)**

13 Cheng agrees to comply with the requirements set forth in Cal. Health & Safety Code  
14 § 25249.7(f).

15 **12. Modification**

16 This Consent Judgment may be modified only by further written agreement of the Parties.

17 **13. Attorney Fees**

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

20 **14. Authorization**

21 The undersigned are authorized to execute this Consent Judgment on behalf of their  
22 respective Parties and have read, understood and agree to all of the terms and conditions of this  
23 document and certifies that he or she is fully authorized by the Party he or she represents to  
24 execute the Consent Judgment on behalf of the Party and legally bind that Party.

25 **15. No Assignment or Encumbrances**

26 The Parties hereby represent and warrant that they have not heretofore assigned or  
27 transferred or purported to assign or transfer any claim, demand, action, cause of action or  
28 right herein released or discharged.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

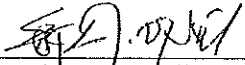
IT IS SO STIPULATED:

SY AND SMITH, PC.

SHEPPARD, MULLIN, RICHTER & HAMPTON

By: \_\_\_\_\_

Parker A. Smith,  
Attorney for Plaintiff,  
King Pun Cheng

By:  \_\_\_\_\_

Stephen J. O'Neil,  
Attorney for Defendant,  
Arrowhead Brass & Plumbing, LLC

Date: \_\_\_\_\_, 2018

Date: March 30, 2018

By: \_\_\_\_\_

King Pun Cheng

By:  \_\_\_\_\_

Name: CORY CHEN  
Title: OPERATIONS DIRECTOR  
Arrowhead Brass & Plumbing, LLC

Date: \_\_\_\_\_, 2018

Date: 3-30, 2018

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: \_\_\_\_\_

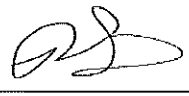
\_\_\_\_\_  
Judge of the Superior Court

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS SO STIPULATED:**

**SY AND SMITH, PC.**

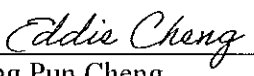
**SHEPPARD, MULLIN, RICHTER & HAMPTON**

By:   
Parker A. Smith,  
Attorney for Plaintiff,  
King Pun Cheng

By: \_\_\_\_\_  
Stephen J. O'Neil,  
Attorney for Defendant,  
Arrowhead Brass & Plumbing, LLC

Date: \_\_\_\_\_, 2018

Date: \_\_\_\_\_, 2018

By:   
King Pun Cheng.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Arrowhead Brass & Plumbing, LLC

Date: March 27, 2018

Date: \_\_\_\_\_, 2018

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_  
\_\_\_\_\_  
Judge of the Superior Court