

Standex_Cheng Settlement

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (hereinafter "Agreement") is hereby entered into by and between Kingpun Cheng, as an individual, (hereinafter "Cheng") and Standex International Corporation, its successors and assigns (hereinafter "Standex"). Standex 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 seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Standex 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. ("Proposition 65").

1.2 Allegations and Representations

Cheng alleges that Standex has offered for sale and sold in the State of California Procon Rotary Vane Pump B0099TT90K containing Lead and Lead Compounds, and that such sales have not been accompanied by Proposition 65 warnings. Lead and Lead Compounds is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm.

Standex denies the allegations and maintains that the subject products do not violate Proposition 65.

For purposes of this Agreement only, Standex represents that Procon Rotary Vane Pumps B0099TT90K are items distributed to retailers and consumers (online and storefront) in the State of California.

1.3 Product Description

The products covered by this Agreement are Procon Rotary Vane Pump B0099TT90K distributed by Standex and sold by others in California. The covered products shall be referred to herein as the "Products."

1.4 Notices of Violation

On or about July 21, 2015, Cheng served Standex, Amazon.com (hereinafter, "Amazon"), and various public enforcement agencies with two documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notices"), alleging that Standex and Amazon violated Proposition 65 by failing to warn consumers and/or customers that the Products exposed users in California to Lead and Lead Compounds.

On or about April 30, 2018, Cheng served Standex, Amazon, and various public enforcement agencies with two documents entitled "Supplemental 60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Supplemental Notices"), alleging that Standex and Amazon violated Proposition 65 by failing to warn consumers and/or customers that the Products exposed users in California to Lead and Lead Compounds.

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No public agency enforcer prosecuted the claims stated in the Notices or Supplemental Notices within 60 days, plus service time, after service of the Notices and Supplemental Notices.

1.5 The Lawsuit

On July 10, 2018, Cheng filed a lawsuit in San Diego Superior Court, captioned *Cheng v. Standex International Corporation, et al.*, Case No. 37-2018-00033956-CU-NP-CTL, alleging one cause of action for violation of Proposition 65 (the "Suit").

1.6 Stipulation as to Jurisdiction/No Admission

For purposes of this Agreement only, the Parties stipulate that in the event that enforcement of this Agreement or a dispute arises regarding the Agreement, the Superior Court of California, County of San Diego shall have jurisdiction over the Parties as to the allegations contained in the Notices and Supplemental Notices, and that venue is proper in the County of San Diego.

Nothing in this Agreement shall be construed as an admission by Standex, of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Standex, of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Standex under this Agreement.

1.7 Effective Date

For purposes of this Agreement, the term "Effective Date" shall mean the latest date identified in the signature block below.

2. WARNINGS AND REFORMULATION

Commencing on the Effective Date, Standex shall not ship for sale, sell, or offer for sale in California, Products that are manufactured, distributed or sold by Standex containing Lead and Lead Compounds in excess of that allowed by law, unless Standex complies with Proposition 65.

2.1 Warnings. Where required by law, Standex shall provide Proposition 65 warnings in a form and manner authorized by the statutory scheme. For illustrative purposes, the warnings may, but are not required to be, displayed as follows:

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

OR

WARNING: Cancer [and Reproductive harm] - www.P65warnings.ca.gov

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2.2 The requirements for warnings, set forth in Section 2.1 above, are imposed pursuant to the terms of this Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)

With regard to all claims that have been raised by Cheng in the Suit, or which could be raised by Cheng in the Suit, with respect to the alleged failure to warn pursuant to Proposition 65 concerning Lead and Lead Compounds in the Products, Standex shall pay a civil penalty of One Thousand Dollars and No Cents (\$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% 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.

Standex shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount of Seven Hundred Fifty Dollars and No Cents (i.e., 75% of the total penalty); and (b) one check in an amount of Two Hundred Fifty Dollars and No Cents (25% of the total penalty) made payable to "Kingpun Cheng." Standex shall deliver these payments within fifteen (15) days after the Effective Date at which time such payments shall be delivered to the following addresses respectively:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

Mr. Kingpun Cheng
C/O Sy and Smith, PC
11622 El Camino Real, Suite 100
San Diego, CA 92130

A Form 1099 will issue for these payments.

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, Standex shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Standex's attention, and negotiating a settlement in the public interest. Standex shall pay Cheng's counsel Nine Thousand Dollars and No Cents (\$9,000.00) for all attorneys' fees, expert and investigation fees, and related costs associated with this matter. Standex shall wire said funds to "Sy

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and Smith, PC Client Trust Account” within fifteen (15) days of the Effective Date. Sy and Smith, PC will provide Standex with wire instructions and tax identification information on or before the Effective Date. Other than the payment required hereunder, each side is to bear its own attorneys’ fees and costs.

It is expressly agreed and understood that the Parties have not relied upon any advice, representations or warranties from the other Party and/or their attorneys whatsoever as to the tax consequences of this Agreement. Cheng and his counsel will be solely and legally responsible to pay any and all applicable taxes on the payments made by Defendants pursuant to this Agreement and will indemnify and hold Defendants harmless from any claim or liability for taxes, penalties, or interest arising as a result of the payment(s) made pursuant to this Agreement.

A Form 1099 will issue for this payment.

5. DISMISSAL OF SUIT

Contemporaneous with the execution of this Agreement, Cheng will deliver to counsel for Standex a signed request for dismissal of the entire Suit as to all named defendants, including Amazon, with prejudice, of the Suit (SDSC Case No.: 37-2018-00033956-CU-NP-CTL), which counsel for Standex shall file following confirmation the settlement funds have been delivered and have cleared.

6. RELEASE OF ALL CLAIMS

6.1 Release of Standex, Amazon, and Downstream Customers

Cheng, on behalf of himself only, releases Standex, and its downstream distributors, wholesalers, licensors, licensees, auctioneers, and retailers, Amazon, their parents, and all subsidiaries and affiliates thereof, and their respective employees, agents, and assigns, affiliates and subsidiaries, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively “Releasees”) from all claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead and Lead Compounds from the Products. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 with respect to exposures to Lead and Lead Compounds and Lead and Lead Compounds Compound 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 Standex or the Releasees arising prior to the Effective Date with respect to violations of Proposition 65 based upon the 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:

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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 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

6.2 Standex Release of Cheng

Standex 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 it in this matter.

7. MUTUAL NON-DISPARAGEMENT.

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

8. SEVERABILITY AND MERGER

If, subsequent to the execution of this Agreement, 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 Agreement 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.

9. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Standex shall have no further obligations pursuant to this Agreement with respect to the Products to the extent the Products are so affected.

10. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: electronic mail and either (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 Standex:

M. Cory Brown
Geoffrey M. Thorne

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Higgs Fletcher & Mack, LLP
401 West A Street, Suite 2600
San Diego, CA 92101

With a copy to:

Stacey S. Constas
Associate General Counsel
Standex International Corporation
11 Keewaydin Drive
Salem, NH 03079

and

For Cheng:

Parker A. Smith
Sy and Smith, PC
11622 El Camino Real, Suite 100
San Diego, CA 92130

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

11. COUNTERPARTS; FACSIMILE SIGNATURES

This Agreement 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.

12. 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).

13. MODIFICATION

This Agreement may be modified only by further written agreement of the Parties.

14. ATTORNEY'S FEES

In the event that any action, suit, or other proceeding is instituted to interpret and/or enforce this Agreement, or arising from a breach of this Agreement, the prevailing party shall recover all of such Party's reasonable attorneys' fees and costs incurred in each and every action, suit, or other proceeding, including any and all appeals or petitions therefrom.

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15. AUTHORIZATION

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

[Signatures Follow]

IT IS HEREBY AGREED TO:

By: Kingpun Cheng
Kingpun Cheng

Date: 2019-1-7

IT IS HEREBY AGREED TO:

By: Alan J. Glass
Alan J. Glass
On Behalf of: Standex International Corporation

Date: 12-20-18