

1 PARKER SMITH, ESQ. (SBN 290311)  
2 SY AND SMITH, PC  
3 11622 El Camino Real  
4 Suite 100  
5 Del Mar, CA 92130  
6 Telephone: 858-746-9554

7 Attorneys for Plaintiff, Kingpun Cheng

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

10 KINGPUN CHENG,  
11 Plaintiff,

12 vs.

13 CONTROL DEVICES, LLC.; AMAZON.COM,  
14 INC.; AND DOES 1-25,  
15 Defendants.

Case No. 37-2016-00019021-CU-NP-CTL

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO CONTROL  
DEVICES, LLC.**

Complaint Filed: June 6, 2016

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 Kingpun Cheng acting on behalf of the public interest  
5 (hereinafter “Cheng”) and Control Devices, LLC, (hereinafter “Control Devices” or  
6 “Defendant”). Collectively Control Devices and Cheng shall be referred to hereafter as the  
7 “Parties” and each of them as a “Party.” Cheng is an individual residing in California who seeks  
8 to promote awareness of exposures to toxic chemicals and improve human health by reducing or  
9 eliminating hazardous substances contained in consumer products. Cheng alleges that Defendant  
10 employs ten or more persons and is a person in the course of doing business for purposes of  
11 Proposition 65, Cal. Health & Safety Code §§ 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 plumbing parts, including brass float valves, which contain lead, and that such sales  
15 have not been accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a  
16 chemical known to the State of California to cause cancer and birth defects or other reproductive  
17 harm. Cheng has cited Control Devices’ “Bob Float Valve B0080MGGZ4”, hereafter (“Bob  
18 Float Valve”) as a specific example of products that are the subject of his allegations.

19             **1.3 Covered Products Description**

20             The products that are covered by this Consent Judgment are defined as all plumbing  
21 related products and parts that are manufactured, sold, or distributed for sale in California by  
22 Control Devices and/or Releasees (as defined in Section 5.1 below). All such items shall be  
23 referred to herein as the “Covered Products.”

24             **1.4 Notices of Violation/Complaint**

25             A) On or about July 21, 2015, Cheng served Control Devices, Amazon.com, Inc., and  
26 various public enforcement agencies with a document entitled "60-Day Notice of Violation"  
27  
28

1 pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Control Devices and  
2 Amazon.com were in violation of Proposition 65 for failing to warn consumers and customers  
3 that the Covered Products exposed users in California to listed chemicals. No public enforcer  
4 diligently prosecuted the claims threatened in the Notice within sixty days plus service time  
5 relative to the provision of the Notice to them by Cheng.

6 B) On June 6, 2016, Cheng, acting in the interest of the general public in the State of  
7 California, filed a complaint in the Superior Court of San Diego County alleging violations of  
8 Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of  
9 exposures to lead contained in Covered Products manufactured, distributed, or sold by Control  
10 Devices.

11 **1.5 Stipulation as to Jurisdiction/No Admission**

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

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

25 **1.6 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
27 Consent Judgment is entered as a judgment of the Court. All Covered Products already shipped  
28 on or before the "Effective Date," or within 180 days thereafter, are deemed to be covered by the

1 waiver and release provisions of Section 5.1 of this Consent Judgment and shall not be subject to  
2 any future enforcement action by Cheng hereunder. The warning requirements of Sections 2.1  
3 and 2.2 shall apply to any Covered Product shipped later than 180 days after the Effective Date.

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

6  
7 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS**

8 **2.1 Commitment to Warn**

9  
10 Commencing One Hundred and Eighty (180) days after the Effective Date, Control  
11 Devices shall not ship, sell, or offer to sell in California a Covered Product(s) that is/are  
12 manufactured, distributed or sold by Control Devices containing more than 300 parts per million  
13 lead or without a warning as set forth in Section 2.2. Commencing One Hundred and Eighty  
14 (180) days after the Effective Date in California, Covered Products manufactured, distributed or  
15 sold by Control Devices, which contain more than 300 parts per million lead, shall include a  
16 warning as provided in Section 2.2.

17  
18 **2.2 Health Hazard Warning**

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

21 WARNING: This product contains or produces a chemical known to the State of  
22 California to cause cancer and birth defects (or other reproductive harm). (California  
23 Health and Safety Code 25249.5 et seq.)

24 **2.3 Placement of Health Hazard Warning**

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

26  
27 (a) With the unit package of the Covered Products, or affixed to the Covered Products.

28 Such warning shall be affixed to or printed on each Covered Product's label or package or the

1 Covered Product itself. If printed on the label, the warning shall be contained in the same section  
2 that states other safety warnings, if any, concerning the use of the Covered Product; Control  
3 Devices may continue to utilize, on an ongoing basis, unit packaging containing substantively the  
4 same Proposition 65 warnings as those set forth in Section 2.2 above, but only to the extent such  
5 packaging materials have already been printed within one hundred and eighty days of the  
6 Effective Date, or  
7

8 (b) In the owner's or operator's manual or instructions of another product in which the  
9 Covered Product is a component, but only if the other product: (i) may cause serious injury or  
10 bodily harm unless used as directed; (ii) is sophisticated, difficult to understand or install, set-up,  
11 or assemble; or (iii) has one or more features a consumer must read about in order to know how to  
12 program or use the Covered Product. If the warning is given in the owner's or operator's manual  
13 or instructions pursuant to this subsection, it shall be located in one of the following places in the  
14 manual or instructions: the outside of the front cover; the inside of the front cover; the first page  
15 other than the cover; or the outside of the back cover. The warning shall be printed or stamped in  
16 the manual or instructions or contained in a durable label or sticker affixed to the manual or  
17 instructions in a font no smaller than the font used for other chemically-related safety warnings in  
18 the manual or instructions. Alternatively, the warning may be included in a safety warning  
19 section of the owner's or operator's manual or instructions. Control Devices may continue to  
20 utilize, on an ongoing basis, owner's or operator's manuals or instructions containing  
21 substantively the same Proposition 65 warnings and without the additional admonitions as those  
22 set forth in Section 2.2 above, but only to the extent such manuals or instructions have already  
23 been printed within one hundred and eighty days of the Effective Date. Owner's or operator's  
24 manual or instructions warnings may only be allowed if the owner's or operator's manual or  
25  
26  
27  
28

1 instructions is sold in the same package and at the same time as the other product and not for  
2 Covered Products sold separately, or

3 (c) Any other method reasonably calculated to provide a sufficient warning under  
4 Proposition 65, including but not limited to inclusion of a separate piece of paper containing the  
5 warning with each unit sold, and/or provision of a warning in an electronic format, which will  
6 appear when a consumer buys any Covered Product on an internet site or otherwise through  
7 electronic commerce, or

8  
9 (d) At the point of retail sale, if the Covered Product is sold in a retail store or similar  
10 establishment, i.e. by posting of Proposition 65 language on or near store shelving, or at or near  
11 the entrance to the store.

12  
13 The requirements for warnings set forth above are imposed pursuant to the terms of this  
14 Consent Judgment. The Parties recognize that these are not the exclusive methods of providing a  
15 warning under Proposition 65 and its implementing regulations and that they may or may not be  
16 appropriate in other circumstances.

17 **2.4 Changes in Law Affecting Health Hazard Warnings**

18 If Proposition 65 warnings for lead or lead compounds should no longer be required,  
19 Defendant and Releasees shall have no further warning obligations pursuant to this Consent  
20 Judgment. Except in the event that a change in the law requires modification or ceases to require  
21 such warnings in the event that Defendant or Releasees cease(s) to implement or substantively  
22 modifies the warnings required under this Consent Judgment, Defendant and Releasees shall  
23 provide written notice to Cheng (through counsel) of its intent to do so, and of the basis for its  
24 intent, no less than thirty (30) days in advance.  
25

26  
27 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE**

28 **§25249.7(b)**

1 With regard to all claims that have been raised or which could be raised with respect to  
2 failure to warn pursuant to Proposition 65 with regard to the Covered Products, Defendant shall  
3 pay a civil penalty of \$500.00 pursuant to Health and Safety Code section 25249.7(b), to be  
4 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these  
5 funds remitted to the State of California's Office of Environmental Health Hazard Assessment  
6 and the remaining 25% of the penalty remitted to Cheng, as provided by California Health &  
7 Safety Code § 25249.12(d) and the instructions directly below.

8 Defendant shall issue two separate checks for the penalty payment: (a) one check made  
9 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of  
10 the total penalty (i.e., \$375.00); and (b) one check in an amount representing 25% of the total  
11 penalty (i.e., \$125.00) made payable directly to Cheng. Defendant shall mail these payments  
12 within fourteen days following the Execution Date, to be held in trust by Cheng's counsel, until  
13 the Effective Date, at which time such payments shall be mailed to the following addresses  
14 respectively:

15 Office of Environmental Health Hazard Assessment  
16 1515 Clay Street, Suite 1600  
Oakland, CA 94612

17  
18 Mr. Kingpun Cheng  
C/O Parker A. Smith, Attorney at Law  
19 11622 El Camino Real, Suite 100  
Del Mar, CA 92130

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

21 The parties reached an accord on the compensation due to Cheng and his counsel under  
22 the private attorney general doctrine and principles of contract law. Under these legal principles,  
23 Defendant shall reimburse Cheng's counsel for fees and costs, incurred as a result of  
24 investigating, bringing this matter to Defendant attention, and negotiating a settlement in the  
25 public interest. Defendant shall pay Cheng's counsel \$13,500.00 for all attorneys' fees, expert  
26 and investigation fees, and related costs associated with this matter and the Notice. Defendant  
27 shall mail a check payable to "Kingpun Cheng and Sy and Smith, PC," via certified mail to the  
28 address for Cheng's counsel referenced above within thirty (30) days following the Execution

1 Date. Other than the payment required hereunder, each side is to bear its own attorneys' fees and  
2 costs.

3 **5. RELEASE OF ALL CLAIMS**

4 **5.1 Cheng's Release of Defendant, Releasees, and Downstream Releasees**

5 As to those matters raised in the Complaint and in the Notice of Violation, Cheng, on  
6 behalf of himself *and on behalf of the public interest*, hereby waives and releases any and all  
7 claims against Defendant, its parent companies, corporate affiliates, subsidiaries, predecessors,  
8 successors and assigns (collectively "Releasees") and each of its suppliers, distributors,  
9 wholesalers, licensors, licensees, auctioneers, retailers (including but not limited to  
10 Amazon.com), franchisees, dealers, customers, owners, purchasers, users (collectively  
11 "Downstream Releasees") and their respective officers, directors, attorneys, representatives,  
12 shareholders, agents, and employees, and sister and parent entities for injunctive relief or  
13 damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and  
14 others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of  
15 Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable  
16 warnings under Proposition 65 and/or under Business and Professions Code §17200, *et seq.* about  
17 exposure to any listed chemicals arising from the sale, distribution, or use of any Covered  
18 Products sold, manufactured or distributed by Defendant, Releasees or Downstream Releasees in  
19 California prior to One Hundred and Eighty (180) days after the Effective Date. Compliance with  
20 the Consent Judgment by Defendant or a Releasee shall constitute compliance with Proposition  
21 65 by all Defendants, Releasees, or Downstream Releasees with respect to the presence of listed  
22 chemicals in the Covered Products as set forth in the Notice of Violation. Plaintiff agrees that  
23 any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.

24 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
25 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity,  
26 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
27 action and releases any other Claims that he could make against Defendant, Releasees or  
28 Downstream Releasees arising up to One Hundred and Eighty (180) days after the Effective Date



1 with respect to violations of Proposition 65 and/or Business and Professions Code §17200  
2 regarding or concerning the Covered Products. With respect to the foregoing waivers and  
3 releases in this paragraph, Cheng hereby specifically **WAIVES** any and all rights and benefits  
4 which he now has, or in the future may have, conferred by virtue of the provisions of Section  
5 1542 of the California Civil Code, which provides as follows:

6  
7 A general release does not extend to claims which the creditor does not know or suspect to  
8 exist in his favor at the time of executing the release, which if known by him or her must  
9 have materially affected his or her settlement with the debtor.

10 **5.2 Defendant's Release of Cheng**

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

16 **6. VIOLATIONS**

17 In the event that any person asserts that Defendant is in violation of the terms of this  
18 settlement and such person so finding wishes to enforce the settlement agreement, such person  
19 must first provide written notice of the violation to Defendant, per paragraph 9 of this Agreement.  
20 Defendant shall have ninety (90) days, commencing on the date of notice of violation, to remedy  
21 the alleged violation.

22 If Defendant fails to remedy the violation within 90 days of receipt of said notice, the  
23 person asserting Defendant is in violation shall provide additional notice to Defendant informing  
24 Defendant of its failure to remedy the violation within the prescribed 90 days. Defendant shall  
25 have an additional fifty (50) days from the date of the additional notice of failure to remedy the  
26 violation. No further action may be taken by the party seeking to enforce the terms of the  
27 settlement until said 50 day period has elapsed.

28 **7. SEVERABILITY AND MERGER**

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 **8. 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 **9. 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 Control Devices:

22 Michael J. Partos  
23 Wood, Smith, Henning & Berman LLP  
24 505 North Brand Boulevard, Suite 1100  
25 Glendale, CA 91203

26 and

27 Robert Liddy  
28 Control Devices, LLC  
1555 Larkin Williams Road  
Fenton, Missouri 63026

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

For Cheng:

Parker Smith, Esq.  
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.

**10. 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.

**11. 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.

**12. 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.

**13. ATTORNEY'S FEES**

13.1 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.

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

1           **14. RETENTION OF JURISDICTION**

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

4           **15. RELEASE OF LIENS**

5           Plaintiff represents and warrants that all bills, costs or liens resulting from or arising out of  
6 their alleged injuries, claims or lawsuit are their responsibility to pay. Plaintiff agrees to assume  
7 responsibility for satisfaction of any and all rights to payment, claims or liens of any kind, that  
8 arise from or are related to payments made or services provided to them or on their behalf.

9 Plaintiff agrees to assume responsibility for all expenses, costs or fees incurred by them, related to  
10 their alleged injuries, claims or lawsuit including without limitation, subrogation claims, liens, or  
11 other rights to payment, relating to medical treatment or lost wages that have been or may be  
12 asserted by any health care provider, insurer, governmental entity, employer or other person or  
13 entity.  
14

15           **16. ADDITIONAL DOCUMENTS**

16           Each party agrees to cooperate fully and execute any and all supplementary documents  
17 and to take any additional actions that may be reasonably necessary or appropriate to give full  
18 force and effect to the basic terms and intent of this Stipulation.  
19

20           **17. DISMISSAL WITH PREJUDICE**

21           Upon the Court's approval of the instant Stipulation, the entire action of all parties and all  
22 causes of action will be dismissed with prejudice.  
23

24           **18. REPRESENTATIONS OF COMPREHENSION OF DOCUMENT**

25           In entering into this Stipulation, all parties represent that they have relied upon the advice  
26 of their counsel of record, the counsel of their own choice, concerning any legal consequences of  
27 this Stipulation; and that the terms of this Stipulation have been completely read and explained to  
28 all parties by their counsel; and that the terms of this Stipulation are fully understood and

1 voluntarily accepted by all parties.

2 **19. WARRANTY OF CAPACITY TO EXECUTE AGREEMENT**

3 All parties represent and warrant that no other person or entity has, or has had, any interest  
4 in the claims, demands, obligations, or causes of action referred to in this Stipulation, except as  
5 otherwise set forth herein; that all parties have the sole right and exclusive authority to execute  
6 this Stipulation and receive the sum specified in it; and that no party has sold, assigned,  
7 transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes  
8 of action referred to in this Stipulation.  
9

10 **20. ENTIRE AGREEMENT**

11 This Stipulation contains the entire agreement between Plaintiff and Defendant with  
12 regard to the matters set forth herein and shall be binding upon and inure to the benefit of the  
13 executors, administrators, personal representatives, heirs, successors and assigns of each party.  
14

15 **21. AUTHORIZATION**


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

21 **[Signatures Follow]**


22 **APPROVED AS TO FORM:**  
23  
24  
25  
26  
27  
28

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

Dated: 10/5/16

By:   
Michael J. Partos, Esq.  
Attorneys for Defendant  
Control Devices, LLC

Dated: 10/11/16

By:   
Parker Smith, Esq.  
Attorneys for Plaintiff,  
Kingpun Cheng

**IT IS HEREBY SO STIPULATED:**

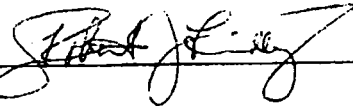
**AGREED TO:**

**AGREED TO:**

Date: 2016-10-13

Date: SEPTEMBER 28, 2016

By:   
KINGPUN CHENG

By:   
On Behalf of:  
CONTROL DEVICES, LLC