

# Settlement Agreement

---

## 1. INTRODUCTION

### 1.1 The Parties

This Settlement Agreement (hereinafter "Settlement Agreement") is hereby entered into by and between Kingpun Cheng, as an individual, (hereinafter "Cheng"), on the one hand, and Sterno Products, LLC and The Sterno Group, LLC. (hereinafter, collectively, "Sterno"), on the other hand. Sterno and Cheng shall be collectively referred to as the "Parties" and each of them as a "Party."

### 1.2 Allegations and Representations

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. Cheng alleges that Sterno 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. Cheng alleges that Sterno and Wal-Mart Stores, Inc. ("Walmart") has offered for sale and sold in the State of California the Sterno Dynamo Extreme Performance Stove Burner, UPC076642501403, (referred hereafter as the "Product") containing lead in metal components, and that such sales have not been accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, or other reproductive harm.

### 1.3 Notices of Violation

On or about August 13, 2015, Cheng served Sterno, Walmart, 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 Sterno and Walmart were in violation of Proposition 65 for failing to warn consumers and customers that the Product exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time after service of the Notice to them by Cheng.

### 1.4 No Admission

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

# Settlement Agreement

---

## 1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is signed by all parties.

## 2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, Sterno shall not ship for sale, sell, or offer for sale in California the Product unless Sterno either satisfies: (a) the Reformulated Option pursuant to Section 2.1 or (b) the Warning Option as provided in Sections 2.2 and 2.3.

2.1 Reformulation Option. The Product shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead, if the accessible exposed brass or other accessible exposed metal components of the Product have a lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). The Parties recognize that such lead content level may be more stringent than required under Proposition 65. Sterno may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the exposed metal alloy from which the components are made, provided such reliance is in good faith. Obtaining test results showing that the lead content is no more than 0.03% by weight, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300 ppm is a means to establish good faith reliance.

2.2 Warning Option. As an alternative to reformulating the Product, commencing on the Effective Date, Product that Sterno ships for sale, sells or offers for sale in California that do not meet the Reformulation Option set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below.

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

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

2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1, Sterno shall provide the warning language set forth in Section 2.3 either:

With the unit package of the Products or affixed to the Products. Such warning shall be prominently affixed to or printed on each Product's label or package or the Product itself. If printed on the label, the warning shall be as conspicuous as other safety warnings, if any, concerning the use of the Product; Sterno may continue to utilize, on an ongoing basis, unit packaging containing substantively the same Proposition 65 warnings as those set forth in Section 2.3 above, but only to the extent such packaging materials have already been printed within ninety days after the Effective Date.

2.5 The requirements for warnings, set forth in Section 2.3 above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods

# Settlement Agreement

---

of providing a warning under Proposition 65 and its implementing regulations and that they may or may not be appropriate in other circumstances.

2.6 If Proposition 65 warnings for lead or lead compounds or other specified chemicals should no longer be required, Sterno shall have no further warning obligations pursuant to this Settlement Agreement. In the event that a change in the law requires modification of such warnings, Sterno may cease to implement or may modify the warnings required under this Settlement Agreement in compliance with the change in the law.

### 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 lead in the Product, Sterno shall pay a civil penalty of \$500.00 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.

Sterno 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., \$375); and (b) one check in an amount representing 25% of the total penalty (i.e., \$125) made payable directly to Cheng (tax identification information will be provided on or before the Effective Date). Sterno shall mail these payments within ten (10) business days after the Effective Date to the following addresses:

Parker A. Smith, Esq.  
C/O Sy and Smith, PC  
11622 El Camino Real, Suite 100  
Del Mar, CA 92130

Counsel for Mr. Kingpun Cheng shall submit the check payable to OEHHA to OEHHA within ten (10) business days of receipt.

### 4. REIMBURSEMENT OF FEES AND COSTS

Sterno agrees to reimburse Cheng's counsel for fees and costs incurred as a result of investigating, issuing the Notice, and negotiating a settlement in the total amount of \$5,000.00 for any and all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. Sterno shall wire said monies to "Sy and Smith, PC" within ten (10) business days of the Effective Date. Sy and Smith, PC will provide Sterno with wire instruction 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.

# Settlement Agreement

---

## 5. RELEASE OF ALL CLAIMS

### 5.1 Release of Sterno and Downstream Customers

Cheng, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, releases Sterno and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Walmart and its affiliates and subsidiaries), marketplace hosts (including, but not limited to, Walmart.com USA LLC), 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 and waives all claims for violations of Proposition 65 up through the Effective Date based on exposure to lead from the Product and any other claims as set forth in the Notice of Violation. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to lead from the Product.

In addition to the foregoing, Cheng, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, 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 Sterno and the other Releasees arising prior to the Effective Date, including but not limited to all actions, causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorney fees, with respect to violations of Proposition 65 based upon the Product, any other claims as set forth in the Notice of Violation, and exposures to lead from the Product.

With respect to the foregoing waivers and releases in this Section 5, 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 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

### 5.2 Sterno Release of Cheng

Sterno waives any and all claims against Cheng, his attorneys and other representatives, for any and all actions taken or statements 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 with respect to the Product.

## 6. Confidentiality and Non-Disparagement

The Parties agree that the terms of the Agreement are confidential and may not be divulged to any third party; except that the Parties may make any disclosure necessary to any accountant or tax

# Settlement Agreement

---

preparer, and to secure legal advice related to this Agreement and any disclosure necessary to comply with federal and state laws or any court order.

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

## 7. SEVERABILITY AND MERGER

If, subsequent to the execution of this Settlement 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 Settlement 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.

## 8. GOVERNING LAW

The terms of this Settlement 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 Sterno shall have no further obligations pursuant to this Settlement Agreement with respect to the products to the extent the Products are so affected.

## 9. Jurisdiction and Venue

For purposes of this Settlement Agreement only, the Parties stipulate that in the event that enforcement of this Settlement Agreement or a dispute arises regarding this Settlement Agreement, the Superior Court of California has proper jurisdiction and that venue is proper in the County of Riverside.

## 9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement 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 Sterno:

Sterno Products, LLC  
1880 Compton Avenue, Suite 101  
Corona, California 92881  
Attn: Mr. Steve Pellegrini  
Chief Financial Officer & Vice President, Administration  
Facsimile: (951) 248-4190

# Settlement Agreement

---

With a Copy to:

Peter Duchesneau/Thomas Leary  
Manatt, Phelps & Phillips, LLP  
11355 W. Olympic Blvd  
Los Angeles, CA 90064  
pduchesneau@manatt.com

and

For Cheng:

Parker A. Smith  
Sy and Smith, PC.  
11622 El Camino Real, Suite 100  
Del Mar, CA 92130  
parker@sysmithlaw.com

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.

## 10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement 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.

## 11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Within ten (10) days of the Effective Date, Cheng shall comply with the requirements set forth in California Health & Safety Code §25249.7(f).

## 12. MODIFICATION

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

## 13. ATTORNEY'S FEES

13.1 A Party who unsuccessfully brings or contests an action in Superior Court arising out of this Settlement Agreement may be required to pay the prevailing Party's reasonable attorney's fees and costs in the discretion of the court.

## 14. AUTHORIZATION

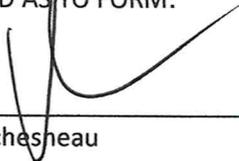
# Settlement Agreement

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

## 15. WARRANTIES AND REPRESENTATIONS REGARDING OTHER POTENTIAL CLAIMS

Cheng and his attorneys, Sy and Smith, PC, represent and warrant that neither of them is aware of any other actual or potential action, violation, or claim against Sterno or any of the Releasees. Cheng and his attorneys, Sy and Smith, PC, agree, represent and warrant that neither of them shall, themselves or by assisting others, file a notice or pursue a claim against Sterno or any of the Releasees for alleged violation of Proposition 65 for a period of two (2) years from the Effective Date herein.

APPROVED AS TO FORM:

By:   
Peter Duchesneau  
Attorney Sterno Products, LLC and The Sterno Group, LLC

Date: 4/20/16

By:   
Parker A. Smith  
Attorney Kingpun Cheng

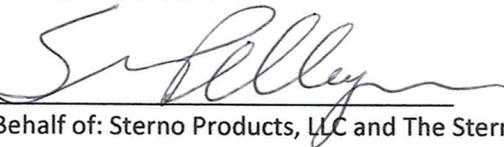
Date: 4/25/16

IT IS HEREBY AGREED TO:

By:   
Kingpun Cheng

Date: 4-25-16

IT IS HEREBY AGREED TO:

By:   
On Behalf of: Sterno Products, LLC and The Sterno Group, LLC

Date: 4/4/16