

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") and Mastercool, Inc. (hereinafter "Mastercool"). Mastercool 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. Mastercool 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 Mastercool has offered for sale and sold in the State of California can tap valves containing lead, 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 Product Description

The products covered by this Settlement Agreement are defined as any and all Can tap valve products that distributed by Mastercool to Amazon.com, Inc. (hereinafter "Amazon") and/or others and sold in California, including but not limited to the Mastercool R134a Can Tap Valve, UPC700376855104. All such items shall be referred to herein as the "Products."

1.4 Notice of Violation

On or about September 29, 2015, Cheng served Mastercool, Amazon and public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Mastercool and Amazon.com, Inc. were in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to lead. To the best of Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

Mastercool denies the material allegations contained in Cheng's Notice and maintains that it has not violated Proposition 65, and maintains that all of the products it has manufactured, sold and distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Mastercool 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 Mastercool of any fact, finding, conclusion, issue of law, or violation

of law, such being specifically denied by Mastercool. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Mastercool under this Settlement Agreement.

1.6 Effective Date

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

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, Mastercool shall not ship for sale, sell, or offer for sale in California Products that contain more than 100 ppm of lead unless the Products comply with this section. Commencing on the Effective Date, Mastercool shall ship for sale, sell, or offer for sale in California Products that are either (a) reformulated pursuant to Section 2.1 or (b) include a clear and reasonable warning, as provided in Section 2.3.

2.1 Reformulation Option. The Products 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 exposed brass or other metal components that are part of the Products meet the following criteria: the alloy from which the components are made shall have a lead content by weight of no more than 0.01% (100 parts per million, or "100 ppm"). Mastercool may rely on information obtained from its suppliers regarding the content of the 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 0.01%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 100 ppm shall be deemed to establish good faith reliance.

2.2 Warning Alternative. As an alternative to reformulating the Products, commencing on the Effective Date, Products that Mastercool 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, Mastercool shall provide Proposition 65 warnings substantially as follows:

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

OR

WARNING: This product contains one or more chemicals 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, Mastercool 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 contained in the same section that states other safety warnings, if any, concerning the use of the Product; Mastercool 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 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, Mastercool 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, Mastercool 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 Products, Mastercool shall pay a civil penalty of \$400.00 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.

Mastercool 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., \$300.00); and (b) one check in an amount representing 25% of the total penalty (i.e., \$100.00) made payable directly to Cheng. Mastercool shall mail these payments within five (5) days after the Effective Date at which time such payments shall be mailed to the following addresses respectively:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

Mr. Kingpun Cheng

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

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, Mastercool shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Mastercool's attention, and negotiating a settlement in the public interest. Mastercool shall pay Cheng's counsel \$4,600 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. Mastercool shall wire said monies to "Sy and Smith, PC" within five (5) days of the Effective Date. Sy and Smith, PC will provide Mastercool with wire instruction and tax identification information. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

5. RELEASE OF ALL CLAIMS

5.1 Release of Mastercool and Downstream Customers

Cheng, on behalf of himself only, releases (a) Mastercool, its owners, parents, subsidiaries, affiliated entities under common ownership, directors, officers, shareholders, employees, agents, and attorneys ("Mastercool") and (b) each entity to whom Mastercool directly or indirectly distributes or sell the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") (including, but not limited to, Amazon.com, Inc. and its affiliates and subsidiaries from all claims for any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against Mastercool and Downstream Releasees regarding exposing persons to Lead and the failure to warn about exposure to Lead arising in connection with the Products manufactured, shipped and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to lead from the Products.

In addition to the foregoing, and in further consideration of the promises and agreements contained herein, 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 Mastercool or the Downstream 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:

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 Mastercool Release of Cheng

Mastercool hereby 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.

6. CONFIDENTIALITY AND NON-DISPARAGEMENT

The Parties agree that the terms of the Settlement Agreement are confidential and may not be divulged to any third party other than the Downstream Releasees, as defined in this Settlement Agreement; except that the Parties may make any disclosure necessary to any accountant or tax preparer, and to secure legal advice related to this Settlement 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 provision of this document is held by a court to be unenforceable, the validity of the remaining provisions 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 Mastercool shall have no further obligations pursuant to this Settlement Agreement with respect to the products to the extent the Products are so affected.

9. NOTICES

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

Sophia Belloli, Esq.
Downey Brand, LLP
455 Market Street, Suite 1500
San Francisco, CA 94105

and

For Cheng:

Parker A. Smith
Sy and Smith, PC
11622 El Camino Real, Suite 100
Del Mar, 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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, 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)

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

12. MODIFICATION

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

13. ENFORCEMENT OF AGREEMENT

Any party may file suit in the Superior Court of the County of San Diego to enforce the terms and conditions of this Settlement Agreement. No action to enforce this Settlement Agreement may be commenced unless the party seeking enforcement notifies the other party of the specific acts alleged to breach this Settlement Agreement at least 90 days before serving or filing any action. Any notice to Mastercool must contain the name of the product, dates after the Effective Date when the product was sold in California, and the location at which the product was offered for sale. Mastercool may cure the violation by sending a letter to the sales location directing that the product be removed from inventory and returned to Mastercool or by refuting the allegations in the notice.

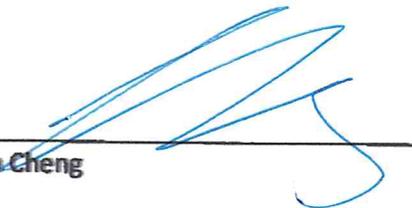
14. AUTHORIZATION

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 Private Settlement 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 Mastercool or any of the Downstream 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 Mastercool or any of the Downstream Releasees for alleged violations of Proposition 65 for a period of two (2) years from the Effective Date herein.

IT IS HEREBY AGREED TO:

By: 
Kingpun Cheng

Date: 6-7-2016

IT IS HEREBY AGREED TO:

By: 
On Behalf of: Mastercool
Tie Nili, V.P.

Date: June 6, 2016