

Private Prop 65 Settlement Agreement

1. INTRODUCTION

1.1 The Parties

This Private Settlement Agreement (hereinafter "Private Settlement") is hereby entered into by and between Kingpun Cheng, as an individual, (hereinafter "Cheng") and Southwire Company, LLC and its affiliates, related entities and associated business units (collectively, "Southwire"). Southwire 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. Southwire 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 Southwire has offered for sale and sold in the State of California Southwire Conduit Bending Level 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. Cheng has cited "Conduit Bending Level," UPC032886908606, as an example of the conduit bending level that is the subject of his allegation. For purposes of this Private Settlement only, Southwire represents that: UPC032886908606 Conduit Bending Level is an item it distributes to retailers and consumers (online and storefront) in the State of California.

1.3 Product Description

The products covered by this Private Settlement are defined as any and all electrical conduit installation products that are distributed by Southwire to Lowe's Companies, Inc. and its related business entities (collectively, "Lowe's") or others, and sold in California. All such items shall be referred to herein as the "Products."

1.4 Notices of Violation

On or about November 6, 2015, Cheng served Southwire, Lowe's, 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 Southwire and Lowe's were in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to lead above levels that trigger a duty to provide a Proposition 65 warning. 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.

Private Prop 65 Settlement Agreement

1.5 Stipulation as to Jurisdiction/No Admission

For purposes of this Private Settlement only, the Parties stipulate that in the event that enforcement of this Private Settlement or a dispute arises regarding this Private Settlement, the Superior Court of California, County of San Diego has proper jurisdiction for a period of Two (2) years after the Effective Date over Southwire as to the allegations contained in the Notice, and that venue is proper in the County of San Diego.

Southwire denies the material allegations contained in Cheng's Notice and maintains that it has not violated Proposition 65. Nothing in this Private Settlement shall be construed as an admission by Southwire or any other entity covered or governed by the terms of this Private Settlement (collectively, "Southwire Parties"), of any fact, finding, issue of law, or violation of law; nor shall compliance with this Private Settlement constitute or be construed as an admission by Southwire Parties of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Southwire Parties. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Southwire as a signatory to this Private Settlement.

1.6 Effective Date

For purposes of this Private Settlement, 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, Southwire shall not ship for sale, sell, or offer for sale in California Products that are manufactured, distributed or sold by Southwire containing more than 300 ppm lead unless they comply with this section. Commencing on the Effective Date, Southwire 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 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 0.03% (300 parts per million, or "300 ppm"). Southwire may comply with the above requirements by relying 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 0.03%, 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 Sixty (60) days after the Effective Date, Products that Southwire ships or distributes for sale in California that

Private Prop 65 Settlement Agreement

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, Southwire shall provide Proposition 65 warnings 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, Southwire 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; Southwire 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 (90) 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 Private Settlement. 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 Proposition 65-listed chemicals should no longer be required, Southwire shall have no further warning obligations pursuant to this Private Settlement. In the event that a change in the law requires modification of such warnings, Southwire may cease to implement or may modify the warnings required under this Private Settlement 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, Southwire shall pay a civil penalty of \$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

Private Prop 65 Settlement Agreement

remitted to Cheng, as provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

Southwire 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., \$750.00; and (b) one check in an amount representing 25% of the total penalty (i.e., \$250.00) made payable directly to Cheng. Southwire 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:

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

Mr. Kingpun Cheng
C/O Law Office of Parker A. Smith, PC
2173 Salk Ave., Suite 250
Carlsbad, CA 92008

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, Southwire shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Southwire's attention, and negotiating a settlement in the public interest. Southwire shall pay Cheng's counsel \$13,500.00 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. As long as Southwire is provided with tax identification information for Cheng and its counsel before the Effective Date, Southwire shall wire or provide checks for said monies to "Law Office of Parker A. Smith, PC" within five (5) days of the Effective Date. Law Office of Parker A. Smith, PC will provide Southwire with wire instruction and tax identification information before the Effective Date. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

5. RELEASE OF ALL CLAIMS AND SOUTHWIRE SAFE HARBOR

5.1 Release of Southwire and Downstream Customers

Cheng, on behalf of himself only, releases Southwire, Southwire Parties, and each of their respective downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Lowe's, www.lowes.com, and all Lowe's 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 from the Products as set forth in the Notice.

Private Prop 65 Settlement Agreement

Compliance with the terms of this Private Settlement constitutes compliance with Proposition 65 with respect to the Products manufactured, imported, distributed, or sold by Releasees after the Effective Date.

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 Southwire 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:

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 Southwire Proposition 65 Safe Harbor

If, following the Effective Date, Cheng or another Proposition 65 client of the Law Office of Parker A. Smith, PC, become aware of an item manufactured and/or distributed by Southwire, that they believe is being sold in violation of Proposition 65 or this Private Settlement, then for each such item Southwire shall be served with the required Proposition 65 60-Day Notice of Violation. Should Southwire address and rectify the alleged Proposition 65 violation within Sixty (60) days of its receipt of such Notice of Violation, then no further action shall be taken in connection with that item. If, however, Southwire does not address or rectify the alleged Proposition 65 violation within the 60-Day Notice of Violation period, then the noticing party shall be free to pursue legal action as they see fit for that item.

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 they deem necessary to any accountant, tax preparer, legal representative or other professional advisor, and any disclosure required to comply with applicable federal or state laws, or any final, binding court order issued against the Party.

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 Private Settlement, any of the provisions herein are found by a court to be legally unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

Private Prop 65 Settlement Agreement

This Private Settlement 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 Private Settlement 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 Southwire shall have no further obligations pursuant to this Private Settlement 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 Southwire:
Southwire Company, LLC
Attn: General Counsel
1 Southwire Drive
Carrollton, GA 30119
John.Stephens@southwire.com

and

For Cheng:
Parker A. Smith
Law Office of Parker A. Smith, PC
2173 Salk Ave., Suite 250
Carlsbad, CA 92008
parkerasmith@gmail.com

Either 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 Private Settlement 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.

Private Prop 65 Settlement Agreement

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

Cheng agrees to comply with all 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. AUTHORIZATION

The undersigned are authorized to execute this Private Settlement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions herein, and certify that he or she is fully authorized by the Party he or she represents to execute the Private Settlement in order to legally bind that Party.

14. WARRANTIES AND REPRESENTATIONS REGARDING OTHER POTENTIAL CLAIMS

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

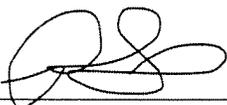
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Private Prop 65 Settlement Agreement

APPROVED:

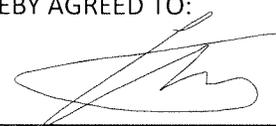
By: _____
Cordon T. Baesel, Esq.
Attorney for Southwire Company, LLC

Date: _____

By:  _____
Parker A. Smith
Attorney for Plaintiff, Kingpun Cheng

Date: 2/5/16

IT IS HEREBY AGREED TO:

By:  _____
Kingpun Cheng

Date: 2-5-2016

IT IS HEREBY AGREED TO:

Southwire Company, LLC

By: _____
Its: _____

Date: _____

Private Prop 65 Settlement Agreement

APPROVED:

By: 
Cordon T. Baesel, Esq.
Attorney for Southwire Company, LLC

Date: 02/08/2016

By: _____
Parker A. Smith
Attorney for Plaintiff, Kingpun Cheng

Date: _____

IT IS HEREBY AGREED TO:

By: _____
Kingpun Cheng

Date: _____

IT IS HEREBY AGREED TO:

Southwire Company, LLC

By: 
Its: Senior Vice President

Date: 2/6/16