

PRIVATE SETTLEMENT AND RELEASE 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, ("Cheng") on the one hand and Hobart Brothers Company ("Hobart") and Illinois Tool Works Inc. ("ITW") on the other. Hobart, ITW, 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. Both Hobart and ITW employ ten or more persons and each is a person in the course of doing business as the term is defined in California *Health & Safety Code* Section 25249.6 et seq. ("Proposition 65").

1.2 Allegations and Representations

Cheng alleges that Hobart has offered for sale and sold in the State of California M—10/H—10 Contact Tip Adaptor and Brass Work Clamp containing lead and purports that such sales have not been accompanied by Proposition 65 warnings. Cheng has cited "M—10/H—10 Contact Tip Adaptor" and "Brass Work Clamp" as examples of the products that are the subject of his allegation ("Hobart Products"). Cheng alleges that ITW has offered for sale and sold in the State of California Caliber Cartridges containing lead and purports that such sales have not been accompanied by Proposition 65 warnings. Cheng has cited "Ramset 22 Caliber Cartridges" as an example of the products that are the subject of his allegation ("Ramset Products") (Hobart Products and Ramset Products collectively, "Products"). Lead is potentially subject to Proposition 65 warning requirements because it is listed as being known to the State of California to cause cancer and/or birth defects or other reproductive harm.

1.3 Notices of Violation

On or about September 29, 2015, Cheng served ITW and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d), alleging that ITW and others were in violation of Proposition 65 for allegedly failing to warn consumers and customers that the Ramset Products exposed users in California to lead ("Ramset Notice").

On or about November 17, 2015, Cheng served Hobart and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d), alleging that Hobart and others were in violation of Proposition 65 for failing to warn consumers and customers that the Hobart Products exposed users in California to lead ("Hobart Notice") (Ramset Notice and Hobart Notice collectively, "Notices").

No public enforcer diligently prosecuted the claims threatened in the Notices within sixty days plus service time after service of the Notices to them by Cheng.

PRIVATE SETTLEMENT AND RELEASE AGREEMENT

1.4 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 over Hobart as to the allegations contained in the Hobart Notice and over ITW as to the allegations contained in the Ramset Notice and that venue is proper in the County of San Diego.

Hobart and ITW deny the material allegations contained in the Notices and each maintains that it has not violated Proposition 65. Nothing in this Private Settlement shall be construed as an admission by Hobart or ITW 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 Hobart or ITW of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by both Hobart and ITW. However, this section shall not diminish or otherwise affect the Parties' obligations, responsibilities, and duties under this Private Settlement.

1.5 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, Hobart and ITW shall not ship for sale, sell, or offer for sale in California Products that are manufactured, distributed, or sold by Hobart or ITW containing more than 300 ppm lead unless they comply with this section. Commencing on the Effective Date, Hobart and ITW 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"). Hobart or ITW 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 300 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 Hobart or ITW 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.

PRIVATE SETTLEMENT AND RELEASE AGREEMENT

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

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

OR

WARNING: This product contains chemicals known to the State of California to cause cancer and/or birth defects or other reproductive harm.

2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1, each unit shall carry one of the warnings above directly on each unit or its label or package in a sufficiently conspicuous manner reasonably calculated to be seen by the ordinary consumer. Alternatively, where products are offered for sale on a display rack, the warning obligation may be fulfilled by means of an identifying sign affixed to each display rack in a sufficiently conspicuous manner reasonably calculated to be seen by the ordinary consumer. Hobart and ITW 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 two hundred and seventy days after the Effective Date.

2.5 The requirements for warnings, set forth in Section 2.3 and 2.4 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 specified chemicals should no longer be required, Hobart and ITW 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, Hobart or ITW 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, Hobart and ITW shall pay a combined civil penalty of \$500 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.

Hobart and ITW 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.,

PRIVATE SETTLEMENT AND RELEASE AGREEMENT

\$125) made payable directly to Cheng. Hobart and ITW 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, Hobart and ITW shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Hobart's and ITW's attention, and negotiating a settlement in the public interest. Hobart and ITW shall together pay Cheng's counsel \$6,500 for all attorney's fees, expert and investigation fees, and related costs associated with this matter and the Notices. Hobart and ITW shall wire said monies to "Sy and Smith, PC" within five (5) business days of the Effective Date. Sy and Smith, PC will provide Hobart and ITW 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 attorney's fees and costs.

5. RELEASE OF ALL CLAIMS

5.1 Release of Hobart, ITW, and Downstream Customers

Cheng, on behalf of himself only, releases Hobart and ITW and each of its respective downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Tractor Supply, Home Depot, Inc. and Home Depot USA, Inc. and their respective parents, affiliates, and subsidiaries), franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and each of their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sisters and parent entities (collectively, "Releasees") from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings on 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

PRIVATE SETTLEMENT AND RELEASE AGREEMENT

rights to institute or participate in, directly or indirectly, any form of legal action and releases any other claims that he could make against Hobart, ITW, or the Releasees arising before the Effective Date with respect to purported 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 Hobart and ITW Release of Cheng

Hobart and ITW each 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 Agreement are confidential and may not be divulged to any third party (excluding Releasees); except that the Parties may make any disclosure necessary to any accountant or tax 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 Private Settlement, 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 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 Hobart and ITW shall have no further obligations pursuant to this Private Settlement with respect to the products to the extent the Products are so affected.

PRIVATE SETTLEMENT AND RELEASE AGREEMENT

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 Hobart and ITW:

Joshua G. Simon
Call & Jensen
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660

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 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.

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. ATTORNEY'S FEES

13.1 A Party who unsuccessfully brings or contests an action arising out of this Private Settlement shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

PRIVATE SETTLEMENT AND RELEASE AGREEMENT

14. AUTHORIZATION

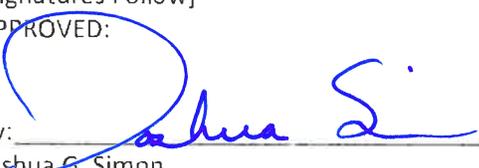
The undersigned are authorized to execute this Private Settlement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certifies that he or she is fully authorized by the Party he or she represents to execute the Private Settlement 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 Hobart, ITW, 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 Hobart, ITW, or any of the Releasees for alleged violation of Proposition 65 for a period of two (2) years from the Effective Date herein.

[Signatures Follow]

APPROVED:

By:  _____

Joshua G. Simon

Attorney for Hobart Brothers Company and Illinois Tool Works Inc.

Date: 6/24/16

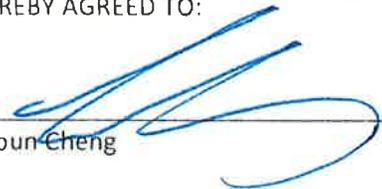
By:  _____

Parker A. Smith

Attorney for Plaintiff, Kingpun Cheng

Date: 6/9/16

IT IS HEREBY AGREED TO:

By:  _____

Kingpun Cheng

Date: 6-17-16

IT IS HEREBY AGREED TO:

By:  _____

On Behalf of: Hobart Brothers Company

Date: 6-23-16

By:  _____

On Behalf of: Illinois Tool Works Inc.

Date: 6-24-16