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

10 KING PUN CHENG,  
11 Plaintiff,  
12 vs.  
13 TRACTOR SUPPLY CO., INC.; et. al.  
14 Defendants.

Case No. 37-2016-00030166-CU-NP-CTL  
  
UNLIMITED JURISDICTION  
  
STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO TRACTOR  
SUPPLY CO., INC.  
  
Complaint Filed: August 30, 2016

17 **1. Introduction**

18 1.1 This Settlement Agreement (hereinafter "Settlement") is hereby entered into by  
19 and between King Pun Cheng, as an individual, (hereinafter "Cheng") and Tractor Supply Co.,  
20 Inc. (hereinafter "Tractor Supply"). Tractor Supply and Cheng shall be collectively referred to as  
21 the "Parties" and each of them as a "Party." Cheng is an individual residing in California who  
22 seeks to promote awareness of exposures to toxic chemicals and improve human health by  
23 reducing or eliminating hazardous substances contained in consumer products.  
24

25 1.2 Cheng alleges that Tractor Supply has offered for sale and sold in the State of  
26 California, nozzle blanks, pressure gauges, and carburetor repair kits with brass, including but not  
27 limited to "Countyline Nozzle Blanks, Countyline Pressure Gauges, and Countyline Carburetor  
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1 Repair Kits" ("Covered Products") containing lead and lead compounds, a chemical listed under  
2 Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, or  
3 other reproductive harm, and that they did so without providing the warning Cheng alleges is  
4 required by Proposition 65.

5  
6 1.3 For purposes of this Settlement only, Tractor Supply represents that: Countyline  
7 Nozzle Blanks, Countyline Pressure Gauges, and Countyline Carburetor Repair Kits are items it  
8 distributed to retailers and consumers (online and storefront) in the state of California.

9 1.4 On or about November 17, 2015, Cheng served Tractor Supply and various public  
10 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health  
11 & Safety Code §25249.7(d) (the "Notice"), alleging that Tractor Supply was in violation of  
12 Proposition 65 for failing to warn consumers and customers that the Covered Products exposed  
13 users in California to lead and lead compounds. No public enforcer diligently prosecuted the  
14 claims threatened in the Notice within sixty days plus service time after service of the Notice to  
15 them by Cheng.

16  
17 1.5 For purposes of this Settlement only, the Parties stipulate that in the event that  
18 enforcement of this Settlement or a dispute arises regarding this Settlement, the Superior Court of  
19 California, County of San Diego has proper jurisdiction over Tractor Supply as to the allegations  
20 contained in the 60 day notice served on or about November 17, 2015, and that venue is proper in  
21 the County of San Diego.

22  
23 1.6 Nothing in this Consent Judgment shall be construed as an admission by Tractor  
24 Supply of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance  
25 with this Consent Judgment constitute or be construed as an admission by Tractor Supply of any  
26 fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by  
27

1 Tractor Supply. This Section shall not, however, diminish or otherwise affect Tractor Supply's  
2 obligations, responsibilities, and duties under this Consent Judgment.

3 1.7 For purposes of this Settlement, the term "Effective Date" shall mean the date on  
4 which notice of the approval and entry of this Consent Judgment by the Court is received by  
5 Tractor Supply.  
6

7 **2. Injunctive Relief**

8 Commencing on the Effective Date, Tractor Supply shall only sell, offer for sale, or  
9 distribute for sale in California, Covered Products that are either (a) reformulated pursuant to  
10 Section 2.1 or (b) include a warning as provided in Section 2.3.

11 2.1 Reformulation Option. The Covered Products shall be deemed to comply with  
12 Proposition 65 with regard to lead and lead compounds and be exempt from any Proposition 65  
13 warning requirements for lead and lead compounds if the exposed components that are part of the  
14 Covered Products meet the following criteria: the Covered Products shall have a lead and lead  
15 compounds content in concentrations of no more than 0.03% (300 parts per million, or "300  
16 ppm"). Tractor Supply shall comply with the above requirements by obtaining test results  
17 showing that the lead and lead compounds content is no more than 0.03%, using a method of  
18 sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less  
19 than 300 ppm.  
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22 2.2 Warning Alternative. As an alternative to reformulating the Covered Products,  
23 within 180 days of the Effective Date, Covered Products that Tractor Supply ships for sale, sells  
24 or offers for sale in California that do not meet the Reformulation Option set forth in Section 2.1  
25 above shall be accompanied by a warning as described in Section 2.3 below.

26 2.3 Warnings. Where required under Section 2.2 above, Tractor Supply shall provide  
27 Proposition 65 warnings substantially as follows:  
28

1           WARNING: This product can expose you to chemicals including lead, which is known to  
2 the State of California to cause cancer and birth defects or other reproductive harm. For more  
3 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

4           Or

5           WARNING: This product contains chemicals known to the State of California to cause  
6 cancer and birth defects or other reproductive harm.  
7

8           2.4     Where utilized as an alternative to meeting the criteria set forth in Section 2.1,  
9 Tractor Supply shall provide the warning language set forth in Section 2.3 either with the unit  
10 package of the Covered Products or affixed to the Covered Products. Such warning shall be  
11 prominently affixed to or printed on each Product's label or package or the Product itself. If  
12 printed on the label, the warning shall be contained in the same section that states other safety  
13 warnings, if any, concerning the use of the Product.  
14

15           2.5     The requirements for warnings, set forth in Section 2.3 above are imposed  
16 pursuant to the terms of this Settlement. The Parties recognize that these are not the exclusive  
17 methods of providing a warning under Proposition 65 and its implementing regulations and that  
18 they may or may not be appropriate in other circumstances.

19           2.6     If Proposition 65 warnings for lead, or other specified chemicals, should no longer  
20 be required, Tractor Supply shall have no further warning obligations pursuant to this Settlement.  
21 In the event that a change in the law requires modification of such warnings, Tractor Supply may  
22 cease to implement or may modify the warnings required under this Settlement in compliance  
23 with the change in the law per Section 11 of this Settlement. In the event that the Office of  
24 Environmental Health Hazard Assessment promulgates one or more regulations requiring or  
25 permitting warning text and/or methods of transmission different than those set forth above,  
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1 Tractor Supply shall be entitled to use, at its discretion, such other warning text and/or method of  
2 transmission without being deemed in breach of this Settlement per Section 11 of this Settlement.

3 **3. Entry of Consent Judgment**

4 3.1 With regard to all claims that have been raised or which could be raised with  
5 respect to failure to warn pursuant to Proposition 65 with regard to lead and lead compounds in  
6 the Covered Products and because opportunities for exposure are minimal due to the nature and  
7 expected use of the product, Tractor Supply shall pay a civil penalty of \$1,500.00 pursuant to  
8 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California  
9 Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's  
10 Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty  
11 remitted to Cheng, as provided by California Health & Safety Code § 25249.12(d) and the  
12 instructions directly below.  
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15 Tractor Supply shall issue two separate checks for the penalty payment: (a) one  
16 check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount  
17 representing 75% of the total penalty (i.e., \$1,125.00; and (b) one check in an amount  
18 representing 25% of the total penalty (i.e., \$375.00) made payable directly to Cheng. Tractor  
19 Supply shall mail these payments within five (5) days after the Effective Date at which time such  
20 payments shall be mailed to the following addresses respectively:  
21

22 Mike Gyurics

23 Fiscal Operations Branch Chief

24 Office of Environmental Health Hazard Assessment

25 P.O. Box 4010

26 Sacramento, CA 95812-4010

27 And  
28

1 Mr. King Pun Cheng  
2 C/O Sy and Smith, PC  
3 11622 El Camino Real, Suite 100  
4 San Diego, CA 92130  
5

6 **4. Reimbursement of Fees and Costs**

7 The parties reached an accord on the compensation due to Cheng and his counsel  
8 under the private attorney general doctrine and principles of contract law. Under these legal  
9 principles, Tractor Supply shall reimburse Cheng's counsel for fees and costs incurred as a result  
10 of investigating, bringing this matter to Tractor Supply's attention, and negotiating a settlement.  
11 Tractor Supply shall pay Cheng's counsel \$16,000.00 for all attorneys' fees, expert and  
12 investigation fees, and related costs associated with this matter and the Notice. Tractor Supply  
13 shall wire said monies or send a check payable to "Sy and Smith, PC" within five (5) days of the  
14 Effective Date. Sy and Smith, PC will provide Tractor Supply with wire instruction and tax  
15 identification information on or before the Effective Date if requested. Other than the payment  
16 required hereunder, each side is to bear its own attorneys' fees and costs.  
17

18 **5. Release of all Claims**

19 **5.1 Release of Tractor Supply and Downstream Customers**

20 Cheng, on behalf of himself and on behalf of the general public, releases Tractor Supply  
21 and their respective officers, directors, attorneys, representatives, shareholders, agents, and  
22 employees, sister and parent entities, successors, and assigns, and each entity to whom it directly  
23 or indirectly distributes or sells the Covered Products including, but not limited to, their  
24 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but  
25 not limited to, Tractor Supply Co., Inc. and its affiliates and subsidiaries), franchisees, dealers,  
26 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,  
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1 (collectively "Releasees") from all claims for violations of Proposition 65 up through the  
2 Effective Date based on exposure to lead and lead compounds from the Covered Products as set  
3 forth in the Notice of Violation. Compliance with the terms of this Settlement constitutes  
4 compliance with Proposition 65 with respect to exposures to lead and lead compounds from the  
5 Covered Products.  
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7 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
8 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,  
9 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
10 action and releases any other claims that he could make against Tractor Supply or the Releasees  
11 arising prior to the Effective Date with respect to violations of Proposition 65 based upon the  
12 Covered Products. The Parties acknowledge that the claims released above may include  
13 unknown claims, and with respect to the foregoing waivers and releases in this paragraph, Cheng  
14 hereby specifically waives any and all rights and benefits which he now has, or in the future may  
15 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which  
16 provides as follows:  
17

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
20 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY  
21 AFFECTED HIS SETTLEMENT WITH THE DEBTOR.  
22

23 Cheng acknowledges and understands the significance and consequences of this specific  
24 waiver of California Civil Code section 1542.

#### 25 5.2 Tractor Supply Release of Cheng

26 Tractor Supply waives any and all claims against Cheng, his attorneys and other  
27 representatives, for any and all actions taken or statements made (or those that could have been  
28

1 taken or made) by Cheng and his attorneys and other representatives in the course of investigating  
2 claims or otherwise seeking enforcement of Proposition 65 against it in this matter.

3 **6. Severability and Merger**

4 If, subsequent to the execution of this Settlement, any of the provisions of this  
5 document are held by a court to be unenforceable, the validity of the enforceable provisions  
6 remaining shall not be adversely affected.  
7

8 This Settlement contains the sole and entire agreement of the Parties and any and  
9 all prior negotiations and understandings related hereto shall be deemed to have been merged  
10 within it. No representations or terms of agreement other than those contained herein exist or  
11 have been made by any Party with respect to the other Party or the subject matter hereof.

12 **7. Post Execution Activities**

13 Cheng agrees to comply with the reporting form requirements referenced in Health and  
14 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and  
15 Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the  
16 Settlement which Cheng shall draft and file. In furtherance of obtaining such approval, the  
17 Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry  
18 of this Settlement as judgment, and to obtain judicial approval of the Settlement in a timely  
19 manner. For purposes of this Section, "best efforts" shall include at a minimum, supporting the  
20 motion for approval, responding to any opposition or objection any third-party may file, and  
21 appearing at the hearing before the Court if so requested.  
22

23 **8. Governing Law**

24 The terms of this Settlement shall be governed by the laws of the State of California. In  
25 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law  
26 generally, or as to the Covered Products, then Tractor Supply shall have no further obligations  
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1 pursuant to this Settlement with respect to the Covered Products to the extent the Covered  
2 Products are so affected.

3 **9. Notices**

4 9.1 Unless specified herein, all correspondence and notices required to be provided  
5 pursuant to this Settlement shall be in writing and personally delivered or sent by: electronic mail  
6 and either (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight  
7 courier on any party by the other party at the following addresses:  
8

9 Tractor Supply:

10 Brian M. Ledger  
11 Gordon Rees Scully Mansukhani, LLP  
12 101 W. Broadway, Suite 200  
13 San Diego, CA 92101  
14 [bledger@grsm.com](mailto:bledger@grsm.com)

15 and

16 For Cheng:

17 Parker A. Smith  
18 Sy and Smith, PC  
19 11622 El Camino Real, Suite 100  
20 Del Mar, CA 92130  
21 [parker@sysmithlaw.com](mailto:parker@sysmithlaw.com)

22 Any party, from time to time, may specify in writing by the means set forth above to the  
23 other party a change of address to which all notices and other communications shall be sent.

24 **10. Counterparts; Facsimile Signatures**

25 10.1 This Settlement may be executed in counterparts and by facsimile, each of which  
26 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
27 same document.  
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11. Modification

This Settlement may be modified only by further written agreement of the Parties with court approval or by noticed motion.

12. Attorney Fees

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

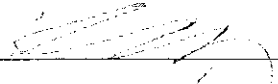
13. Authorization

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

**IT IS SO STIPULATED:**

Dated: 7-17-18

Dated: \_\_\_\_\_

By: 

By: \_\_\_\_\_

King Pun Cheng

On Behalf of Tractor Supply Co., Inc.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

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**11. Modification**

This Settlement may be modified only by further written agreement of the Parties with court approval or by noticed motion.

**12. Attorney Fees**

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

**13. Authorization**

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

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

Dated: 5-9-18

By: \_\_\_\_\_

By: Karen S. Austin  
Vice President, Legal & Licensing  
On Behalf of Tractor Supply Co., Inc.

King Pun Cheng

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

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Judge of the Superior Court

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**12. Attorney Fees**

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

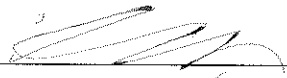
**13. Authorization**

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

**IT IS SO STIPULATED:**

Dated: 4-17-18

Dated: \_\_\_\_\_

By: 

By: \_\_\_\_\_

King Pun Cheng

On Behalf of Tractor Supply Co., Inc.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_

Judge of the Superior Court