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2 **SY AND SMITH, PC.**  
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4 Del Mar, CA 92130  
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8 Attorneys for Plaintiff, King Pun Cheng

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

10 KING PUN CHENG,  
11  
12 Plaintiff,  
13 vs.  
14 ACCESSORIES MARKETING, INC.  
15 Defendants.

Case No. 37-2016-00019031-CU-NP-CTL  
UNLIMITED JURISDICTION  
**STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO ACCESSORIES  
MARKETING, INC.**  
Complaint Filed: June 6, 2016

17 **1. Introduction**

18 1.1 This Consent Judgment is hereby entered into by and between Kingpun Cheng, as  
19 an individual, (hereinafter “Cheng”) and Accessories Marketing, Inc. (hereinafter “AMI”), a  
20 wholly-owned subsidiary of Illinois Tool Works, Inc. (hereinafter “ITW”). AMI and Cheng shall  
21 be collectively referred to as the “Parties” and each of them as a “Party.” Cheng is an individual  
22 residing in California who seeks to promote awareness of exposures to toxic chemicals and  
23 improve human health by reducing or eliminating hazardous substances contained in consumer  
24 products. AMI employs ten or more persons as required for purposes of Cal. Health & Safety  
25 Code §§ 25249.5 et seq. (“Proposition 65”).  
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1           1.2     Cheng alleges that AMI has offered for sale and sold in the State of California tire  
2 valve and core assemblies with brass, including but not limited to "Slime Core Housings,"  
3 UPC716281003318, containing lead ("Covered Products"), a chemical listed under Proposition  
4 65 as a chemical known to the State of California to cause cancer, birth defects, or other  
5 reproductive harm, and that they did so without providing the warning Cheng alleges is required  
6 by Proposition 65.  
7

8           1.3     For purposes of this Consent Judgment only, AMI represents that:  
9 UPC716281003318 Core Housing is an item it distributed to retailers and consumers (online and  
10 storefront) in the state of California. AMI represents that it began placing a Proposition 65  
11 warning all Covered Products in 2014. AMI continues to sell only Covered Products containing a  
12 Proposition 65 warning, and the product purchased by Cheng was old stock which had not been  
13 sold through at the store level.  
14

15           1.4     On or about November 19, 2015, Cheng served AMI and ITW, Tractor Supply  
16 Company, Amazon, and various public enforcement agencies with a document entitled "60-Day  
17 Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that  
18 AMI, ITW, Tractor Supply Company, and Amazon were in violation of Proposition 65 for failing  
19 to warn consumers and customers that the Covered Products exposed users in California to lead.  
20 No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days  
21 plus service time after service of the Notice to them by Cheng.  
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23           1.5     For purposes of this Consent Judgment only, the Parties stipulate that in the event  
24 that enforcement of this Consent Judgment or a dispute arises regarding this Consent Judgment,  
25 the Superior Court of California, County of San Diego has proper jurisdiction over AMI as to the  
26 allegations contained in the 60 day notice served on or about November 19, 2015, and that venue  
27 is proper in the County of San Diego.  
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1           1.6     AMI and ITW deny the material, factual, and legal allegations contained in  
2 Cheng's Notice and maintain that they have not violated Proposition 65. Nothing in this Consent  
3 Judgment shall be construed as an admission by AMI or ITW of any fact, finding, conclusion of  
4 law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute  
5 or be construed as an admission by AMI or ITW of any fact, finding, conclusion of law, issue of  
6 law, or violation of law, such being specifically denied. However, this section shall not diminish  
7 or otherwise affect the obligations, responsibilities, and duties of AMI under this Consent  
8 Judgment.  
9

10           1.7     For purposes of this Consent Judgment, the term "Effective Date" shall mean the  
11 date this Court approves and enters this Consent Judgment.  
12

13           **2.     Injunctive Relief**

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

17           2.1     Reformulation Option. The Covered Products shall be deemed to comply with  
18 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements  
19 for lead if the exposed brass or other metal components that are part of the Covered Products  
20 meet the following criteria: the alloy from which the components are made shall have a lead  
21 content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). AMI may  
22 comply with the above requirements by relying on information obtained from its suppliers  
23 regarding the content of the alloy from which the components are made, provided such reliance is  
24 in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a  
25 method of sufficient sensitivity to establish a limit of quantification (as distinguished from  
26 detection) of less than 100 ppm shall be deemed to establish good faith reliance.  
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1           2.2     Warning Alternative. As an alternative to reformulating the Covered Products,  
2 commencing on the Effective Date, Covered Products that AMI ships for sale, sells or offers for  
3 sale in California that do not meet the Reformulation Option set forth in Section 2.1 above shall  
4 be accompanied by a warning as described in Section 2.3 below.

5           2.3     Warnings. Where required under Section 2.2 above, AMI shall provide Proposition  
6 65 warnings substantially as follows:  
7

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

10          OR

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

13           2.4     Where utilized as an alternative to meeting the criteria set forth in Section 2.1,  
14 AMI shall provide the warning language set forth in Section 2.3 either with the unit package of  
15 the Covered Products or affixed to the Covered Products. Such warning shall be prominently  
16 affixed to or printed on each Product's label or package or the Product itself. If printed on the  
17 label, the warning shall be contained in the same section that states other safety warnings, if any,  
18 concerning the use of the Product; AMI may continue to utilize, on an ongoing basis, unit  
19 packaging containing substantively the same Proposition 65 warnings as those set forth in Section  
20 2.3 above, but only to the extent such packaging materials have already been printed within  
21 ninety days after the Effective Date.  
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23           2.5     The requirements for warnings set forth in Section 2.3 above are imposed  
24 pursuant to the terms of this Consent Judgment. The Parties recognize that these are not the  
25 exclusive methods of providing a warning under Proposition 65 and its implementing regulations  
26 and that they may or may not be appropriate in other circumstances.  
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1           2.6     If Proposition 65 warnings for lead or lead compounds or other specified  
2 chemicals should no longer be required, AMI shall have no further warning obligations pursuant  
3 to this Consent Judgment. In the event that a change in the law requires modification of such  
4 warnings, AMI may cease to implement or may modify the warnings required under this Consent  
5 Judgment in compliance with the change in the law. In the event that the Office of Environmental  
6 Health Hazard Assessment promulgates one or more regulations requiring or permitting warning  
7 text and/or methods of transmission different than those set forth above, AMI shall be entitled to  
8 use, at its discretion, such other warning text and/or method of transmission without being  
9 deemed in breach of this Consent Judgment.  
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11           2.7     Notwithstanding anything else in this Consent Judgment, Covered Products that  
12 were manufactured prior to the Effective Date shall be subject to the release of liability pursuant  
13 to Section 5 of this Consent Judgment, without regard to when such Covered Products were, or  
14 are in the future, distributed or sold to customers. As a result, the obligations of AMI as set forth  
15 in this Consent Judgment, including but not limited to Section 2, do not apply to these products  
16 manufactured prior to the Effective Date.  
17

18           **3.     Entry of Consent Judgment**

19           3.1     With regard to all claims that have been raised or which could be raised with  
20 respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products,  
21 AMI shall pay a civil penalty of \$1,500 pursuant to Health and Safety Code section 25249.7(b), to  
22 be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these  
23 funds remitted to the State of California's Office of Environmental Health Hazard Assessment  
24 and the remaining 25% of the penalty remitted to Cheng, as provided by California Health &  
25 Safety Code § 25249.12(d) and the instructions directly below.  
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1 AMI shall issue two separate checks for the penalty payment: (a) one check made  
2 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of  
3 the total penalty (i.e., \$1,125; and (b) one check in an amount representing 25% of the total  
4 penalty (i.e., \$375) made payable directly to Cheng. AMI shall mail these payments within  
5 fourteen (14) days after the Effective Date at which time such payments shall be mailed to the  
6 following addresses respectively:  
7

8 Proposition 65 Settlement Coordinator

9 California Department of Justice

10 1515 Clay Street, 20th Floor

11 Oakland, CA 94612-1413

12  
13  
14 Mr. Kingpun Cheng

15 C/O Sy and Smith, PC

16 11622 El Camino Real, Suite 100

17 San Diego, CA 92130

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

19 The parties reached an accord on the compensation due to Cheng and his counsel  
20 under the private attorney general doctrine and principles of contract law. Under these legal  
21 principles, AMI shall reimburse Cheng's counsel for fees and costs incurred as a result of  
22 investigating, bringing this matter to AMI's attention, and negotiating a settlement. AMI shall pay  
23 Cheng's counsel \$21,000 for all attorneys' fees, expert and investigation fees, and related costs  
24 associated with this matter and the Notice. AMI shall wire said monies or send a check payable  
25 to "Sy and Smith, PC" within fourteen (14) days of the Effective Date. Sy and Smith, PC will  
26 provide AMI with wire instruction and tax identification information on or before the Effective  
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1 Date if requested. Other than the payment required hereunder, each side is to bear its own  
2 attorneys' fees and costs.

3 5. **Release of all Claims**

4 5.1 Release of AMI, ITW and Downstream Customers

5 Cheng, on behalf of himself and on behalf of the general public, releases AMI and ITW  
6 and their respective officers, directors, attorneys, representatives, shareholders, agents, and  
7 employees, sister and parent entities, successors, and assigns, and each entity to whom it directly  
8 or indirectly distributes or sells the Covered Products including, but not limited to, their  
9 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but  
10 not limited to, Tractor Supply Company, Amazon and their affiliates and subsidiaries),  
11 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,  
12 subsidiaries, (collectively "Releasees") from all claims for violations of Proposition 65 up  
13 through the Effective Date based on exposure to lead from the Covered Products as set forth in  
14 the Notice of Violation. Compliance with the terms of this Consent Judgment constitutes  
15 compliance with Proposition 65 with respect to exposures to lead from the Covered Products.  
16

17 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
18 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,  
19 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
20 action and releases any other claims that he could make against AMI and ITW or the Releasees  
21 arising prior to the Effective Date with respect to violations of Proposition 65 based upon the  
22 Covered Products. The Parties acknowledge that the claims released above may include  
23 unknown claims, and with respect to the foregoing waivers and releases in this paragraph, Cheng  
24 hereby specifically waives any and all rights and benefits which he now has, or in the future may  
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1 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which  
2 provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
5 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY  
6 AFFECTED HIS SETTLEMENT WITH THE DEBTOR.  
7

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

10 5.2 AMI and ITW Release of Cheng

11 AMI and ITW waive any and all claims against Cheng, his attorneys and other  
12 representatives, for any and all actions taken or statements made (or those that could have been  
13 taken or made) by Cheng and his attorneys and other representatives in the course of investigating  
14 claims or otherwise seeking enforcement of Proposition 65 against it in this matter.  
15

16 **6. Confidentiality and Non-Disparagement**

17 The Parties agree that the terms of the Agreement are confidential and may not be  
18 divulged to any third party; except that the Parties may make any disclosure necessary to any  
19 accountant or tax preparer, and to secure legal advice related to this Agreement and any  
20 disclosure necessary to comply with federal and state laws or any court order.  
21

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

25 **7. Severability and Merger**  
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1 If, subsequent to the execution of this Consent Judgment, any of the provisions of  
2 this document are held by a court to be unenforceable, the validity of the enforceable provisions  
3 remaining shall not be adversely affected.

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

9 **8. Governing Law**

10 The terms of this Consent Judgment shall be governed by the laws of the State of  
11 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
12 reason of law generally, or as to the Covered Products, then AMI shall have no further obligations  
13 pursuant to this Consent Judgment with respect to the Covered Products to the extent the Covered  
14 Products are so affected.  
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16 **9. Notices**

17 9.1 Unless specified herein, all correspondence and notices required to be provided  
18 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by:  
19 electronic mail and either (i) first-class, (registered or certified mail) return receipt requested; or  
20 (ii) overnight courier on any party by the other party at the following addresses:  
21

22 AMI and ITW:

23 Shelby Miller  
24 George Gigounas  
25 DLA Piper LLP  
26 555 Mission Street, Suite 2400  
27 San Francisco, CA 94105  
28 [shelby.miller@dlapiper.com](mailto:shelby.miller@dlapiper.com)  
[george.gigounas@dlapiper.com](mailto:george.gigounas@dlapiper.com)

and

1 For Cheng:

2 Parker A. Smith  
3 Sy and Smith, PC  
4 11622 El Camino Real, Suite 100  
5 Del Mar, CA 92130  
6 [parker@sysmithlaw.com](mailto:parker@sysmithlaw.com)

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

9 **10. Counterparts; Facsimile Signatures**

10 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
11 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
12 the same document.

13 **11. Compliance with Health & Safety Code § 25249.7(f)**

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

16 **12. Modification**

17 This Consent Judgment may be modified only by further written agreement of the Parties.

18 **13. Attorney Fees**

19 A Party who unsuccessfully brings or contests an action arising out of this Consent  
20 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs.  
21

22 **14. Authorization**

23 The undersigned are authorized to execute this Consent Judgment on behalf of their  
24 respective Parties and have read, understood and agree to all of the terms and conditions of this  
25 document and certifies that he or she is fully authorized by the Party he or she represents to  
26 execute the Consent Judgment on behalf of the Party and legally bind that Party.  
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28 **15. Warranties and Representations Regarding Other Potential Claims**

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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 AMI and ITW 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 AMI and ITW or any of the Releasees for alleged violation of Proposition 65 for a period of two (2) years from the Effective Date herein.

**IT IS SO STIPULATED:**

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

Dated: 7/14/2016

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

By: Shelby Miller *WPL*

Parker A. Smith, Attorney for Plaintiff

Shelby Miller, Attorney for Defendant

Dated: 2016-8-8

Dated: 7/13/2016

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

By: J. B. Miller

Kingpun Cheng

On Behalf of AMI and ITW

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

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

\_\_\_\_\_

Judge of the Superior Court

1 Cheng and his attorneys, Law Offices of Parker A. Smith, PC, represent and warrant that  
2 neither of them is aware of any other actual or potential action, violation, or claim against AMI  
3 and ITW or any of the Releasees. Cheng and his attorneys, Law Offices of Parker A. Smith, PC,  
4 agree, represent and warrant that neither of them shall, themselves or by assisting others, file a  
5 notice or pursue a claim against AMI and ITW or any of the Releasees for alleged violation of  
6 Proposition 65 for a period of two (2) years from the Effective Date herein.  
7

8 **IT IS SO STIPULATED:**

9 Dated: 8/1/16

Dated: 7/14/2016

10 By: [Signature]

By: Shelby Miller/NCL

11 Parker A. Smith, Attorney for Plaintiff

Shelby Miller, Attorney for Defendant

13 Dated: 8-1-2016

14 Dated: 7/13/2016

15 By: [Signature]  
16 Kingpun Cheng

By: [Signature]  
17 On Behalf of AMI and ITW

18  
19 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

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

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22  
23 Judge of the Superior Court  
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