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7 Attorneys for Plaintiff, King Pun Cheng

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

10 KING PUN CHENG,

Case No.

11 Plaintiff,

UNLIMITED JURISDICTION

12 vs.

13 DAS COMPANIES, *et al.*

**STIPULATION AND [PROPOSED]
ORDER RE ENTRY OF CONSENT
JUDGMENT AS TO DAS
COMPANIES, INC.**

14 Defendants.

15 Complaint Filed: May 23, 2016

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Stipulation and [Proposed] Order Re Consent Judgment (“Consent Judgment”) is
4 hereby entered into by and between King Pun Cheng acting on behalf of the public interest
5 (hereinafter “Cheng”) and DAS Companies, Inc. (hereinafter collectively referred to as “DAS” or
6 “Defendants”). Collectively DAS and Cheng shall be referred to hereafter as the “Parties” and
7 each of them as a “Party.” Cheng is an individual residing in California who seeks to promote
8 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer products. Defendants employ ten or more persons
10 and for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6, *et seq.* each are
11 considered a person in the course of doing business

12 **1.2 Allegations and Representations**

13 Cheng alleges that Defendants have offered for sale in the State of California and have
14 sold in California tire gauge and truck gauge products made from leaded brass, which contains
15 lead, and that such sales have not been accompanied by Proposition 65 warnings. Lead is listed
16 under Proposition 65 as chemicals known to the State of California to cause cancer and birth
17 defects or other reproductive harm. Cheng has cited DAS “RoadPro Large Dial Tire Gauge” and
18 “Truck Spec Gauge”, hereafter (“Products”) as a specific example of products that are the subject
19 of his allegations.

20 **1.3 Covered Products Description**

21 The products that are covered by this Consent Judgment are defined as tire gauges, air coil
22 and tire air gauge hoses and truck gauges, including but not limited to, the RoadPro Large Dial
23 Tire Gauge (UPC045464768110) and Truck Spec Gauge (UPC045464236138) made from leaded
24 brass or for which leaded brass is a component, that is manufactured, sold, or distributed for sale
25 in California by Defendants and/or Releasees (as defined in Section 5.1 below). All such items
26 shall be referred to herein as the “Covered Products.”
27
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1 **1.4 Notices of Violation/Complaint**

2 A) On or about March 3, 2016, Cheng served DAS Companies, Inc.; DAS Companies
3 Inc. dba RoadPro; DAS Companies, Inc. dba TruckSpec; Ace Hardware; and various public
4 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health
5 & Safety Code §25249.7(d) (the "Notice"), alleging that DAS and ACE Hardware were in
6 violation of Proposition 65 for failing to warn consumers and customers that the Covered
7 Products exposed users in California to listed chemicals.. No public enforcer diligently
8 prosecuted the claims threatened in the Notice within sixty days plus service time relative to the
9 provision of the Notice to them by Cheng.

10 B) On May 23, 2016, Cheng, acting in the interest of the general public in the State of
11 California, filed a complaint in the Superior Court of San Diego County alleging violations of
12 Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of
13 exposures to lead contained in Covered Products manufactured, distributed, or sold by DAS.

14 **1.5 Stipulation as to Jurisdiction/No Admission**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Defendants as to the allegations contained in the complaint filed in this matter,
17 that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve,
18 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
19 of all claims which were or could have been raised in the Complaint based on the facts alleged
20 therein and or in the Notices.

21 Defendants individually and collectively deny the material allegations contained in
22 Cheng's Notice and Complaint and maintains that each has not violated Proposition 65. Nothing
23 in this Consent Judgment shall be construed as an admission by any Defendant of any fact,
24 finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
25 constitute or be construed as an admission by any Defendant of any fact, finding, conclusion,
26 issue of law, or violation of law, such being specifically denied by each Defendant. However,
27 this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of
28 each Defendant under this Consent Judgment.

1 **1.6 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
3 Consent Judgment is entered as a judgment of the Court. All Covered Products already shipped
4 on or before the "Effective Date" or within 30 days thereafter are deemed to be covered by the
5 waiver and release provisions of Section 5.1 of this Consent Judgment and shall not be subject to
6 any future enforcement action by Cheng hereunder. The warning requirements of Sections 2.1
7 and 2.2 shall apply to any Covered Product future product manufacturing runs that begin no later
8 than and are shipped later than –One Hundred Twenty (120) calendar days after the Effective
9 Date.

10 For purposes of this Consent Judgment, the term "Execution Date" shall mean the date
11 this Consent Judgment is signed by all parties in Section 14 below.

12 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS**

13 **2.1 Commitment to Warn**

14 Commencing with future product manufacturing runs One Hundred Twenty (120)
15 Calendar days days after the Effective Date, Defendants shall not ship, sell, or offer to sell in
16 California a Covered Product(s) that is are manufactured, distributed or sold by Defendants
17 containing more than 100 parts per million lead or without a warning as set forth in Section 2.2.
18 One Hundred Twenty (120) calendar days after the Effective Date in California. Covered
19 Products future product runs manufactured, distributed or sold by Defendants shall include a
20 warning as provided in Section 2.2.
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24 **2.2 Health Hazard Warning**

25 Where required under Section 2.1 above, Defendants shall provide a Proposition 65
26 warning as follows:
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1 **CALIFORNIA PROPOSITION 65 WARNING: This product contains chemicals**
2 **known to the State of California to cause cancer and birth defects or other**
3 **reproductive harm.**

4 **2.3 Placement of Health Hazard Warning**

5 Defendants shall provide the warning language set forth in Section 2.2 either:

6 (a) With the unit package of the Covered Products or affixed to the Covered Products.

7 Such warning shall be prominently affixed to or printed on each Covered Product's label or
8 package or the Covered Product itself. If printed on the label, the warning shall be contained in
9 the same section that states other safety warnings, if any, concerning the use of the Covered
10 Product: Defendants may continue to utilize, on an ongoing basis, unit packaging containing
11 substantively the same Proposition 65 warnings as those set forth in Section 2.2 above, but only
12 to the extent such packaging materials have already been printed within one hundred twenty days
13 of the Effective Date, or

14 (b) In the owner's manual of another product in which the Covered Product is a
15 component, but only if the other product: (i) may cause serious injury or bodily harm unless used
16 as directed; (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has
17 one or more features a consumer must read about in order to know how to program or use the
18 Covered Product. If the warning is given in the owner's manual pursuant to this subsection, it
19 shall be located in one of the following places in the manual: the outside of the front cover; the
20 inside of the front cover; the first page other than the cover; or the outside of the back cover. The
21 warning shall be printed or stamped in the manual or contained in a durable label or sticker
22 affixed to the manual in a font no smaller than the font used for other chemically-related safety
23 warnings in the manual. Alternatively, the warning may be included in a safety warning section
24 of the owner's manual. DAS may continue to utilize, on an ongoing basis, owner's manuals
25 containing substantively the same Proposition 65 warnings and without the additional
26 of the owner's manual. DAS may continue to utilize, on an ongoing basis, owner's manuals
27 containing substantively the same Proposition 65 warnings and without the additional
28 of the owner's manual.

1 admonitions as those set forth in Section 2.2 above, but only to the extent such manuals have
2 already been printed within ninety days of the Effective Date. Owner's manual warnings may
3 only be allowed if the owner's manual is sold in the same package and at the same time as the
4 other product and not for Covered Products sold separately.

5
6 The requirements for warnings set forth above are imposed pursuant to the terms of this
7 Consent Judgment. The Parties recognize that these are not the exclusive methods of providing a
8 warning under Proposition 65 and its implementing regulations and that they may or may not be
9 appropriate in other circumstances.

10 **2.4 Changes in Law Affecting Health Hazard Warnings**

11 If Proposition 65 warnings for lead, lead compounds, or other specified chemicals should
12 no longer be required, Defendants and Releasees shall have no further warning obligations
13 pursuant to this Consent Judgment. Except in the event that a change in the law requires
14 modification or ceases to require such warnings in the event that Defendants or Releasees
15 cease(s) to implement or modifies the warnings required under this Consent Judgment,
16 Defendants and Releasees shall provide written notice to Cheng (through counsel) of its intent to
17 do so, and of the basis for its intent, no less than thirty (30) days in advance.
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20 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE**

21 **§25249.7(b)**

22 With regard to all claims that have been raised or which could be raised with respect to
23 failure to warn pursuant to Proposition 65 with regard to the Covered Products, Defendants shall
24 collectively pay a single civil penalty of \$2,000.00 pursuant to Health and Safety Code section
25 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with
26 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
27 Assessment and the remaining 25% of the penalty remitted to Cheng, as provided by California
28 Health & Safety Code § 25249.12(d) and the instructions directly below.

1 Defendants shall collectively issue two separate checks for the penalty payment: (a) one
2 check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount
3 representing 75% of the total penalty (*i.e.*, \$1,500); and (b) one check in an amount representing
4 25% of the total penalty (*i.e.*, \$500) made payable directly to Cheng. Defendants shall mail these
5 payments within ten (10) calendar days following the Execution Date and receipt of appropriate
6 tax identification numbers, to be held in trust by Plaintiff's counsel, until the Effective Date, at
7 which time such payments shall be mailed to the following addresses respectively:

8 Mike Gyurics
9 OEHHA
10 Fiscal Operations Branch
11 P.O. Box 4010
12 Sacramento, California 95812-4010

11 Mr. King Pun Cheng
12 C/O Parker A. Smith, Attorney at Law
13 11622 El Camino Real, Suite 100
14 Del Mar, CA 92130

14 **4. REIMBURSEMENT OF FEES AND COSTS**

15 The Parties reached an accord on the compensation due to Cheng and his counsel under
16 the private attorney general doctrine and principles of contract law. Under these legal principles,
17 Defendants shall reimburse Cheng's counsel for fees and costs, incurred as a result of
18 investigating, bringing this matter to Defendant attention, and negotiating a settlement in the
19 public interest. Defendants shall collectively pay Cheng's counsel twenty thousand five hundred
20 dollars (\$20,500.00) for all attorneys' fees, expert and investigation fees, and related costs
21 associated with this matter and the Notice. Within ten (10) calendar days after the Execution
22 Date, Defendants shall send a check covering all fees and costs to Plaintiff's counsel, who shall:
23 1) hold such funds in Trust pending Court approval of this Consent Judgment; 2) promptly notify
24 Cheng that the settlement funds have been received and placed into a trust account and 3)
25 disburse such fees only after the Effective Date. Other than the payment required hereunder,
26 each side is to bear its own attorneys' fees and costs.

27 **5. RELEASE OF ALL CLAIMS**

28 **5.1 Cheng's Release of Defendant, Releasees, and Downstream Releasees**

1 As to those matters raised in the Complaint and in the Notice of Violation, Cheng, on
2 behalf of himself and on behalf of the public interest, hereby waives and releases any and all
3 claims against Defendants, their parent companies, corporate affiliates, subsidiaries,
4 predecessors, successors and assigns (collectively "Releasees") and each of their distributors,
5 wholesalers, licensors, licensees, auctioneers, retailers (including but not limited to ACE
6 Hardware), franchisees, dealers, customers, owners, purchasers, users (collectively "Downstream
7 Releasees") and their respective officers, directors, attorneys, representatives, shareholders,
8 agents, and employees, and sister and parent entities for injunctive relief or damages, penalties,
9 fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
10 expenses, or any other sum incurred or claimed, for the alleged failure of Defendants, Releasees
11 or Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition
12 65 and/or under Business and Professions Code §17200, *et seq.* about exposure to listed
13 chemicals arising from the sale, distribution, or use of any Covered Products sold, manufactured
14 or distributed by Defendants, Releasees or Downstream Releasees in California prior to Ninety
15 (90) days after the Effective Date. Compliance with the Consent Judgment by a Defendant or a
16 Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee, or
17 Downstream Releasee with respect to the presence of listed chemicals in the Covered Products.
18 Plaintiff agrees that any and all claims in the underlying Proposition 65 sixty day notice letter and
19 the Complaint are resolved with prejudice by this Consent Judgment.

20 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,
21 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,
22 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
23 action and releases any other Claims that he could make against Defendants, Releasees or
24 Downstream Releasees arising up to Ninety (90) days after the Effective Date with respect to
25 violations of Proposition 65 and/or Business and Professions Code §17200 based upon the
26 Covered Products. With respect to the foregoing waivers and releases in this paragraph, Cheng
27 hereby specifically waives any and all rights and benefits which he now has, or in the future may
28

1 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
2 provides as follows:

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

9
10 **5.2 Defendant's Release of Cheng**

11 Defendants 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
14 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
15 matter, and or with respect to the Covered Products.

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17 **6. SEVERABILITY AND MERGER**

18 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
19 document are held by a court to be unenforceable, the validity of the enforceable provisions
20 remaining shall not be adversely affected.

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

25
26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California and apply within the State of California. Compliance with the terms of this Consent
Judgment resolves any issue, now or in the future, as to the requirements of Proposition 65 with
respect to alleged exposures to lead arising from the Covered Products. In the event that
Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as
to the Covered Products, then Defendants shall provide written notice to Cheng of any asserted

1 change in the law, and shall have no further obligations pursuant to this Consent Judgment with
2 respect to, and to the extent that, the Covered Products are so affected.

3 **8. NOTICES**

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

8
9 For DAS Companies, Inc.

10 Anthony Scicchitano, Esq.
11 DAS Companies, Inc. General Counsel
12 724 Lawn Road
13 Palmyra, PA 17078

14 and

15 For Cheng:

16 Parker Smith, Esq.
17 Sy and Smith, PC
18 11622 El Camino Real, Suite 100
19 Del Mar, CA 92130

20 Any Party, from time to time, may specify in writing to the other party a change of address to
21 which all notices and other communications shall be sent.

22 **9. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES**

23 This Consent Judgment may be executed in counterparts and by email or facsimile, each
24 of which shall be deemed an original, and all of which, when taken together, shall constitute one
25 and the same document.

26 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
27 **APPROVAL**

28 Cheng agrees to comply with the requirements set forth in California Health & Safety
Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and
Defendants shall support approval of such Motion.

This Consent Judgment shall not be effective until it is approved and entered by the Court

1 and shall be null and void if, for any reason, it is not approved and entered by the Court within
2 twelve months after it has been fully executed by the Parties.

3 **11. MODIFICATION**

4 This Consent Judgment may be modified only by further stipulation of the Parties and the
5 approval of the Court or upon the granting of a motion brought to the Court by either Party.

6 **12. ATTORNEY'S FEES**

7 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
8 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs
9 unless the unsuccessful party has acted with substantial justification. For purposes of this
10 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
11 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, *et seq.*

12 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
13 pursuant to law.

14 **13. RETENTION OF JURISDICTION**

15 This Court shall retain jurisdiction of this matter to implement or modify the Consent
16 Judgment.

17 **14. AUTHORIZATION**

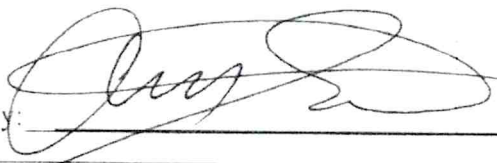
18 The undersigned are authorized to execute this Consent Judgment on behalf of their
19 respective Parties and have read, understood and agree to all of the terms and conditions of this
20 document and certifies that he or she is fully authorized by the Party he or she represents to
21 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
22 Except as explicitly provided herein each Party is to bear its own fees and costs.
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25 **[Signatures Follow]**

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APPROVED AS TO FORM:

Dated:

By: 

Anthony Scicchitano, Esq.
DAS Companies, Inc. General Counsel
724 Lawn Road
Palmyra, PA 17078

Dated: 6/14/16

By: 

Parker Smith, Esq.
Attorneys for Plaintiff.
King Pun Cheng

IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: 6-17-16

Date: 23 May 2016

By: 
KING PUN CHENG

By: 
On Behalf of:
DAS COMPANIES, INC.