

# Ningbo Bai Jia\_Cheng Settlement

---

## 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 Ningbo Bai Jia. Ningbo Bai Jia 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. Ningbo Bai Jia employs ten or more persons and for purposes of this Private Settlement only admits is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

### 1.2 Allegations and Representations

Cheng alleges that Ningbo Bai Jia has offered for sale and sold in the State of California Defiant 6-Outlet Surge Protector containing di(2 ethylhexyl)phthalate ("DEHP"), and that such sales have not been accompanied by Proposition 65 warnings. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and also listed for male developmental harm. Cheng has cited "Defiant 6-Outlet Surge Protector" as an example of the surge protector that is the subject of his allegation.

For purposes of this Private Settlement only, Ningbo Bai Jia represents that: Defiant 6-Outlet Surge Protector is an item it distributes to retailers (online and storefront) for sale in the state of California.

### 1.3 Product Description

The product that is covered by this Private Settlement is defined as any and all Defiant 6-Outlet Surge Protector products that are distributed by Ningbo Bai Jia to Home Depot USA, Inc. (hereinafter "Home Depot") 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 May 6, 2016, Cheng served Home Depot 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 Home Depot was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to DEHP. 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. Cheng subsequently determined that the product at issue in the Notice was manufactured, or distributed, or imported, or sold by Ningbo Bai Jia.

## Ningbo Bai Jia\_Cheng Settlement

---

### 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 over Ningbo Bai Jia as to the allegations contained in the 60 day notice served on or about May 6, 2016, and that venue is proper in the County of San Diego.

Ningbo Bai Jia 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 against interest by Ningbo Bai Jia 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 against interest by Ningbo Bai Jia of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Ningbo Bai Jia. Nothing in this agreement shall preclude Ningbo Bai Jia from asserting any and all applicable defenses available to it in any future proceeding by any person under Proposition 65 or otherwise. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Ningbo Bai Jia under 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 and notice is served by Cheng on Ningbo Bai Jia that the Private Settlement is fully executed.

## 2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the three month anniversary of the Effective Date, Ningbo Bai Jia shall not ship for sale, sell, or offer for sale in California Products that are manufactured, distributed or sold by Ningbo Bai Jia containing more than 1,000 ppm DEHP unless they comply with this section. Commencing on the three month anniversary of the Effective Date, Ningbo Bai Jia 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 Sections 2.2 and 2.3.

**2.1 Reformulation Option.** The Products shall be deemed to comply with Proposition 65, for purposes of this Private Settlement, with regard to DEHP and be exempt from any Proposition 65 warning requirements for DEHP if the cord components that are part of the Products meet the following criteria: the cord components shall have a DEHP content by weight of no more than 1,000 parts per million ("ppm"). Ningbo Bai Jia may comply with the above requirements by relying on information obtained from its suppliers regarding the DEHP content of the components, provided such reliance is in good faith. Obtaining test results showing that the DEHP content is no more than 1,000 ppm, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 1,000 ppm shall be deemed to establish good faith reliance.

## Ningbo Bai Jia\_Cheng Settlement

---

2.2 **Warning Alternative.** As an alternative to reformulating the Products, Products that Ningbo Bai Jia 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.

2.3 **Warnings.** Where required under Section 2.2 above, Ningbo Bai Jia shall provide Proposition 65 warnings in one of the forms below, as Ningbo Bai Jia shall elect in its sole discretion, and Ningbo Bai Jia also can elect in its sole discretion to use the text in [brackets] as well:

[Proposition 65] [Prop 65] WARNING: This product contains DEHP, a chemical known to the State of California to cause [reproductive harm and] cancer.

OR

[Proposition 65] [Prop 65] WARNING: This product contains one or more chemicals known to the State of California to cause [reproductive harm and] cancer.

OR

Any form of warning which is deemed a clear and reasonable form of warning as to the Products under Title 27 Cal. Code Reg. 25600 *et seq.* ("Clear and Reasonable Warnings"). The parties expressly agree that Ningbo Bai Jia may elect to use a warning which satisfies the terms of the currently effective, 2008 version of the regulations, or the new terms adopted on August 30, 2016 and operative on August 30, 2018. If there are future amendments to the warning regulations in 27 Cal. Code Reg. 25600 (or any successor thereto) Ningbo Bai Jia also may elect to provide a warning which is deemed a clear and reasonable form of warning as to the Products under any such successor regulations.

2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1, Ningbo Bai Jia shall provide the warning language set forth in Section 2.3 either: on the label, 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. Ningbo Bai Jia may continue to utilize, on an ongoing basis for at three months after the Effective Date, unit packaging containing any allowed form of warning set forth in Section 2.3 above, or any other existing form of warning it has previously used, but only to the extent such warnings have already been applied to the products, labels or packaging or the warning materials have already been printed.

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.

2.6 If Proposition 65 warnings for DEHP or other specified chemicals should no longer be required, Ningbo Bai Jia 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, Ningbo Bai Jia may cease to

## Ningbo Bai Jia\_Cheng Settlement

---

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)

Ningbo Bai Jia shall pay a civil penalty of \$6,000 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.

Ningbo Bai Jia 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., \$4,500); and (b) one check in an amount representing 25% of the total penalty (i.e., \$1,500) made payable directly to Cheng. Cheng agrees to provide taxpayer identification information to the extent necessary for Ningbo Bai Jia to process the payment. Ningbo Bai Jia 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, Ningbo Bai Jia shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Ningbo Bai Jia's attention, and negotiating a settlement in the public interest. Ningbo Bai Jia shall pay Cheng's counsel \$23,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. Ningbo Bai Jia shall send a check to "Sy and Smith, PC" within five (5) days of the Effective Date. Sy and Smith, PC will provide Ningbo Bai Jia with tax identification information before the Effective Date. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

## Ningbo Bai Jia Cheng Settlement

---

### 5. RELEASE OF ALL CLAIMS

#### 5.1 Release of Ningbo Bai Jia and Upstream and Downstream Persons

Cheng, on behalf of himself only, releases Ningbo Bai Jia, its parents, subsidiaries, corporate affiliates and each of its upstream and downstream distributors, wholesalers, licensors, licensees, auctioneers, manufacturers, retailers (including, but not limited to, Home Depot and its affiliates and subsidiaries), franchisees, dealers, customers, owners, purchasers, users, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and their respective predecessors, successors or assigns (collectively "Releasees") from all claims for violations of Proposition 65 up through and including the Effective Date based on exposure to DEHP from the Products as set forth in the Notice of Violation. Cheng agrees that he shall regard compliance with the terms of this Private Settlement by Ningbo Bai Jia to constitute compliance with Proposition 65 by all Releasees with respect to exposures to DEHP from the Products 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 Ningbo Bai Jia or the Releasees (including Home Depot and its affiliates and subsidiaries) 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.

\_\_\_\_\_ Initials

#### 5.2 Ningbo Bai Jia Release of Cheng

Ningbo Bai Jia waives any and all claims against Cheng, his attorneys and other representatives, for any and all actions taken or statements 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 up through the Effective Date.

### 6. Reporting

Cheng agrees to report this settlement to the Office of the Attorney General after the Effective Date in accordance with law. Home Depot shall be entitled to receive a copy of this Private Settlement.

## Ningbo Bai Jia\_Cheng Settlement

---

### 7. SEVERABILITY AND MERGER

If, subsequent to the Effective Date 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, or DEHP is delisted, then Ningbo Bai Jia shall have no further obligations pursuant to this Private Settlement with respect to the products to the extent the Products are so affected. This Private Settlement shall have no effect on Products sold outside of California or which are not sold to California consumers.

### 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 Ningbo Bai Jia:  
Judith M. Praitis  
Sidley Austin LLP  
555 West 5<sup>th</sup> Street  
Los Angeles, CA 90013  
jpraitis@sidley.com

and

For Cheng:  
Parker A. Smith  
Sy and Smith, PC  
11622 El Camino Real, Suite 100  
Del Mar, CA 92130  
parker@sysmithlaw.com

## Ningbo Bai Jia\_Cheng Settlement

---

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. The Private Settlement shall terminate if Ningbo Bai Jia no longer sells the Products or the Products are not sold to California consumers.

### 13. ATTORNEY'S FEES

A Party who successfully brings or contests an action arising out of this Private Settlement shall be entitled to request that the court ruling on the matter order the non-prevailing party to pay the prevailing Party's reasonable attorney's fees and costs.

### 14. AUTHORIZATION

Each undersigned representative of each Party 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 to bind that Party.

[Signatures Follow]

IT IS HEREBY AGREED TO:

By:   
Kingpun Cheng

Date: 2016-10-13

IT IS HEREBY AGREED TO:

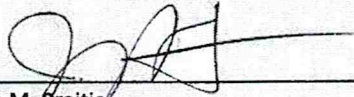
By:   
On Behalf of: Ningbo Bai Jia

Date: 2016/10/12

## Ningbo Bai Jia\_Cheng Settlement

---

Approved as to Form by Counsel for each Party:

By:   
Judith M. Praitis  
Attorney for Defendant, Ningbo Bai Jia

Date: October 12, 2016

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

Date: 10/12/16