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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,  
11 Plaintiff,  
12 vs.  
13 SKF USA INC.; et. al.  
14 Defendants.

Case No. 37-2016-00032623-CU-NP-CTL

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO SKF USA INC.**

Complaint Filed: September 19, 2016

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17 **1. Introduction**

18 1.1 This Settlement Agreement is hereby entered into by and between Kingpun Cheng,  
19 as an individual, (hereinafter “Cheng”) and SKF USA Inc. (hereinafter “SKF”). SKF and Cheng  
20 shall be collectively referred to as the “Parties” and each of them as a “Party.” Cheng is an  
21 individual residing in California who seeks to promote awareness of exposures to toxic chemicals  
22 and improve human health by reducing or eliminating hazardous substances contained in  
23 consumer products. SKF employs ten or more persons as required for purposes of Cal. Health &  
24 Safety Code §§ 25249.5 et seq. (“Proposition 65”).

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26 1.2 Cheng alleges that SKF has offered for sale and sold in the State of California  
27 whip hose extensions sold by SKF USA, Inc., including but not limited to “Lincoln Whip Hose  
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1 Extension” (“Covered Products”) containing lead, a chemical listed under Proposition 65 as a  
2 chemical known to the State of California to cause cancer, birth defects, or other reproductive  
3 harm, and that they did so without providing the warning Cheng alleges is required by  
4 Proposition 65.

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6 1.3 For purposes of this Settlement only, SKF represent that: Whip Hose Extension is  
7 an item it distributed to retailers and consumers (online and storefront) in the state of California.

8 1.4 On or about June 27, 2016, Cheng served SKF, Lincoln Industrial Corporation,  
9 O’Reilly Automotive, and various public enforcement agencies with a document entitled "60-Day  
10 Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that  
11 SKF, Lincoln Industrial Corporation, and O’Reilly Automotive were in violation of Proposition  
12 65 for failing to warn consumers and customers that the Covered Products exposed users in  
13 California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice  
14 within sixty days plus service time after service of the Notice to them by Cheng.

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16 1.5 For purposes of this Settlement only, the Parties stipulate that in the event that  
17 enforcement of this Settlement or a dispute arises regarding this Settlement, the Superior Court of  
18 California, County of San Diego has proper jurisdiction over SKF as to the allegations contained  
19 in the 60 day notice served on or about June 27, 2016, and that venue is proper in the County of  
20 San Diego.

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22 1.6 For purposes of this Private Settlement, the term “Effective Date” shall mean the  
23 date on which notice of the approval and entry of this Consent Judgment by the Court is received  
24 by SKF.

25 **2. Injunctive Relief**

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

4 2.1 Reformulation Option. The Covered Products shall be deemed to comply with  
5 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements  
6 for lead if the exposed brass or other metal components that are part of the Covered Products  
7 meet the following criteria: the alloy from which the components are made shall have a lead  
8 content by weight of no more than 0.03% (300 parts per million, or “300 ppm”). SKF may  
9 comply with the above requirements by relying on information obtained from its suppliers  
10 regarding the content of the alloy from which the components are made, provided such reliance is  
11 in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a  
12 method of sufficient sensitivity to establish a limit of quantification (as distinguished from  
13 detection) of less than 300 ppm shall be deemed to establish good faith reliance.

14 2.2 Warning Alternative. As an alternative to reformulating the Covered Products,  
15 within 180 days of the Effective Date, Covered Products that SKF ships for sale, sells or offers  
16 for sale in California that do not meet the Reformulation Option set forth in Section 2.1 above  
17 shall be accompanied by a warning as described in Section 2.3 below.

18 2.3 Warnings. Where required under Section 2.2 above, SKF shall provide Proposition  
19 65 warnings substantially as follows:

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

22 2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1,  
23 SKF shall provide the warning language set forth in Section 2.3 either with the unit package of  
24 the Covered Products or affixed to the Covered Products. Such warning shall be prominently  
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1 affixed to or printed on each Product's label or package or the Product itself. If printed on the  
2 label, the warning shall be contained in the same section that states other safety warnings, if any,  
3 concerning the use of the Product.

4           2.5     The requirements for warnings, set forth in Section 2.3 above are imposed  
5 pursuant to the terms of this Settlement. The Parties recognize that these are not the exclusive  
6 methods of providing a warning under Proposition 65 and its implementing regulations and that  
7 they may or may not be appropriate in other circumstances.

8           2.6     If Proposition 65 warnings for lead or lead compounds, or other specified  
9 chemicals, should no longer be required, SKF shall have no further warning obligations pursuant  
10 to this Settlement. In the event that a change in the law requires modification of such warnings,  
11 SKF may cease to implement or may modify the warnings required under this Settlement in  
12 compliance with the change in the law. In the event that the Office of Environmental Health  
13 Hazard Assessment promulgates one or more regulations requiring or permitting warning text  
14 and/or methods of transmission different than those set forth above, SKF shall be entitled to use,  
15 at its discretion, such other warning text and/or method of transmission without being deemed in  
16 breach of this Settlement.

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19           **3.     Entry of Consent Judgment**

20           3.1     With regard to all claims that have been raised or which could be raised with  
21 respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products,  
22 SKF shall pay a civil penalty of \$1,000 pursuant to Health and Safety Code section 25249.7(b), to  
23 be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these  
24 funds remitted to the State of California's Office of Environmental Health Hazard Assessment  
25 and the remaining 25% of the penalty remitted to Cheng, as provided by California Health &  
26 Safety Code § 25249.12(d) and the instructions directly below.  
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1 SKF 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., \$750; and (b) one check in an amount representing 25% of the total penalty  
4 (i.e., \$250) made payable directly to Cheng. SKF shall mail these payments within fourteen (14)  
5 days after the Effective Date at which time such payments shall be mailed to the following  
6 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. King Pun 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, SKF shall reimburse Cheng's counsel for fees and costs incurred as a result of  
22 investigating, bringing this matter to SKF's attention, and negotiating a settlement. SKF 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. SKF shall wire said monies or send a check payable to  
25 "Sy and Smith, PC" within fourteen (14) days of the Effective Date. Sy and Smith, PC will  
26 provide SKF 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 SKF and Downstream Customers

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

10 5.2 SKF Release of Cheng

11 SKF 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**

1           If, subsequent to the execution of this Private Settlement, 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 Settlement contains the sole and entire agreement of the Parties and any and  
5 all prior negotiations and understandings related hereto shall be deemed to have been merged  
6 within it. No representations or terms of agreement other than those contained herein exist or  
7 have been made by any Party with respect to the other Party or the subject matter hereof.  
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9           **8.     Governing Law**

10          The terms of this Settlement shall be governed by the laws of the State of California. In  
11 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law  
12 generally, or as to the Covered Products, then SKF shall have no further obligations pursuant to  
13 this Settlement with respect to the Covered Products to the extent the Covered Products are so  
14 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 Settlement shall be in writing and personally delivered or sent by: electronic mail  
19 and either (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight  
20 courier on any party by the other party at the following addresses:  
21

22           SKF:

23           Ryan S. Landis, Esq.  
24           Polsinelli LLP  
25           2049 Century Park East, Suite 2900  
26           Los Angeles, CA 90067  
27           [rlandis@polsinelli.com](mailto:rlandis@polsinelli.com)

28           and

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For Cheng:

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

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**

10.1 This 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 Settlement may be modified only by further written agreement of the Parties.

**13. 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.

**14. 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.

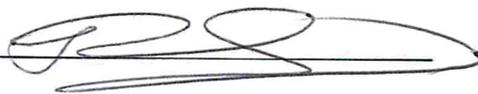
**15. Warranties and Representations Regarding Other Potential Claims**

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 SKF or  
3 any of the Releasees. Cheng and his attorneys, Sy and Smith, PC, agree, represent and warrant  
4 that neither of them shall, themselves or by assisting others, file a notice or pursue a claim against  
5 SKF or any of the Releasees for alleged violation of Proposition 65 for a period of two (2) years  
6 from the Effective Date herein.  
7

8 **IT IS SO STIPULATED:**

9 Dated: Oct. 18, 2016

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

10 By: 

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

11 Parker A. Smith, Attorney for Plaintiff

Ryan Landis, Attorney for Defendant

12 Dated: 10-24-16

Dated: OCTOBER 7, 2016

13 By:   
14  
15 King Pun Cheng

By: Theodore P. Bauer  
On Behalf of SKF USA Inc.

16  
17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18  
19 Dated: \_\_\_\_\_

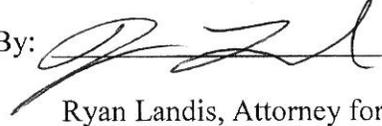
\_\_\_\_\_

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 SKF or  
3 any of the Releasees. Cheng and his attorneys, Sy and Smith, PC, agree, represent and warrant  
4 that neither of them shall, themselves or by assisting others, file a notice or pursue a claim against  
5 SKF or any of the Releasees for alleged violation of Proposition 65 for a period of two (2) years  
6 from the Effective Date herein.  
7

8 **IT IS SO STIPULATED:**

9 Dated: \_\_\_\_\_  
10 By: \_\_\_\_\_  
11 Parker A. Smith, Attorney for Plaintiff

Dated: Oct 18, 2016  
By:   
Ryan Landis, Attorney for Defendant

12 Dated: \_\_\_\_\_  
13 By: \_\_\_\_\_  
14 King Pun Cheng

Dated: OCTOBER 7, 2016  
By: Theodore P. Baum  
On Behalf of SKF USA Inc.

15  
16  
17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18  
19 Dated: \_\_\_\_\_

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