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7 Attorneys for Plaintiff, King Pun Cheng

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10 KING PUN CHENG,

11 Plaintiff,

12 vs.

13 SKF USA INC.; et. al.

14 Defendants.

Case No.

UNLIMITED JURISDICTION

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

Complaint Filed: March 29, 2017

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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 Alameda has proper jurisdiction over SKF as to the allegations contained in
19 the 60 day notice served on or about June 27, 2016, and that venue is proper in the County of
20 Alameda.

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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**

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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
5 2.1 Reformulation Option. The Covered Products shall be deemed to comply with
6 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements
7 for lead if the exposed brass or other metal components that are part of the Covered Products
8 meet the following criteria: the alloy from which the components are made shall have a lead
9 content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). SKF may
10 comply with the above requirements by relying on information obtained from its suppliers
11 regarding the content of the alloy from which the components are made, provided such reliance is
12 in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a
13 method of sufficient sensitivity to establish a limit of quantification (as distinguished from
14 detection) of less than 300 ppm shall be deemed to establish good faith reliance.
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16 2.2 Warning Alternative. As an alternative to reformulating the Covered Products,
17 within 180 days of the Effective Date, Covered Products that SKF ships for sale, sells or offers
18 for sale in California that do not meet the Reformulation Option set forth in Section 2.1 above
19 shall be accompanied by a warning as described in Section 2.3 below.
20

21 2.3 Warnings. Where required under Section 2.2 above, SKF shall provide Proposition
22 65 warnings substantially as follows:

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

25 2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1,
26 SKF shall provide the warning language set forth in Section 2.3 either with the unit package of
27 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
5 2.5 The requirements for warnings, set forth in Section 2.3 above are imposed
6 pursuant to the terms of this Settlement. The Parties recognize that these are not the exclusive
7 methods of providing a warning under Proposition 65 and its implementing regulations and that
8 they may or may not be appropriate in other circumstances.

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

19
20 **3. Entry of Consent Judgment**

21 3.1 With regard to all claims that have been raised or which could be raised with
22 respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products,
23 SKF shall pay a civil penalty of \$1,000 pursuant to Health and Safety Code section 25249.7(b), to
24 be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these
25 funds remitted to the State of California's Office of Environmental Health Hazard Assessment
26 and the remaining 25% of the penalty remitted to Cheng, as provided by California Health &
27 Safety Code § 25249.12(d) and the instructions directly below.
28

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

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

20 The parties reached an accord on the compensation due to Cheng and his counsel
21 under the private attorney general doctrine and principles of contract law. Under these legal
22 principles, SKF shall reimburse Cheng's counsel for fees and costs incurred as a result of
23 investigating, bringing this matter to SKF's attention, and negotiating a settlement. SKF shall pay
24 Cheng's counsel \$21,000 for all attorneys' fees, expert and investigation fees, and related costs
25 associated with this matter and the Notice. SKF shall wire said monies or send a check payable to
26 "Sy and Smith, PC" within fourteen (14) days of the Effective Date. Sy and Smith, PC will
27 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.
16

17
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.
7

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.
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16 6. Severability and Merger

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

21 This Settlement 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 7. Governing Law

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

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5 **8. Notices**

6 8.1 Unless specified herein, all correspondence and notices required to be provided
7 pursuant to this Settlement shall be in writing and personally delivered or sent by: electronic mail
8 and either (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight
9 courier on any party by the other party at the following addresses:

10 SKF:

11 Ryan S. Landis, Esq.
12 Polsinelli LLP
13 2049 Century Park East, Suite 2900
14 Los Angeles, CA 90067
rlandis@polsinelli.com

15 and

16
17
18 For Cheng:

19 Parker A. Smith
20 Sy and Smith, PC
21 11622 El Camino Real, Suite 100
22 Del Mar, CA 92130
parker@sysmithlaw.com

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

25 **9. Counterparts; Facsimile Signatures**

26 9.1 This Settlement may be executed in counterparts and by facsimile, each of which
27 shall be deemed an original, and all of which, when taken together, shall constitute one and the
28 same document.

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10. 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).

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.

14. Warranties and Representations Regarding Other Potential Claims

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 SKF or any of the Releasees. Cheng and his attorneys, Sy and Smith, PC, agree, represent and warrant that neither of them shall, themselves or by assisting others, file a notice or pursue a claim against SKF 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: 4/5/2017
By: [Signature]

Dated: MAY 4, 2017
By: Theodore P. Bar
SKF USA INC.
SECRETARY

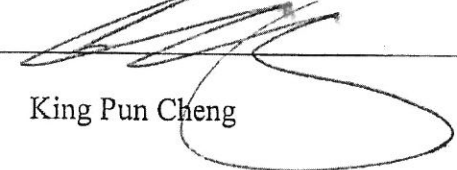
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Parker A. Smith, Attorney for Plaintiff

Ryan Landis, Attorney for Defendant

Dated: 2017-3-28

Dated: May 4, 2017

By: 
King Pun Cheng

By: 
On Behalf of SKF USA Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court