

# **Best Case and Accessories, Inc.\_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 Best Case and Accessories, Inc. (hereafter "Best Case"). Best Case 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. Best Case employs ten or more persons and 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 Best Case has offered for sale and sold in the State of California Just Wireless 6 ft Audio Cable UPC705954200598 containing 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. Cheng has cited Just Wireless 6 ft Audio Cable UPC705954200598 as an example of the brushing sets that are the subject of his allegation.

For purposes of this Private Settlement only, Best Case represents that: Just Wireless 6 ft Audio Cable UPC705954200598 is an item it distributes to retailers and consumers (online and storefront) in the state of California.

### **1.3 Product Description**

The product that is covered by this Private Settlement is defined as any and all Just Wireless Audio Cables that are distributed by Best Case to Ross Stores, Inc. (hereinafter "Ross") 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 July 15, 2016, Cheng served Best Case, Ross, 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 Best Case and Ross were 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.

### **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

## Best Case and Accessories, Inc.\_Cheng Settlement

Superior Court of California, County of San Diego has proper jurisdiction over Best Case as to the allegations contained in the 60 day notice served on or about July 15, 2016, and that venue is proper in the County of San Diego.

Best Case 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 by Best Case 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 by Best Case of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Best Case. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Best Case 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.

## 2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, Best Case shall not ship for sale, sell, or offer for sale in California Products that are manufactured, distributed or sold by Best Case containing DEHP in concentrations of more than 0.1% (1,000 parts per million, or "1,000 ppm") unless they comply with this section. Commencing on the Effective Date, Best Case 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 Section 2.3.

2.1 Reformulation Option. The Products shall be deemed to comply with Proposition 65 with regard to DEHP and be exempt from any Proposition 65 warning requirements for DEHP if the exposed the Products meet the following criteria: the concentrations of DEHP shall be no more than 0.1% (1,000 parts per million, or "1,000 ppm").

## 3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)

With regard to all claims that have been raised or which could be raised with respect to failure to warn pursuant to Proposition 65 with regard to DEHP in the Products, Best Case shall pay a civil penalty of \$500 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.

Best Case 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., \$375; and (b) one check in an amount representing 25% of the total penalty (i.e., \$125) made

## Best Case and Accessories, Inc.\_Cheng Settlement

payable directly to Cheng. Best Case 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, Best Case shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Best Case's attention, and negotiating a settlement in the public interest. Best Case shall pay Cheng's counsel \$6,500 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. Best Case shall issue a payment by check to "Sy and Smith, PC" within five business (5) days of the Effective Date. The payment will be sent via overnight mail to Sy and Smith, to the address set forth in Section 9. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

#### 5. RELEASE OF ALL CLAIMS

##### 5.1 Release of Best Case and Downstream Customers

Cheng, on behalf of himself only, releases Best Case and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Ross Stores, Inc.) their parent, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns, affiliates and subsidiaries, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the Products as set forth in the Notice of Violation. Compliance with the terms of this Private Settlement constitutes compliance with Proposition 65 with respect to exposures to DEHP and DEHP Compound from the Products.

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

## **Best Case and Accessories, Inc.\_Cheng Settlement**

---

releases any other claims that he could make against Best Case or the Releases 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.**

### **5.2 Best Case and Accessories, Inc. Release of Cheng**

Best Case waives any and all claims against Cheng, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or 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.

### **6. Non-Disparagement**

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

### **7. SEVERABILITY AND MERGER**

If, subsequent to the execution 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, then Best Case shall have no further obligations pursuant to this Private Settlement with respect to the products to the extent the Products are so affected.

### **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:

## Best Case and Accessories, Inc.\_Cheng Settlement

---

For Best Case:

Melissa A. Jones  
Stoel Rives, LLP.  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814

and

For Cheng:

Parker A. Smith  
Sy and Smith, PC  
11622 El Camino Real, Suite 100  
Del Mar, CA 92130

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.

### 13. ATTORNEY'S FEES

13.1 A Party who unsuccessfully brings or contests an action arising out of this Private 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 Private 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 Private Settlement on behalf of the Party and legally bind that Party.

# Best Case and Accessories, Inc.\_Cheng Settlement

---

[Signatures Follow]

APPROVED:



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

Melissa A. Jones

Attorney for Defendant, Best Case and Accessories, Inc.

Date: July 14, 2017

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

Parker A. Smith

Attorney for Plaintiff, Kingpun Cheng

Date: 7/6/17

IT IS HEREBY AGREED TO:

By:  \_\_\_\_\_  
Kingpun Cheng

Date: 7-6-2017

IT IS HEREBY AGREED TO:

By:  \_\_\_\_\_ *a.s. President*  
On Behalf of: Best Case and Accessories, Inc.

Date: 6/29/17