

1 PARKER SMITH, ESQ. (SBN 290311)
2 **SY AND SMITH, PC.**
3 11622 El Camino Real, Suite 100
4 Del Mar, CA 92130
5 Telephone: (858) 746-9554
6 Facsimile: (858)746-5199

7
8 Attorneys for Plaintiff, Kingpun Cheng

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

10 KINGPUN CHENG,

11 Plaintiff,

12 vs.

13 SNOW PEAK, INC.; RECREATIONAL
14 EQUIPMENT, INC..

15 Defendants.

Case No. 37-2017-00026437-CU-NP-CTL

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]
ORDER RE ENTRY OF CONSENT
JUDGMENT AS TO SNOW PEAK,
INC. AND RECREATIONAL
EQUIPMENT, INC.**

Complaint Filed: July 20, 2017

18 **1. Introduction**

19 1.1 This Settlement Agreement (hereinafter "Settlement") is hereby entered into by
20 and between Kingpun Cheng, as an individual, (hereinafter "Cheng"), Snow Peak, Inc.
21 (hereinafter "Snow Peak"), and Recreational Equipment, Inc. (hereinafter "REI"). Snow Peak,
22 REI and Cheng shall be collectively referred to as the "Parties" and each of them as a "Party."
23 Cheng is an individual residing in California who seeks to promote awareness of exposures to
24 toxic chemicals and improve human health by reducing or eliminating hazardous substances
25 contained in consumer products. Snow Peak and REI employ ten or more persons as required for
26 purposes of Cal. Health & Safety Code §§ 25249.5 et seq. ("Proposition 65").
27
28

1 1.2 Cheng alleges that Snow Peak and REI have offered for sale and sold in the State
2 of California certain stove/burner and torch/lantern/flame products, including but not limited to
3 “Snow Peak Gigapower stoves and torches” (“Covered Products”) containing lead and lead
4 compounds, a chemical listed under Proposition 65 as a chemical known to the State of California
5 to cause cancer, birth defects, or other reproductive harm, and that they did so without providing
6 the warning Cheng alleges is required by Proposition 65.
7

8 1.3 For purposes of this Settlement only, Snow Peak represents that: the Covered
9 Products are items it distributed to retailers and consumers (online and storefront) in the state of
10 California.
11

12 1.4 On or about September 26, 2016, Cheng served Snow Peak, REI, and various
13 public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to
14 Health & Safety Code §25249.7(d) (the "Notice"), alleging that Snow Peak and REI were in
15 violation of Proposition 65 for failing to warn consumers and customers that the Covered
16 Products exposed users in California to lead and lead compounds. No public enforcer diligently
17 prosecuted the claims threatened in the Notice within sixty days plus service time after service of
18 the Notice to them by Cheng.
19

20 1.5 For purposes of this Settlement only, the Parties stipulate that in the event that
21 enforcement of this Settlement or a dispute arises regarding this Settlement, the Superior Court of
22 California, County of San Diego has proper jurisdiction over Snow Peak and REI as to the
23 allegations contained in the 60 day notice served on or about September 26, 2016, and that venue
24 is proper in the County of San Diego.
25

26 1.6 Nothing in this Consent Judgment shall be construed as an admission by Snow
27 Peak or REI of any fact, finding, conclusion, issue of law, or violation of law, nor shall
28 compliance with this Consent Judgment constitute or be construed as an admission by Snow Peak

1 or REI of any fact, finding, conclusion, issue of law, or violation of law, the same being
2 specifically denied by Snow Peak and REI. This Section shall not, however, diminish or
3 otherwise affect Snow Peak's or REI's obligations, responsibilities, and duties under this Consent
4 Judgment.

5
6 1.7 For purposes of this Settlement, the term "Effective Date" shall mean the date on
7 which notice of the approval and entry of this Consent Judgment by the Court is received by
8 Snow Peak.

9 **2. Injunctive Relief**

10 Commencing on the Effective Date, Snow Peak and REI shall only sell, offer for sale, or
11 distribute for sale in California, Covered Products that are either (a) reformulated pursuant to
12 Section 2.1 or (b) include a warning as provided in Section 2.3.

13
14 2.1 Reformulation Option. The Covered Products shall be deemed to comply with
15 Proposition 65 with regard to lead and lead compounds and be exempt from any Proposition 65
16 warning requirements for lead and lead compounds if the exposed brass or other metal
17 components that are part of the Covered Products meet the following criteria: (1) the Covered
18 Products shall have a lead and lead compounds content in concentrations of no more than 0.3%
19 (3,000 parts per million, or "3,000 ppm"); or (2) the Covered Products shall have a Maximum
20 Allowable Dose Level of exposure of less than 0.5 µg/day.

21
22 2.2 Warning Alternative. As an alternative to reformulating the Covered Products,
23 within 90 days of the Effective Date, Covered Products that Snow Peak or REI ship for sale, sell
24 or offer for sale in California that do not meet the Reformulation Option set forth in Section 2.1
25 above shall be accompanied by a warning as described in Section 2.3 below.

26
27 2.3 Warnings. Where required under Section 2.2 above, Snow Peak shall provide
28 Proposition 65 warnings substantially as follows:

1 **WARNING:** This product can expose you to chemicals including lead, which is known to
2 the State of California to cause Cancer and birth defects or other Reproductive Harm. For more
3 information go to www.P65Warnings.ca.gov.

4 Or

5 **WARNING:** This product contains chemicals known to the State of California to cause
6 Cancer and birth defects or other Reproductive Harm.
7

8 2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1,
9 Snow Peak shall provide the warning language set forth in Section 2.3 either with the unit
10 package of the Covered Products or affixed to the Covered Products. Such warning shall be
11 prominently affixed to or printed on each Product's label or package or the Product itself. If
12 printed on the label, the warning shall be contained in the same section that states other safety
13 warnings, if any, concerning the use of the Product.
14

15 2.5 The requirements for warnings, set forth in Section 2.3 above, are imposed
16 pursuant to the terms of this Settlement. The Parties recognize that these are not the exclusive
17 methods of providing a warning under Proposition 65 and its implementing regulations and that
18 they may or may not be appropriate in other circumstances.

19 2.6 If Proposition 65 warnings for lead and lead compounds, or other specified
20 chemicals, should no longer be required, Snow Peak and REI shall have no further warning
21 obligations pursuant to this Settlement. In the event that a change in the law requires modification
22 of such warnings, Snow Peak and REI may cease to implement or may modify the warnings
23 required under this Settlement in compliance with the change in the law. In the event that the
24 Office of Environmental Health Hazard Assessment promulgates one or more regulations
25 requiring or permitting warning text and/or methods of transmission different than those set forth
26
27
28

1 above, Snow Peak and REI shall be entitled to use, at their discretion, such other warning text
2 and/or method of transmission without being deemed in breach of this Settlement.

3 **3. Entry of Consent Judgment**

4 3.1 With regard to all claims that have been raised or which could be raised with
5 respect to failure to warn pursuant to Proposition 65 with regard to lead and lead compounds in
6 the Covered Products and because opportunities for exposure are minimal due to the nature and
7 expected use of the product, Snow Peak, on behalf of itself and REI, shall pay a civil penalty of
8 \$1,000 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance
9 with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of
10 California's Office of Environmental Health Hazard Assessment and the remaining 25% of the
11 penalty remitted to Cheng, as provided by California Health & Safety Code § 25249.12(d) and the
12 instructions directly below.
13
14

15 Snow Peak shall issue two separate checks for the penalty payment: (a) one check
16 made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing
17 75% of the total penalty (i.e., \$750); and (b) one check in an amount representing 25% of the total
18 penalty (i.e., \$250) made payable directly to Cheng. Snow Peak shall mail these payments within
19 five (5) days after the Effective Date at which time such payments shall be mailed to the
20 following addresses respectively:
21

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA 95812-4010
27

28 And

1 Mr. Kingpun Cheng
2 C/O Sy and Smith, PC
3 11622 El Camino Real, Suite 100
4 San Diego, CA 92130

5
6 3.2 Upon the Court's entry of the consent judgment set forth in this Settlement, this
7 action (Case No. 37-2017-00026437-CU-NP-CTL in the Superior Court for the State of
8 California, County of San Diego) shall be dismissed with prejudice pursuant to the "Release of
9 All Claims" set forth in Part 5 of this Settlement.

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

11 The parties reached an accord on the compensation due to Cheng and his counsel
12 under the private attorney general doctrine and principles of contract law. Under these legal
13 principles, Snow Peak, on behalf of itself and REI, shall reimburse Cheng's counsel for fees and
14 costs incurred as a result of investigating, bringing this matter to Snow Peak's and REI's
15 attention, and negotiating a settlement. Snow Peak, on behalf of itself and REI, shall pay Cheng's
16 counsel \$18,435 for all attorneys' fees, expert and investigation fees, and related costs associated
17 with this matter and the Notice. Snow Peak shall wire said monies or send a check payable to
18 "Sy and Smith, PC" within five (5) days of the Effective Date. Sy and Smith, PC will provide
19 Snow Peak with wire instruction and tax identification information on or before the Effective
20 Date if requested. Other than the payment required hereunder, each side is to bear its own
21 attorneys' fees and costs.

22
23
24 5. **Release of all Claims**

25 5.1 Release of Snow Peak and Downstream Customers, Including REI

26 Cheng, on behalf of himself and on behalf of the general public, releases Snow Peak, REI
27 and their respective officers, directors, attorneys, representatives, shareholders, agents, and
28

1 employees, sister and parent entities, successors, and assigns, and each entity to whom they
2 directly or indirectly distribute or sell the Covered Products including, but not limited to, their
3 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but
4 not limited to, REI and its affiliates and subsidiaries), franchisees, dealers, customers, owners,
5 purchasers, users, parent companies, corporate affiliates, subsidiaries, (collectively “Releasees”)
6 from all claims for violations of Proposition 65 up through the Effective Date based on exposure
7 to lead and lead compounds from the Covered Products as set forth in the Notice of Violation.
8 Compliance with the terms of this Settlement constitutes compliance with Proposition 65 with
9 respect to exposures to lead and lead compounds from the Covered Products.
10

11 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,
12 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,
13 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
14 action and releases any other claims that he could make against Snow Peak or the Releasees
15 arising prior to the Effective Date with respect to violations of Proposition 65. The Parties
16 acknowledge that the claims released above may include unknown claims, and with respect to the
17 foregoing waivers and releases in this paragraph, Cheng hereby specifically waives any and all
18 rights and benefits which he now has, or in the future may have, conferred by virtue of the
19 provisions of Section 1542 of the California Civil Code, which provides as follows:
20

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
22 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
23 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
24 HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;
25

26 as well as under any other state or federal statute or common law principle of similar
27 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
28

1 released matters. Cheng acknowledges and understands the significance and consequences of this
2 specific waiver of California Civil Code section 1542.

3 The Parties intend and agree that this Settlement shall finally resolve Case No. 37-2017-
4 00026437-CU-NP-CTL in the Superior Court for the State of California, County of San Diego.

5
6 **5.2 Snow Peak and REI Release of Cheng**

7 Snow Peak and REI waive any and all claims against Cheng, his attorneys and other
8 representatives, for any and all actions taken or statements made (or those that could have been
9 taken or made) by Cheng and his attorneys and other representatives in the course of investigating
10 claims or otherwise seeking enforcement of Proposition 65 against it in this matter.

11 **6. Severability and Merger**

12 If, subsequent to the execution of this Settlement, any of the provisions of this document
13 are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall
14 not be adversely affected.

15
16 This Settlement contains the sole and entire agreement of the Parties and any and all prior
17 negotiations and understandings related hereto shall be deemed to have been merged within it.
18 No representations or terms of agreement other than those contained herein exist or have been
19 made by any Party with respect to the other Party or the subject matter hereof.

20
21 **7. Governing Law**

22 The terms of this Settlement shall be governed by the laws of the State of California. In
23 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
24 generally, or as to the Covered Products, then Snow Peak and REI shall have no further
25 obligations pursuant to this Settlement with respect to the Covered Products to the extent the
26 Covered Products are so affected.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. Notices

8.1 Unless specified herein, all correspondence and notices required to be provided pursuant to this 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:

Snow Peak:

Ryan Goldstein, Esq.
Jack Baumann, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
ryangoldstein@quinnemanuel.com
jackbaumann@quinnemanuel.com

and

For Cheng:

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

9. Counterparts; Facsimile Signatures

9.1 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.

10. Modification

This Settlement may be modified only by further written agreement of the Parties with court approval or by noticed motion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. 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.

12. 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 certify 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.

IT IS SO STIPULATED:

Dated: 2017-11-8 Dated: _____

By: *Eddie Cheng* By: _____

Kingpun Cheng On Behalf of Snow Peak, Inc.

Dated: _____

By: _____

On Behalf of Recreational Equipment, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. 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.

12. 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 certify 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.

IT IS SO STIPULATED:


Dated: _____ Dated: _____

By: _____ By: _____

Kingpun Cheng

On Behalf of Snow Peak, Inc.

Dated: 11.12.17

By: 

On Behalf of Recreational Equipment, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. 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.

12. 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 certify 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.

IT IS SO STIPULATED:

Dated: _____

Dated: 10, Nov, 2017

By: _____

By: *Jehon Yanson*

Kingpun Cheng

On Behalf of Snow Peak, Inc.

Dated: _____

By: _____

On Behalf of Recreational Equipment, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court