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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 KING PUN CHENG,

11 Plaintiff,

12 vs.

13 HAIER US APPLIANCE SOLUTIONS, INC.

14 Defendants.

Case No. 37-2017-00010851-CU-NP-CTL

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]
ORDER RE ENTRY OF CONSENT
JUDGMENT AS TO HAIER US
APPLIANCE SOLUTIONS, INC.**

Complaint Filed: March 24, 2017

17 **1. Introduction**

18 **1.1 Parties**

19 This Consent Judgment is hereby entered into by and between Kingpun Cheng, as an
20 individual and acting in the interest of the public, (hereinafter "Cheng") and Haier US Appliance
21 Solutions, Inc. (hereinafter "HAIER"). HAIER and Cheng shall be collectively referred to as the
22 "Parties" and each of them as a "Party." Cheng is an individual residing in California who seeks
23 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
24 eliminating hazardous substances contained in consumer products. HAIER employs ten or more
25 persons as required for purposes of Cal. Health & Safety Code §§ 25249.5 et seq. ("Proposition
26 65").
27

1 **1.2 General Allegations**

2 Cheng alleges that HAIER offered for sale and sold in the State of California Haier
3 Stainless Steel Washer Hoses, including but not limited to “Haier Improved GE Appliances
4 Stainless Steel Washer Hoses” UPC084691809968 (“Covered Products”), containing DEHP , a
5 chemical listed under Proposition 65 as a chemical known to the State of California to cause
6 cancer, birth defects, or other reproductive harm, and that they did so without providing the
7 warning Cheng alleges is required by Proposition 65.
8

9 **1.3 Notice of Violation**

10 On or about September 26, 2016, Cheng issued a 60 Day Notice of Violation to HAIER,
11 Home Depot, Inc. and various public enforcement agencies pursuant to Health & Safety Code
12 §25249.7(d) alleging that Haier US Appliance Solutions, Inc. was in violation of Proposition 65
13 for failing to warn California consumers that the Covered Products exposed them to DEHP (“60
14 Day Notice”). The 60 Day Notice is referred to herein as “Notice”. No public enforcer diligently
15 prosecuted the claims threatened in the Notice within sixty days plus service time after service of
16 the Notice to them by Cheng.
17

18 **1.4 Complaint**

19 On or about March 24, 2017 Cheng filed a Complaint against HAIER for civil penalties
20 and injunctive relief (“Complaint”) in San Diego Superior Court, Case No. 37-2017-00010851-
21 CU-NP-CTL. The Complaint alleges, among other things, that HAIER violated Proposition 65
22 by failing to give clear and reasonable warnings of exposure to DEHP from the Covered
23 Products.
24

25 **1.5 Consent to Jurisdiction**

26 For purposes of this Consent Judgment, the Parties consent that this Court has jurisdiction
27 over the allegations of violations contained in the Complaint and personal jurisdiction over the
28

1 named Defendant as to the acts alleged in the Complaint, that venue is proper in the County of
2 San Diego and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
3 and resolution of the allegations contained in the Notices, Complaint, and of all claims which
4 were or could have been raised by any person or entity based in whole or in part, directly or
5 indirectly, on the prior conduct of the Parties or on the facts alleged in the Complaint or arising
6 therefrom or related to.
7

8 **1.6 No Admission**

9 HAIER denies the material, factual, and legal allegations contained in Cheng's Notice and
10 Complaint and maintain that they have not violated Proposition 65. Nothing in this Consent
11 Judgment shall be construed as an admission by HAIER of any fact, finding, conclusion of law,
12 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or
13 be construed as an admission by HAIER of any fact, finding, conclusion of law, issue of law, or
14 violation of law, such being specifically denied. However, this section shall not diminish or
15 otherwise affect the obligations, responsibilities, and duties of HAIER under this Consent
16 Judgment.
17

18 **1.7 Effective Date**

19 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
20 Court approves and enters this Consent Judgment.
21

22 **2. Injunctive Relief**

23 Except for those Covered Products described in Section 2.4 of this Consent Judgment,
24 commencing on the Effective Date, HAIER shall only sell, offer for sale, or distribute for sale in
25 California, Covered Products that are either (a) reformulated pursuant to Section 2.1 or (b)
26 include a warning as provided in Section 2.3.
27

28 **2.1 Reformulation Option.**

1 The Covered Products shall be deemed to comply with Proposition 65 with regard to
2 DEHP, and be exempt from any Proposition 65 warning requirements for DEHP, if the exposed
3 the Covered Products meet the following criteria: the alloy from which the components are made
4 shall have a DEHP content by weight of no more than 0.10% (1,000 parts per million, or “1,000
5 ppm”). HAIER may comply with the above requirements by relying on information obtained
6 from its suppliers regarding the content of the alloy from which the components are made,
7 provided such reliance is in good faith. Obtaining test results showing that the DEHP content is
8 no more than 0.10%, using a method of sufficient sensitivity to establish a limit of quantification
9 (as distinguished from detection) of less than 1,000 ppm shall be deemed to establish good faith
10 reliance. For purposes of this Consent Judgment, Covered Products in compliance with this
11 standard are “Reformulated Products”.
12

13 2.2 **Warning Alternative.**

14 As an alternative to reformulating the Covered Products, , Covered Products that HAIER
15 ships for sale, sells or offers for sale in California that do not meet the Reformulation Option set
16 forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below.
17

18 2.3 **Clear and Reasonable Warnings.**

19 Where required under Section 2.2 above, HAIER shall provide Proposition 65 warnings
20 substantially as follows:
21

22 WARNING: This product can expose you to chemicals including DEHP, which is known
23 to the State of California to cause cancer and birth defects or other reproductive harm. For more
24 information go to www.P65Warnings.ca.gov.

25 OR

26 WARNING: This product contains a chemical known to the State of California to cause
27 cancer and birth defects or other reproductive harm.
28

1 2.3.1 Where utilized as an alternative to meeting the criteria set forth in Section 2.1,
2 HAIER shall provide the warning language set forth in Section 2.3 either with the unit package of
3 the Covered Products or affixed to the Covered Products. Such warning shall be prominently
4 affixed to or printed on each Covered Product's label or package or the Covered Product itself. If
5 printed on the label, the warning shall be contained in the same section that states other safety
6 warnings, if any, concerning the use of the Covered Product.
7

8 2.3.2 The requirements for warnings set forth in Section 2.3 above are imposed pursuant
9 to the terms of this Consent Judgment. The Parties recognize that these are not the exclusive
10 methods of providing a warning under Proposition 65 and its implementing regulations and that
11 they may or may not be appropriate in other circumstances. HAIER may use other warning text
12 and/or method of transmission deemed "clear and reasonable" under regulations promulgated by
13 the Office of Environmental Health Hazard Assessment without being in breach of this Consent
14 Judgment.
15

16 2.4 **Sell-Through**

17 Notwithstanding any other Section in this Consent Judgment, Covered Products that are
18 manufactured prior to June 30, 2017 shall be subject to the release of liability pursuant to Section
19 5 of this Consent Judgment, without regard to when such Covered Products were, or are in the
20 future, distributed or sold to customers. As a result, the obligations of HAIER as set forth in this
21 Consent Judgment, including but not limited to Section 2, do not apply to the Covered Products
22 manufactured prior to June 30, 2017.
23

24 3. **Entry of Consent Judgment**

25 3.1 **Civil Penalty**

26 With regard to all claims that have been raised or which could be raised with respect to
27 failure to warn pursuant to Proposition 65 with regard to DEHP in the Covered Products, HAIER
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1 shall pay a civil penalty of \$2,800 pursuant to Health and Safety Code section 25249.7(b), to be
2 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these
3 funds remitted to the State of California's Office of Environmental Health Hazard Assessment
4 and the remaining 25% of the penalty remitted to Cheng, as provided by California Health &
5 Safety Code § 25249.12(d) and the instructions directly below.
6

7 3.2 **Payment Procedures**

8 HAIER shall issue two separate checks for the penalty payment: (a) one check made
9 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of
10 the total penalty (i.e., \$2,100; and (b) one check in an amount representing 25% of the total
11 penalty (i.e., \$700) made payable directly to Cheng. HAIER shall mail these payments within
12 five (5) days after the Effective Date at which time such payments shall be mailed to the
13 following addresses respectively:
14

15 Office of Environmental Health Hazard Assessment

16 Attn: Mike Gyurics

17 1001 I Street

18 Mail Stop 12-B

19 Sacramento, CA 95814
20

21 and
22

23
24 Mr. Kingpun Cheng

25 C/O Sy and Smith, PC

26 11622 El Camino Real, Suite 100

27 San Diego, CA 92130
28

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

2 The parties reached an accord on the compensation due to Cheng and his counsel
3 under the private attorney general doctrine and principles of contract law. Under these legal
4 principles, HAIER shall reimburse Cheng's counsel for fees and costs incurred as a result of
5 investigating, bringing this matter to HAIER's attention, and negotiating a settlement. HAIER
6 shall pay Cheng's counsel \$35,000 for all attorneys' fees, expert and investigation fees, and
7 related costs associated with this matter and the Notice. HAIER shall wire said monies or send a
8 check payable to "Sy and Smith, PC" within five (5) days of the Effective Date. Sy and Smith,
9 PC will provide HAIER with wire instruction and tax identification information on or before the
10 Effective Date if requested. Other than the payment required hereunder, each side is to bear its
11 own attorneys' fees and costs.
12

13 5. **Release of all Claims**

14 5.1 **Release of HAIER and Downstream Customers, Retailers, Suppliers**
15 **and Entities**
16

17 Cheng, acting on behalf of himself and on behalf of the general public and in the public
18 interest, releases HAIER and its respective officers, directors, attorneys, representatives,
19 shareholders, agents, employees, sister and parent entities, affiliates, subsidiaries, successors, and
20 assigns, its suppliers and vendors, and each entity to whom it directly or indirectly distributes or
21 sells the Covered Products including, but not limited to, their downstream distributors,
22 wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Home
23 Depot, Inc. and its respective officers, directors, attorneys, representatives, shareholders, agents,
24 employees, sister and parent entities, affiliates, subsidiaries, successors, and assigns), franchisees,
25 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, and
26 subsidiaries (collectively "Releasees") from all claims for violations of Proposition 65 up through
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1 the Effective Date based on exposure to DEHP from the Covered Products as set forth in the
2 Notice of Violation. This Consent Judgment is a final and binding resolution between Cheng,
3 acting on his own behalf, and on behalf of the public and in the public interest, and HAIER, and
4 shall have preclusive effect such that no other person or entity, whether purporting to act in his,
5 her, or its interests or the public interest shall be permitted to pursue and/or take any action with
6 respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
7 been brought pursuant to the Notice against HAIER or Releasees. Compliance with the terms of
8 this Consent Judgment constitutes compliance by HAIER and Releasees with Proposition 65 with
9 respect to exposures to DEHP 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 HAIER or the Releasees arising
15 prior to the Effective Date with respect to violations of Proposition 65 based upon the Covered
16 Products. The Parties acknowledge that the claims released above may include unknown claims,
17 and with respect to the foregoing waivers and releases in this paragraph, Cheng hereby
18 specifically waives any and all rights and benefits which he now has, or in the future may have,
19 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
20 provides as follows:
21

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
23 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
24 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY
25 AFFECTED HIS SETTLEMENT WITH THE DEBTOR.
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1 Cheng acknowledges and understands the significance and consequences of this specific
2 waiver of California Civil Code section 1542.

3 **5.2 HAIER Release of Cheng**

4 HAIER waives any and all claims against Cheng, his attorneys and other
5 representatives, for any and all actions taken or statements made (or those that could have been
6 taken or made) by Cheng and his attorneys and other representatives in the course of investigating
7 claims or otherwise seeking enforcement of Proposition 65 against it in this matter.
8

9 **6. Non-Disparagement**

10 The Parties agree to refrain from taking action or making statements, written, oral
11 or through any form of social media, which disparage or defame the goodwill or reputation of the
12 other Party.
13

14 **7. Severability and Merger**

15 If, subsequent to the execution of this Consent Judgment, any of the provisions of
16 this document are held by a court to be unenforceable, the validity of the enforceable provisions
17 remaining shall not be adversely affected.

18 This Consent Judgment contains the sole and entire agreement of the Parties and
19 any and all prior negotiations and understandings related hereto shall be deemed to have been
20 merged within it. No representations or terms of agreement other than those contained herein
21 exist or have been made by any Party with respect to the other Party or the subject matter hereof.
22

23 **8. Governing Law**

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

3 **9. Notices**

4 9.1 Unless specified herein, all correspondence and notices required to be provided
5 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by:
6 electronic mail and either (i) first-class, (registered or certified mail) return receipt requested; or
7 (ii) overnight courier on any party by the other party at the following addresses:
8

9 HAIER:

10 Shelby Miller
11 George Gigounas
12 DLA Piper LLP
13 555 Mission Street, Suite 2400
14 San Francisco, CA 94105
shelby.miller@dlapiper.com
george.gigounas@dlapiper.com

15 and

16 For Cheng:

17 Parker A. Smith
18 Sy and Smith, PC
19 11622 El CHaierno Real, Suite 100
20 Del Mar, CA 92130
parker@sysmithlaw.com

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

23 **10. Counterparts; Facsimile Signatures**

24 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
25 which shall be deemed an original, and all of which, when taken together, shall constitute one and
26 the same document.
27
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1 **11. Court Approval**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one (1)
4 year after it has been fully executed by the Parties.
5

6 **12. Compliance with Health & Safety Code § 25249.7(f)**

7 Cheng agrees to comply with the requirements set forth in California Health & Safety
8 Code §25249.7(f).

9 **13. Modification**

10 This Consent Judgment may be modified only by further written agreement of the Parties
11 with court approval or by noticed motion.
12

13 **14. Attorney Fees**

14 A Party who unsuccessfully brings or contests an action arising out of this Consent
15 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

16 **15. Authorization**

17 The undersigned are authorized to execute this Consent Judgment on behalf of their
18 respective Parties and have read, understood and agree to all of the terms and conditions of this
19 document and certifies that he or she is fully authorized by the Party he or she represents to
20 execute the Consent Judgment on behalf of the Party and legally bind that Party.
21

22 **IT IS SO STIPULATED:**

23
24 Dated: _____

 Dated: _____

25 By: _____

 By: _____

26 Parker A. Smith, Attorney for Plaintiff

 Shelby Miller, Attorney for Defendant

1 **11. Court Approval**

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3 shall be null and void if, for any reason, it is not approved and entered by the Court within one (1)
4 year after it has been fully executed by the Parties.
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18 respective Parties and have read, understood and agree to all of the terms and conditions of this
19 document and certifies that he or she is fully authorized by the Party he or she represents to
20 execute the Consent Judgment on behalf of the Party and legally bind that Party.
21

22 **IT IS SO STIPULATED:**

23
24 Dated: 4/5/17

 Dated: _____

25 By: [Signature]

 By: _____

26 Parker A. Smith, Attorney for Plaintiff

 Shelby Miller, Attorney for Defendant

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Dated: 2017 4 5
By: [Signature]
Kingpun Cheng

Dated: 4/10/17
By: [Signature]
On Behalf of HAIER

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court

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12. Compliance with Health & Safety Code § 25249.7(f)

13. Modification

14. Attorney Fees

15. Authorization

IT IS SO STIPULATED:

Dated: 11/11/17

By: [Signature]

Shelby Miller, Attorney for Defendant