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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 KING PUN CHENG,

11 Plaintiff,

12 vs.

13 PRIME WIRE AND CABLE, INC.

14 Defendants.

Case No. 37-2017-0023996-CU-PO-CTL

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]
ORDER RE ENTRY OF CONSENT
JUDGMENT AS TO PRIME WIRE
AND CABLE, INC.**

Complaint Filed: June 30, 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 general public, (hereinafter "Cheng") and Prime Wire
21 and Cable, Inc. (hereinafter "Prime Wire,"), Prime Wire and Cheng shall be collectively referred
22 to as the "Parties" and each of them as a "Party." Cheng is an individual residing in California
23 who seeks to promote awareness of exposures to toxic chemicals and improve human health by
24 reducing or eliminating hazardous substances contained in consumer products. Prime Wire is a
25 "person in the course of doing business" for purposes of Cal. Health & Safety Code §§ 25249.5 *et*
26 *seq.* ("Proposition 65").
27
28

1 **1.2 General Allegations**

2 Cheng alleges that Prime Wire offered for sale and sold, including directly or indirectly
3 via retailers or other downstream parties, in the State of California power strip/surge protector
4 products, including but not limited to "Prime Wire Power Strip 2-Pack PB8100X2"
5 UPC054732807406, containing Di(2-Ethylhexyl)phthalate ("DEHP"), a chemical listed under
6 Proposition 65 as known to the State of California to cause cancer, birth defects, and/or other
7 reproductive harm, and that they did so without providing the warning Cheng alleges is required
8 by Proposition 65. Power strip or surge protector products, including but not limited to, Prime
9 Wire Power Strip 2-Pack PB8100X2, are referred to herein as "Covered Products".
10

11 **1.3 Notice of Violation**

12 On or about March 29, 2017, Cheng issued a 60 Day Notice of Violation to Prime Wire,
13 Dixieline Lumber Company and public enforcement agencies pursuant to Health & Safety Code
14 §25249.7(d) alleging that Prime Wire and others were in violation of Proposition 65 for failing to
15 warn California consumers that the Covered Products exposed them to DEHP (the "Notice"). No
16 public enforcer has commenced or diligently prosecuted the claims alleged in the Notice.
17

18 **1.4 Complaint**

19 On or about June 30, 2017 Cheng filed a Complaint against Prime Wire and DOES 1-10
20 for civil penalties and injunctive relief ("Complaint") in San Diego Superior Court, Case No. 37-
21 2017-0023996-CU-PO-CTL. The Complaint alleges, among other things, that Prime Wire
22 violated Proposition 65 by failing to give clear and reasonable warnings of exposure to DEHP
23 from use of the Covered Products.
24

25 **1.5 Consent to Jurisdiction**

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

1 over Prime Wire as to the acts alleged in the Notice and Complaint, that venue is proper in the
2 County of San Diego and that this Court has jurisdiction to enter this Consent Judgment as a full
3 settlement and resolution of the allegations contained in the Notice, Complaint, and of all claims
4 which were or could have been raised by any person or entity based in whole or in part, directly
5 or 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 Nothing in this Consent Judgment shall be construed as an admission against interest by
10 Prime Wire of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall
11 compliance with this Consent Judgment constitute or be construed as an admission against
12 interest by Prime Wire of any fact, finding, conclusion of law, issue of law, or violation of law,
13 such being specifically denied by Prime Wire. However, this section shall not diminish or
14 otherwise affect the obligations, responsibilities and duties under this Consent Judgment.
15

16 **1.7** For purposes of this Consent Judgment, the term "Effective Date" shall mean the
17 date that Cheng serves notice on Prime Wire that his Motion to Approve the Consent Judgment
18 has been granted by the Court.
19

20 **2. Injunctive Relief**

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

24 **2.1 Reformulation Option**

25 The Covered Products shall be deemed to comply with Proposition 65 with regard to
26 DEHP, and be exempt from any Proposition 65 warning requirements for DEHP, if the exposed
27 components or surfaces of the Covered Products meet the following criteria: the materials from
28

1 which the exposed components or surface materials are made shall have a DEHP content by
2 weight of no more than 0.10% (1,000 parts per million, or "1,000 ppm"). Prime Wire may
3 comply with the above requirements by relying on information obtained from its suppliers or
4 manufacturers regarding the content of the materials from which the components are made,
5 provided such reliance is in good faith. Obtaining test results showing that the DEHP content is
6 no more than 0.10%, using a method of sufficient sensitivity to establish a limit of quantification
7 (as distinguished from detection) of less than 1,000 ppm shall be deemed to establish good faith
8 reliance. For purposes of this Consent Judgment, Covered Products in compliance with this
9 standard are "Reformulated Products".
10

11 **2.2 Warning Alternative**

12 As an alternative to reformulating the Covered Products, commencing on the Effective
13 Date, Covered Products that Prime Wire ships for sale, sells or offers for sale in California that
14 are not Reformulated Products as set forth in Section 2.1 above shall be accompanied by a clear
15 and reasonable warning as described in Section 2.3 below.
16

17 **2.3 Clear and Reasonable Warnings**

18 Where required under Section 2.2 above, Prime Wire shall provide a Proposition 65
19 warning on each Covered Product, or its immediate packaging, or label, using one or more of the
20 options below, as Prime Wire may elect in its sole discretion:
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 OR

2 **WARNING:** This product contains chemicals, including lead, known to the State of
3 California to cause cancer, and birth defects or other reproductive harm. Wash hands after
4 handling.
5

6 OR



7 **WARNING:** This product can expose you to chemicals including Di(2-
8 ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer
9 and birth defects or other reproductive harm. For more information go to
10 www.P65Warnings.ca.gov.

OR, if the warning is on the Covered Product (and not its packaging):



11 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov/product.

12 2.3.1 Where utilized as an alternative to meeting the criteria set forth in Section 2.1,

13 Prime Wire shall provide the warning language set forth in Section 2.3 either with the unit
14 package of the Covered Products or affixed to the Covered Products or on the label. Such
15 warning shall be prominently affixed to or printed on each Product's label or unit package or the
16 Product itself. If printed on the label, the warning shall be contained in the same section that
17 states other safety warnings, if any, concerning the use of the Covered Product. For Covered
18 Products "in the stream of commerce" prior to the Effective Date, Prime Wire may use existing
19 Proposition 65 warning text, or such Covered Products may be sold by any person without a
20 warning. "In the stream of commerce" as used herein means either: (a) the Covered Products
21 have left the possession of Prime Wire, or (b) have been shipped to distributors or retailers, or (c)
22 are in a distribution warehouse operated by Prime Wire and are in final, consumer-ready
23 packaging or form and are distributed by Prime Wire to its customers before December 31, 2017.
24

25 2.3.2 The requirements for warnings, set forth in Section 2.3 above are imposed
26 pursuant to the terms of this Consent Judgment. The Parties recognize that these are not the
27
28

1 exclusive methods of providing a warning under Proposition 65 and its implementing regulations
2 and that they may or may not be appropriate in other circumstances or for other products.

3 2.4 **Products in the Stream of Commerce or Manufactured Prior to the Effective**
4 **Date**

5 Notwithstanding anything else in this Consent Judgment, Covered Products that are or
6 were in the stream of commerce prior to the Effective Date, or were manufactured prior to the
7 Effective Date, shall be subject to the release of liability pursuant to Section 5 of this Consent
8 Judgment, without regard to when such Covered Products were, or are in the future, distributed or
9 sold to customers or purchased by consumers. As a result, the obligations of Prime Wire as set
10 forth in this Consent Judgment, including but not limited to Section 2, do not apply to products
11 that are or were in the stream of commerce or manufactured prior to the Effective Date.
12

13
14 3. **Entry of Consent Judgment**

15 3.1 With regard to all claims that have been raised or which could be raised with
16 respect to failure to warn pursuant to Proposition 65 with regard to DEHP in the Covered
17 Products, Prime Wire shall pay a civil penalty of \$1,000.00 pursuant to Health and Safety Code
18 section 25249.7(b), to be apportioned in accordance with California Health & Safety Code §
19 25192, with 75% of these funds remitted to the State of California's Office of Environmental
20 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Cheng,
21 as provided by California Health & Safety Code § 25249.12(c)(1) and (d) and the instructions
22 directly below.
23

24 3.2 **Payment Procedures**

25 Prime Wire shall issue two separate checks for the penalty payment: (a) one check made
26 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of
27 the total penalty (i.e., \$750.00); and (b) one check in an amount representing 25% of the total
28

1 penalty (i.e., \$250.00) made payable directly to Cheng. Prime Wire shall mail these payments
2 within five (5) business days after the Effective Date to the following addresses respectively:

3 Proposition 65 Settlement Coordinator

4 California Department of Justice

5 1515 Clay Street, 20th Floor

6 Oakland, CA 94612-1413; and

7 Mr. Kingpun Cheng

8 C/O Sy and Smith, PC

9 11622 El Camino Real, Suite 100

10 San Diego, CA 92130.

11
12 **4. Reimbursement of Fees and Costs**

13 The Parties reached an accord on the compensation due to Cheng and his counsel under
14 the private attorney general doctrine and principles of contract law. Under these legal principles,
15 Prime Wire shall reimburse Cheng's counsel for fees and costs incurred as a result of
16 investigating, bringing this matter to Prime Wire's attention, and negotiating a settlement. Prime
17 Wire shall pay Cheng's counsel \$12,500.00 for all attorneys' fees, expert and investigation fees,
18 and related costs associated with this matter, the Notices and associated fees and costs Prime
19 Wire shall wire said monies or send a check payable to "Sy and Smith, PC" within five (5)
20 business days of the Effective Date. Sy and Smith, PC will provide Prime Wire with wire
21 instruction and tax identification information on or before the Effective Date. Other than the
22 payment required hereunder, each side is to bear its own attorneys' fees and costs.
23
24

25 **5. Release of all Claims**

26 **5.1 Release of Prime Wire and Downstream Customers, Retailers and Entities**

1 Cheng, acting on behalf of himself and in the public interest, fully waives and releases
2 Prime Wire and its officers, directors, attorneys, representatives, shareholders, agents, and
3 employees, sister and parent entities, predecessors, successors, and assigns, and each entity to
4 whom they directly or indirectly distributed or distribute or sold or sell the Covered Products
5 including, but not limited to, their downstream distributors, wholesalers, licensors, licensees,
6 auctioneers, retailers (including, but not limited to Dixieline Lumber Company, its parent and all
7 affiliates and subsidiaries thereof), their respective employees, agents and assigns, franchisees,
8 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,
9 (collectively "Releasees") from all claims for violations of Proposition 65 up through the
10 Effective Date, based on exposure to DEHP from the Covered Products as set forth in the Notices
11 and Complaint. Compliance with the terms of this Consent Judgment by Prime Wire constitutes
12 compliance with Proposition 65 with respect to exposures to DEHP from the Covered Products
13 after the Effective Date.
14

15
16 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,
17 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,
18 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
19 action and releases any other claims, cause of action, obligation, costs, expenses, attorneys' fees,
20 damages, losses, liabilities, and demands that he made or could make against Prime Wire or the
21 Releasees with respect to alleged violations of Proposition 65 arising from the Covered Products.
22 The Parties acknowledge that the claims released above may include unknown claims, and with
23 respect to the foregoing waivers and releases in this paragraph, Cheng hereby specifically waives
24 any and all rights and benefits which he now has, or in the future may have, conferred by virtue of
25 the provisions of Section 1542 of the California Civil Code, which provides as follows:
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
3 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY
4 AFFECTED HIS SETTLEMENT WITH THE DEBTOR.
5

6 Cheng acknowledges and understands the significance and consequences of this specific
7 waiver of California Civil Code section 1542.

8 5.2 **Prime Wire Release of Cheng**

9 Prime Wire waives any and all claims against Cheng, and his attorneys, for any and all
10 actions taken or statements made by Cheng or his attorneys in the course of investigating claims
11 or otherwise seeking enforcement of Proposition 65 against it in this matter up through the
12 Effective Date.
13

14 6. **Non-Disparagement**

15 The Parties agree to refrain from taking action or making statements, written, oral or
16 through any form of media, including social media, which disparage or defame the goodwill or
17 reputation of the other Party in connection with this Consent Judgment.

18 7. **Severability and Merger**

19 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
20 document are held by a court to be unenforceable, the validity of the enforceable provisions
21 remaining shall not be adversely affected.
22

23 This Consent Judgment contains the sole and entire agreement of the Parties and any and
24 all prior negotiations and understandings related hereto shall be deemed to have been merged
25 within it. No representations or terms of agreement other than those contained herein exist or
26 have been made by any Party with respect to the other Party or the subject matter hereof.
27

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1 **8. Governing Law**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by
4 reason of law generally, or as to the Covered Products, then Prime Wire shall have no further
5 obligations pursuant to this Consent Judgment with respect to the Covered Products to the extent
6 the Covered Products are so affected. This Consent Judgment shall have no application to
7 Covered Products that are not sold in California.
8

9 **9. Notices**

10 9.1 Unless specified herein, all correspondence and notices required to be provided
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by:
12 electronic mail and either (i) first-class, (registered or certified mail) return receipt requested; or
13 (ii) overnight courier on any Party by the other Party at the following addresses:
14

15 Prime Wire:

16 Judith M. Praitis
17 Sidley Austin LLP
18 555 West Fifth Street
19 Los Angeles, CA 90013
20 jpraitis@sidley.com

21 and

22 For Cheng:

23 Parker A. Smith
24 Sy and Smith, PC
25 11622 El Camino Real, Suite 100
26 Del Mar, CA 92130
27 parker@sysmithlaw.com

28 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.

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1 **10. Counterparts; Facsimile Signatures**

2 10.1 This Consent Judgment may be executed in counterparts and by facsimile or
3 exchange by electronic means, each of which shall be deemed an original, and all of which, when
4 taken together, shall constitute one and the same document.
5

6 **11. Modification**

7 This Consent Judgment may be modified only by further written agreement of the Parties
8 with court approval or by noticed motion. A copy of any motion to modify shall be served on the
9 Office of Attorney General.

10 **12. Attorney Fees**

11 A Party who unsuccessfully brings or contests an action arising out of this Consent
12 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs if
13 awarded by court order after application therefor.
14

15 **13. Authorization**

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

21 **14. Notice to Attorney General; Motion**

22 Cheng agrees to satisfy all submittal obligations to the Office of the Attorney General
23 under Proposition 65 and to file a motion seeking approval of this consent judgment pursuant to
24 Proposition 65 with the Court.

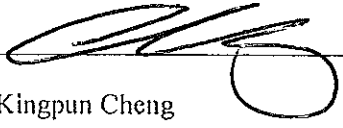
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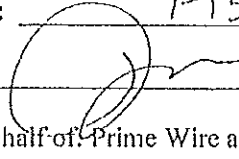
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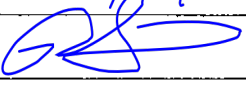
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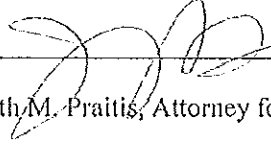
IT IS SO STIPULATED:

Dated: 2017-7-25
By: 
Kingpun Cheng

Dated: 7-13-17
By: 
On Behalf of: Prime Wire and Cable, Inc.

Approved as to Form:

Dated: 7/25/17
By: 
Parker A. Smith, Attorney for Plaintiff

Dated: 7/13/17
By: 
Judith M. Praitis, Attorney for Defendant

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____
Judge of the Superior Court