

Settlement Agreement

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (hereafter "Settlement Agreement") is hereby entered into by and between Kingpun Cheng, as an individual, (hereinafter "Cheng") and Newell Brands, Inc., Irwin Industrial Tool Company, Stanley Black & Decker, Inc., Black & Decker (U.S.) Inc., individually and dba "Irwin," Dixieline aka Dixieline Lumber Company, Builders FirstSource, Inc., Irwin Newell Rubbermaid (hereafter collectively, "Irwin"). Irwin 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. For purposes of this Settlement Agreement only, Irwin acknowledges that it 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 Relevant Allegations and Representations

Cheng alleges that Irwin has offered for sale and sold in the State of California metal combination squares containing lead and that such sales have not been accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, or other reproductive harm. Cheng has cited "Irwin"-branded combination squares as products that contain accessible brass parts that may expose a user to lead.

Irwin disputes and denies Cheng's allegations. For purposes of this Settlement Agreement only, Irwin represents that Irwin's metal combination squares are items it has distributed to retailers and/or sold in the State of California.

1.3 Product Description

The products covered by this Settlement Agreement are defined as "Irwin"-branded metal combination squares that have been or are distributed and/or sold by Irwin in California. All such items shall be referred to herein as the "Products."

1.4 Notices of Violation

On or about March 30, 2017, Cheng served Irwin 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 Irwin was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer is diligently prosecuting the claims in the Notice.

1.5 Stipulation as to Jurisdiction/No Admission

For purposes of this Settlement Agreement only, the Parties stipulate that in the event that enforcement becomes necessary, or a dispute arises regarding this Settlement Agreement, the Superior Court of California, County of San Diego has specific jurisdiction over Irwin for the purposes of enforcing the terms of this Settlement Agreement only, and that venue for the enforcement action is proper in the County of San Diego.

The Parties have entered into this Settlement Agreement to resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Settlement Agreement shall be construed as an admission by Irwin of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Irwin of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Irwin. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Irwin under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed by both Parties.

2. WARNINGS AND REFORMULATION

Commencing 90 days after the Effective Date, Irwin shall not ship for sale, sell, or offer for sale in California Products that are manufactured, distributed or sold by Irwin containing more than 100 ppm lead unless they comply with this section. Commencing 90 days after the Effective Date, Irwin shall only 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; or (c) tested and certified to expose consumers to less than the then-current exposure action levels for warnings or reformulation under Proposition 65.

2.1 Reformulation Option. The Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the exposed brass or other metal components that are part of the Products meet the following criteria: the alloy from which the components are made shall have a lead content by weight of no more than 0.01% (100 parts per million, or "100 ppm"). Irwin may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the alloy from which the components are made, provided such reliance is in good faith. For example, without limitation, obtaining test results showing that the lead content is no more than 0.01%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 100 ppm, shall be deemed to establish good faith reliance.

2.2 Warning Alternative. As an alternative to reformulating the Products, commencing 90 days from the Effective Date, Products that Irwin ships for sale, sells or offers for sale in California that

do not meet the Reformulation Option set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below.

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

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

OR

WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

2.4 Warning Method. Where utilized as an alternative to meeting the criteria set forth in Section 2.1, Irwin shall provide the warning language set forth in Section 2.3 either with the Product's unit packaging or labeling or affixed to the Products. Such warning shall be noticeably affixed to or printed on each Product's label or packaging or on the Product itself. Irwin may continue to utilize, on an ongoing basis, unit packaging containing not identical but substantively the same Proposition 65 warnings as those set forth in Section 2.3 above, but only to the extent such packaging materials have already been printed within 90 days after the Effective Date. Cheng agrees any such warnings comply with both Proposition 65 and the terms of this Settlement Agreement.

2.5 The requirements for warnings, set forth in Section 2.3 above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

2.6 If Proposition 65 warnings for lead or lead compounds or other specified chemicals should no longer be required, Irwin shall have no further warning obligations pursuant to this Settlement Agreement. In the event that a change in the law requires or permits modification of the content of or method of providing such warnings, Irwin may cease to implement or may modify the warnings required under this Settlement Agreement in compliance with the change in the law. Cheng acknowledges that in lieu of the provisions contained in Sections 2.3 and 2.4 above, Irwin may provide any warning required by this Settlement Agreement in the form and by means which comply with the requirements for consumer warnings in the provisions contained in 27 California Code of Regulations §25600, *et seq.* operative as of August 30, 2018. Irwin is also authorized to discontinue warnings in the event that testing conducted pursuant to California regulations for lead exposure demonstrates an exposure level below that requiring a Proposition 65 warning pursuant to California law.

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 lead or lead compounds in the Products, Irwin shall pay a civil penalty of \$1,000 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. After a full investigation, Cheng agrees that this penalty payment satisfies and complies with the criteria set forth under Proposition 65.

Irwin 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., \$750); and (b) one check in an amount representing 25% of the total penalty (i.e., \$250) made payable directly to "Kingpun Cheng." (Sy and Smith, PC has already provided Irwin with tax identification information with respect to this payment.) Irwin is authorized, and shall, issue a 1099 form with respect to the \$250 payment to Mr. Cheng as provided in this Agreement, consistent with the W-9 provided by Sy and Smith. Irwin shall mail these payments within fourteen (14) business days after the Effective Date at which time such payments shall be mailed to the following addresses respectively:

Office of Environmental Health Hazard Assessment
Attn: Mike Gyurics
1001 I Street
Mail Stop 12-B
Sacramento, CA 95814

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

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Cheng and his counsel under Code of Civil Procedure Section 1021.5 and other applicable law. Under these legal principles, Irwin shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Irwin's attention, and negotiating this Settlement Agreement in the public interest. Pursuant to and in satisfaction of Code of Civil Procedure Section 1021.5 and other applicable law, Irwin shall pay Cheng's counsel a total of \$14,000 in full and complete satisfaction and payment for all attorneys' fees, expert and investigation fees, and related costs associated with this matter, the Notice, and negotiating this Settlement Agreement. Irwin is authorized to, and shall issue a 1099 form representing the payment of \$14,000 as required by this Agreement to Sy and Smith, PC, consistent with the W9 it has previously provided. Irwin shall deliver a check or wire said monies to "Sy and Smith, PC" within fourteen (14) business days of the Effective Date. Sy and Smith, PC will provide Irwin with wire instruction and tax identification information on or before the Effective Date. Other than the payment required hereunder, each side is to bear his or its own attorneys' fees and costs.

Payments made under this agreement to Cheng and/or Sy and Smith may be made by prompt wire transfer as follows:

Account Name – Sy and Smith, PC

Bank : [bank identification previously provided by Sy and Smith, PC]

Bank Address: [address previously provided by Sy and Smith, PC]

Account Number: [number previously provided by Sy and Smith, PC]

Routing Number: [number previously provided by Sy and Smith, PC]

5. RELEASE OF ALL CLAIMS

5.1 Release of Irwin and Downstream Customers

Cheng, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees only, releases Irwin and its officers, directors, attorneys, representatives, shareholders, agents, employees, and sister and parent entities, and each of Irwin's downstream distributors, wholesalers, licensors, customers, licensees, auctioneers, retailers (including, but not limited to, Dixieline Lumber Company, Builders FirstSource, all other post-manufacture distributors, and their affiliates and subsidiaries), franchisees, dealers, purchasers, users, and each of Irwin's owners, 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 lead or lead compounds from the Products as set forth in the Notice of Violation. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to lead 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 further provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims, liabilities, and demands of any nature, character or kind, known or unknown, suspected or unsuspected, as such claims relate to Proposition 65. Cheng further acknowledges that he is familiar with California Civil Code section 1542, which provides as follows:

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

Cheng, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that he may have under, or which may be conferred on him by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters herein.

5.2 Irwin Release of Cheng

Except as set forth in this Agreement, Irwin 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 relating to the Products.

6. SEVERABILITY AND MERGER

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

This Settlement Agreement 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.

7. GOVERNING LAW

The terms of this Settlement Agreement 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 Irwin shall have no further obligations pursuant to this Settlement Agreement.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: 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:

For Irwin:

Kevin R. Crisp, Esq.
LESTER & CANTRELL, LLP
1770 Iowa Avenue, Suite 110
Riverside, CA 92507

AND

Theodore Morris, Esq.
STANLEY BLACK & DECKER, INC.
701 E. Joppa Road
Mail Stop TW230
Law Department
Towson, MD 21286

and

For Cheng:

Parker A. Smith, Esq.
Sy and Smith, PC
11622 El Camino Real, Ste. 100
San Diego, 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.

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

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 Agreement may be modified only by further written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement 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 Agreement on behalf of the Party and legally bind that Party.

[Signature contained on the next page]

APPROVED AS TO FORM:

Lester & Cantrell, LLP

By: _____

Kevin R. Crisp, Esq.

Attorneys for Irwin

Date: _____

SY AND SMITH, PC

By: _____

Parker A. Smith

Attorneys for Kingpun Cheng

Date: _____

IT IS HEREBY AGREED TO:

By: _____

Kingpun Cheng

Date: _____

IT IS HEREBY AGREED TO:

By:  _____

On Behalf of: Irwin


Date: 8/24/17

Theodore C. Morris

Assistant Secretary


APPROVED AS TO FORM:

Lester & Cantrell, LLP

By: 
Kevin R. Crisp, Esq.
Attorneys for Irwin

Date: 8/31/17

SY AND SMITH, PC

By: 
Parker A. Smith
Attorneys for Kingpun Cheng

Date: 8/28/17

IT IS HEREBY AGREED TO:

By: 
Kingpun Cheng

Date: 2017-8-28

IT IS HEREBY AGREED TO:

By: 
On Behalf of: Irwin

Theodore C. Morris
Assistant Secretary

Date: 8/24/17