

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 Attorneys for Plaintiff, Kingpun Cheng

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

10 KINGPUN CHENG,

11 Plaintiff,

12 vs.

13 HOMEWERKS WORLDWIDE, LLC; et. al.

14 Defendants.

Case No.

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO HOMEWERKS  
WORLDWIDE, LLC**

Complaint Filed: September 28, 2017

17 **1. Introduction**

18 1.1 This Settlement Agreement is hereby entered into by and between Kingpun Cheng,  
19 as an individual, (hereinafter “Cheng”) and Homewerks Worldwide, LLC (hereinafter  
20 “Homewerks”). Homewerks and Cheng shall be collectively referred to as the “Parties” and each  
21 of them as a “Party.” Cheng is an individual residing in California who seeks to promote  
22 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating  
23 hazardous substances contained in consumer products. Homewerks employs ten or more persons  
24 as required for purposes of Cal. Health & Safety Code §§ 25249.5 et seq. (“Proposition 65”).

25 1.2 Cheng alleges that Homewerks has offered for sale and sold in the State of  
26 California brass valves, such as Homewerks Brass Valve, 1” UPC820633982319, containing  
27  
28

1 Diisononyl Phthalate (“DINP”), and that such sales have not been accompanied by Proposition 65  
2 warnings. DINP is listed under Proposition 65 as a chemical known to the State of California to  
3 cause cancer. Cheng has cited Homewerks Brass Valve, 1”UPC820633982319 as an example of  
4 the brass valves that are the subject of his allegation.

5  
6 1.3 For purposes of this Settlement only, Homewerks represents that: Homewerks  
7 Brass Valve, 1” is an item it distributes to distributors, wholesalers and retailers (online and  
8 storefront) in the state of California.

9 1.4 The product that is covered by this Settlement is defined as any and all  
10 Homewerks Worldwide, LLC brand brass valves containing DINP that are distributed by  
11 Homewerks to Orchard Supply Hardware or others, and sold in California. All such items shall  
12 be referred to herein as the “Covered Products.”

13  
14 1.5 On or about May 8, 2017, Cheng served Homewerks, Orchard Supply Hardware,  
15 and various public enforcement agencies with a document entitled "60-Day Notice of Violation"  
16 pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Homewerks and  
17 Orchard Supply Hardware were in violation of Proposition 65 for failing to warn consumers and  
18 customers that the Covered Products exposed users in California to DINP, and lead and lead  
19 compounds. No public enforcer diligently prosecuted the claims threatened in the Notice within  
20 sixty days plus service time after service of the Notice to them by Cheng.

21  
22 1.6 For purposes of this Settlement only, the Parties stipulate that in the event that  
23 enforcement of this Settlement or a dispute arises regarding this Settlement, the Superior Court of  
24 California, County of San Francisco has proper jurisdiction over Homewerks as to the allegations  
25 contained in the 60 day notice served on or about May 8, 2017, and that venue is proper in the  
26 County of San Francisco.

1           1.7     For purposes of this Settlement, the term “Effective Date” shall mean the date on  
2           which the Parties receive notice of the approval of this Consent Judgment by the Court, including  
3           tentative rulings.

4           **2.     Injunctive Relief**

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

9           2.1     Reformulation Option. The Covered Products shall be deemed to comply with  
10          Proposition 65 with regard to DINP and be exempt from any Proposition 65 warning  
11          requirements for DINP if the portions of the Products which come into contact with the body  
12          surface during reasonably foreseeable use meet the following criterion: the concentrations of  
13          DINP shall be no more than 0.1% (1,000 parts per million, or “1,000 ppm”).

15          2.2     Warning Alternative. As an alternative to reformulating the Covered Products,  
16          commencing on the Effective Date, Covered Products that Homewerks ships for sale, sells or  
17          offers for sale in California that do not meet the Reformulation Option set forth in Section 2.1  
18          above shall be accompanied by a warning as described in Section 2.3 below.

19          2.3     Warnings. Where required under Section 2.2 above, Homewerks shall provide  
20          Proposition 65 warnings substantially as follows:

22                 WARNING: This product can expose you to chemicals including DINP, which is known  
23                 to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

24                 Or

25                 WARNING: This product contains DINP, a chemical known to the State of California to  
26                 cause cancer.

27                 OR, for Products that contain listed chemicals in addition to DINP, such as lead  
28

1           WARNING: This product contains [one or more] chemicals, including lead, known to the  
2 State of California to cause cancer and birth defects or other reproductive harm. [Wash hands  
3 after handling.]

4 As to the last warning, the bracketed text may, but is not required to, be used.

5           2.4     Where utilized as an alternative to meeting the criteria set forth in Section 2.1,  
6 Homewerks shall provide the warning language set forth in Section 2.3 either with the unit  
7 package of the Covered Products or affixed to the Covered Products so that such warning shall be  
8 prominently affixed to or printed on each Covered Product's label or package or the Covered  
9 Product itself. If printed on the label, the warning shall be contained in the same section that  
10 states other safety warnings, if any, concerning the use of the Covered Product; Homewerks may  
11 continue to utilize, on an ongoing basis, unit packaging containing not identical but substantively  
12 the same Proposition 65 warnings as those set forth in Section 2.3 above or as set forth in the  
13 Consent Judgment entered on June 30, 2014 in *Mateel Environmental Justice Foundation v.*  
14 *Mueller Industries (Homewerks Worldwide LLC)* (San Francisco Case No. CGC-13-531776), as  
15 amended, but only to the extent such packaging materials are printed no later than ninety (90)  
16 after the Effective Date. Plaintiff agrees any such warnings comply with both Proposition 65 and  
17 the terms of this Settlement Agreement. Notwithstanding the above, Plaintiff agrees that  
18 Homewerks may comply with the warning requirements of this Settlement Agreement by  
19 complying with Title 27, California Code of Regulations, Sections 25601, et seq., as they may be  
20 amended from time to time, with the express acknowledgement and agreement that (1) such  
21 warnings may identify other Proposition 65-listed carcinogens in addition to or instead of DINP;  
22 and (2) such warnings may be in the form of the short form "on-product" warnings described in  
23 Title 27, California Code of Regulations, Sections 25602(a)(4) and 25603(b).  
24  
25  
26  
27  
28

1           2.5     The requirements for warnings, set forth in Section 2.3 above are imposed  
2 pursuant to the terms of this Settlement. The Parties recognize that these are not the exclusive  
3 methods of providing a warning under Proposition 65 and its implementing regulations.

4           **3.     Entry of Consent Judgment**

5           3.1     With regard to all claims that have been raised or which could have been raised  
6 with respect to failure to warn pursuant to Proposition 65 with regard to DINP in the Covered  
7 Products and because opportunities for exposure are minimal due to the nature and expected use  
8 of the Covered Products, Homewerks shall pay a civil penalty of \$2,000 pursuant to Health and  
9 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
10 Code § 25192, with 75% of these funds remitted to the State of California's Office of  
11 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to  
12 Cheng, as provided by California Health & Safety Code § 25249.12(d) and the instructions  
13 directly below.

14                     Homewerks shall issue two separate checks for the penalty payment: (a) one  
15 check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount  
16 representing 75% of the total penalty (i.e., \$1,500; and (b) one check in an amount representing  
17 25% of the total penalty (i.e., \$500) made payable directly to Cheng. Homewerks shall mail  
18 these payments within five (5) days after the Effective Date at which time such payments shall  
19 be mailed to the following addresses respectively:  
20  
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

1  
2 Mr. Kingpun Cheng  
3 C/O Sy and Smith, PC  
4 11622 El Camino Real, Suite 100  
5 San Diego, CA 92130  
6

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

8 The parties reached an accord on the compensation due to Cheng and his counsel  
9 under the private attorney general doctrine and principles of contract law. Under these legal  
10 principles, Homewerks shall reimburse Cheng's counsel for fees and costs incurred as a result of  
11 investigating, bringing this matter to Homewerks's attention, and negotiating a settlement.  
12 Homewerks shall pay Cheng's counsel \$21,250 for all attorneys' fees, expert and investigation  
13 fees, and related costs associated with this matter and the Notice. Homewerks shall wire said  
14 monies or send a check payable to "Sy and Smith, PC" within five (5) days of the Effective Date.  
15 Sy and Smith, PC will provide Homewerks with wire instruction and tax identification  
16 information on or before the Effective Date if requested. Other than the payment required  
17 hereunder, each side is to bear its own attorneys' fees and costs.  
18

19 5. **Release of all Claims**

20 5.1 Release of Homewerks and Downstream Customers  
21

22 This Agreement is a full, final, and binding resolution between Cheng, on behalf of  
23 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and  
24 in the interest of the general public, and Homewerks and each of its owners, officers, directors,  
25 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, distributors,  
26 franchisees, marketplace hosts, direct and indirect customers (including but not limited to OSH),  
27 their respective parents (including Lowe's Companies), and all subsidiaries and affiliates thereof  
28

1 and their respective employees, agents, and assigns, affiliates and subsidiaries, franchisees,  
2 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,  
3 and their respective officers, directors, attorneys, representatives, shareholders, agents, and  
4 employees, and sister and parent entities (all collectively “Defendant Releasees”) of any violation  
5 of Proposition 65 that has been or could have been asserted against Homewerks or Defendant  
6 Releasees based on the Notice or complaint filed in this action, regarding the failure to warn  
7 about exposure to DINP arising in connection with any Covered Product manufactured, sourced,  
8 distributed, or sold by Homewerks prior to the Effective Date. Settling Defendant’s compliance  
9 with this Agreement shall be deemed compliance with Proposition 65 with respect to DINP in the  
10 Covered Products after the Effective Date.  
11

12 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
13 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,  
14 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
15 action and releases any other claims that he could make against Homewerks or the other  
16 Defendant Releasees arising prior to the Effective Date with respect to violations of Proposition  
17 65 based upon the Covered Products. The Parties acknowledge that the claims released above  
18 may include unknown claims, and with respect to the foregoing waivers and releases in this  
19 paragraph, Cheng hereby specifically waives any and all rights and benefits which he now has, or  
20 in the future may have, conferred by virtue of the provisions of Section 1542 of the California  
21 Civil Code, which provides as follows:  
22

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
25 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY  
26 AFFECTED HIS SETTLEMENT WITH THE DEBTOR.  
27  
28

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

5.2 Homewerks Release of Cheng

Homewerks 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 the claims asserted in the Notice or complaint filed in this action..

6. 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 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.

7. Governing Law

The terms of this 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 Covered Products, then Homewerks shall have no further obligations pursuant to this Settlement with respect to the Covered Products to the extent the Covered Products are so affected.

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:



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

Homeworks:  
  
Ann G. Grimaldi  
Grimaldi Law Offices  
50 California Street, Suite 1500  
San Francisco, CA 94111  
[ann.grimaldi@grimaldilawoffices.com](mailto:ann.grimaldi@grimaldilawoffices.com)

and

For Cheng:  
  
Parker A. Smith  
Sy and Smith, PC  
11622 El Camino Real, Suite 100  
Del Mar, CA 92130  
[parker@sysmithlaw.com](mailto: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. 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 may be modified only by further written agreement of the Parties with court approval or by noticed motion.

**12. Attorney Fees**

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

3 **13. Authorization**

4 The undersigned are authorized to execute this Settlement on behalf of their respective  
5 Parties and have read, understood and agree to all of the terms and conditions of this document  
6 and certifies that he or she is fully authorized by the Party he or she represents to execute the  
7 Settlement on behalf of the Party and legally bind that Party.  
8

9 **IT IS SO STIPULATED:**

10 Dated: October 24, 2017

Dated: October 24, 2017

11 By: 

By: 

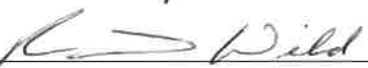
12 Parker A. Smith, Attorney for Plaintiff

Ann G. Grimaldi, Attorney for Defendant

13 Dated: 2017-10-24

Dated: 10/23/2017

14 By: 

By: 

15 Kingpun Cheng

On Behalf of Homewerks Worldwide, LLC

16  
17  
18 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

19 Dated: \_\_\_\_\_

\_\_\_\_\_

20 Judge of the Superior Court  
21  
22  
23  
24  
25  
26  
27  
28