

# Westinghouse Cheng Settlement

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## 1. INTRODUCTION

### 1.1 The Parties

This Settlement Agreement (hereinafter "**Settlement**") is hereby entered into by and between Kingpun Cheng, as an individual (hereinafter "**Cheng**"), and Westinghouse Lighting Corporation, a Pennsylvania corporation (hereafter "**Westinghouse**"). Westinghouse 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. Westinghouse is a family-owned business that was started in 1946 and currently sells a full line of light bulbs, lighting fixtures, ceiling fans and lighting accessories all driven by the power of an American brand – Westinghouse.

### 1.2 Allegations and Representations

Cheng alleges that Westinghouse has offered for sale and sold to The Home Depot, Inc., a Delaware corporation, Home Depot U.S.A., Inc., a Georgia corporation (hereinafter, collectively "**Home Depot**"), in California, a 4" Crossbar Tapped 1/4-IP kit (UPC #030721701108), which includes, among other parts, a 1/4-IP by 1/8-IP reducing bushing containing lead (collectively "**Item 70110**"), and that such sales prior to June 2013 had not been accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to California to cause cancer, birth defects and other reproductive harm. Cheng has cited Item 70110 as the subject of his allegation.

For purposes of this Settlement only, Westinghouse represents that Item 70110 is an item Westinghouse distributes to Home Depot in California.

### 1.3 Product Description

The product that is covered by this Settlement, and defined in Section 1.2 as Item 70110, is distributed by Westinghouse and sold to Home Depot in California. Such item shall be referred to herein as the "**Product**."

### 1.4 Notices of Violation

On or about July 14, 2017, Cheng served Westinghouse, Westinghouse Electric Corporation, a Delaware corporation ("**Westinghouse Electric**"), Home Depot, 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 Westinghouse was in violation of Proposition 65 for failing to warn consumers and customers that the Product exposed them in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty (60) days plus service time after service of the Notice to them by Cheng.

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## 1.5 Stipulation as to Jurisdiction/No Admission

For purposes of this Settlement only, the Parties stipulate that in the event that enforcement of this Settlement or a dispute arises regarding this Settlement, the Superior Court of California, County of San Diego, has proper jurisdiction over Westinghouse only as to the allegations contained in the Notice served on or about July 14, 2017, and that venue is proper in the County of San Diego.

Nothing in this Settlement shall be construed as an admission by Westinghouse of any fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement constitute or be construed as an admission by Westinghouse, Westinghouse Electric or Home Depot of any fact, finding, conclusion, issue of law, or violation of law. However, this Section 1.5 shall not diminish or otherwise affect the obligations, responsibilities, and duties of Westinghouse under this Settlement.

## 1.6 Effective Date

For purposes of this Settlement, the term “**Effective Date**” shall mean the date this Settlement is last signed by a Party.

## 2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, Westinghouse shall not ship for sale, sell, or offer for sale in California any Product that is manufactured, distributed or sold by Westinghouse containing more than 0.03% (300 parts per million, or “300 ppm”) lead unless it complies with this Section 2. Commencing on the Effective Date, Westinghouse shall ship for sale, sell, or offer for sale to Home Depot in California only Product that is either (a) reformulated pursuant to Section 2.1 or (b) includes a warning as provided in Section 2.3.

**2.1 Reformulation Option.** The Product 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 Product meet the following criteria: the alloy from which the components are made shall have a lead content by weight of no more than 0.03% (300 parts per million, or “**300 ppm**”). Westinghouse may comply with the requirements of Section 2 and this Section 2.1 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. Obtaining test results showing that the lead content is no more than 300 ppm, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish good faith reliance.

**2.2 Warning Alternative.** As an alternative to reformulating the Product, commencing on the Effective Date, Product that Westinghouse ships for sale, sells or offers for sale in California that does not meet the Reformulation Option set forth in Sections 2 and/or 2.1 shall be accompanied by the warning described in Section 2.3.

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**2.3 Warnings.** Where required under Section 2.2, Westinghouse shall provide the following Proposition 65 warning, which shall be revised pursuant to The Office of Environmental Health Hazard Assessment (OEHHA) regulations, adopted in August 2016, and that will take full effect in August 2018:

WARNING: This product contains chemicals known to the State of California to cause cancer, birth defects and/or other reproductive harm.

**2.4** Where utilized as an alternative to meeting the criteria set forth in Section 2.1, Westinghouse shall provide the warning language set forth in Section 2.3 as follows:

With the unit package of the Product or affixed to the Product. Such warning shall be prominently affixed to or printed on each Product's label or package or the Product itself. If printed on the package, the warning shall be contained on the backside. Westinghouse 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, but only to the extent such packaging materials have already been printed within ninety (90) days after the Effective Date. Plaintiff agrees any such warnings comply with both Proposition 65 and the terms of this Settlement.

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

### **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 in the Product, and taking into consideration the extremely prompt and cooperative manner with which Westinghouse has taken in correcting the violation, Westinghouse shall pay a civil penalty of One Hundred and No/100 Dollars (\$100.00) pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with seventy-five percent (75%) of these funds remitted to the California's OEHHA, and the remaining twenty-five percent (25%) of the penalty remitted to Cheng, as provided by California Health & Safety Code § 25249.12(d) and the instructions in the following paragraph.

Westinghouse 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 seventy-five percent (75%) of the total penalty – i.e., Seventy-Five and No/100 Dollars (\$75.00); and (b) one check in an amount representing twenty-five (25%) of the total penalty – i.e., Twenty-Five and No/100 Dollars (\$25.00), made payable directly to Cheng. Westinghouse shall mail these payments within five (5) business days after the Effective Date at which time such payments shall be mailed to the following addresses respectively:

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Mike Gyurics  
Office of Environmental Health Hazard Assessment  
Fiscal Operations  
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  
Del Mar, CA 92130

#### 4. REIMBURSEMENT OF FEES AND COSTS

The parties reached an accord on the compensation due to Cheng and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Westinghouse shall reimburse Cheng's counsel for reasonable fees and costs incurred as a result of investigating, bringing this matter to Westinghouse's attention, and negotiating a settlement in the public interest. Westinghouse shall pay Cheng's counsel Three Thousand Eight Hundred and No/100 Dollars (\$3,800.00 ) for all attorneys' fees, expert and investigation fees and related costs associated with this matter and the Notice. Westinghouse shall wire said monies to "Sy and Smith, PC" within five (5) business days of the Effective Date. Sy and Smith, PC, will provide Westinghouse with wire instructions and tax identification information on or before the Effective Date. Other than the payment required hereunder, each Party agrees to pay its own attorneys' fees and costs.

#### 5. RELEASE OF ALL CLAIMS

5.1 Release of Westinghouse, Westinghouse Electric, Home Depot, and Downstream Customers.

Cheng, on behalf of himself only, releases Westinghouse, Westinghouse Electric, Home Depot, and each of their downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, including, but not limited to, Home Depot, Westinghouse, Westinghouse Electric, their parent companies, and all subsidiaries and affiliates thereof, and their respective employees, agents, and assigns, affiliates and subsidiaries, franchisees, dealers, customers, owners, purchasers, users, 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 from the Product as set forth in the Notice. Compliance with the terms of this Settlement constitutes compliance with Proposition 65 with respect to exposures to lead from the Product.

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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 releases any other claims that he could make against Westinghouse, Westinghouse Electric, or Home Depot or the Releasees arising prior to the Effective Date with respect to violations of Proposition 65 based upon the Product. With respect to the foregoing waivers and releases in this paragraph, Cheng hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

Cheng waives any and all claims against Westinghouse and/or its attorney, Howard J. Anderson, for any and statements made by Westinghouse and/or its attorney in the course of defending this enforcement of Proposition 65 against Westinghouse, Westinghouse Electric and Home Depot in this matter.

## **5.2 Westinghouse Release of Cheng**

Westinghouse waives any and all claims against Cheng, his attorney, Parker A. Smith, 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 it in this matter.

## **6. Confidentiality and Non-Disparagement**

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

## **7. SEVERABILITY AND MERGER**

If, subsequent to the execution of this 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.

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## 8. GOVERNING LAW

The terms of this Settlement shall be governed by the laws of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Westinghouse shall have no further obligations pursuant to this Settlement with respect to the products to the extent the Product is so affected.

## 9. NOTICES

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:

For Westinghouse:

Howard Anderson  
123 College Blvd  
San Antonio, TX 78209

and

For Cheng:

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

Any party, from time to time, may specify in writing by the means set forth in this Section 9 to the other party a change of address to which all notices and other communications shall be sent.

## 10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement may be executed in counterparts and delivered by facsimile or email as a PDF attachment, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

## 11. 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).

## 12. MODIFICATION

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

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## 13. ATTORNEYS' FEES

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

## 14. 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 Settlement and certifies that he or she is fully authorized by the Party he or she represents to execute the Settlement on behalf of the Party and to legally bind that Party.

IT IS HEREBY AGREED TO:

By:   
Kingpun Cheng

Date: 2018-3-12

IT IS HEREBY AGREED TO:

By:   
Raymond Angelo, President and CEO  
On behalf of: Westinghouse

Date: 3/8/18