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

10 KINGPUN CHENG,  
11 Plaintiff,  
12 vs.  
13 TENERGY CORPORATION,  
14 Defendants.

Case No. 37-2018-0018928-CU-NP-CTL

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO TENERGY  
CORPORATION**

Complaint Filed: April 17, 2018

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17 **1. Introduction**

18 **1.1 Parties**

19 This Stipulation and [Proposed] Order re Consent Judgment (“Consent Judgment”) is  
20 hereby entered into by and between Kingpun Cheng, as an individual and acting in the interest of  
21 the public (hereinafter “Cheng”), and Tenergy Corporation (hereinafter “Tenergy”). Tenergy and  
22 Cheng shall be collectively referred to as the “Parties” and each of them as a “Party.” Cheng is  
23 an individual residing in California who seeks to promote awareness of exposures to toxic  
24 chemicals and improve human health by reducing or eliminating hazardous substances contained  
25 in consumer products. For purposes of this Stipulation and proposed Order, Tenergy  
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1 acknowledges that it employs ten or more persons as required for purposes of Cal. Health &  
2 Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

3           **1.2 General Allegations**

4           Cheng alleges that Tenergy offered for sale and sold in the State of California metallic  
5 fidget spinners, including but not limited to “Tenergy Model 61241 Premium Finger Spinner”  
6 UPC844949029612, containing lead and lead compounds, which are chemicals listed under  
7 Proposition 65 as a chemical known to the State of California to cause cancer, birth defects,  
8 and/or other reproductive harm, and that it did so without providing the warning Cheng alleges is  
9 required by Proposition 65. The products that are covered by this Consent Judgment are defined  
10 as metallic fidget spinners manufactured or distributed by or for Tenergy that are or were sold by  
11 Tenergy and other retailers in or into California. All such metallic fidget spinners, including but  
12 not limited to “Tenergy Model 61241 Premium Finger Spinner,” are referred to herein as  
13 “Covered Products”. Tenergy believed and believes, based on testing performed by the product  
14 manufacturer before receiving Cheng’s 60-day notice in October 2017, that the Covered Products  
15 do not contain allegedly impermissible levels of accessible lead or lead compound that would  
16 expose users to lead in excess of the allowable safe harbor number for lead. Cheng represents  
17 and contends that he has confirmed through testing conducted by an independent laboratory that  
18 lead was present and accessible in amounts that would expose users to lead in excess of the  
19 allowable safe harbor number for lead (0.05 µg/day for reproductive toxicity and 15 µg/day oral  
20 for carcinogens), as established by California Office of Environmental Health Hazard  
21 Assessment. See <https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>.  
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25           **1.3 Notice of Violation**

26           On or about October 9, 2017, Cheng issued a 60 Day Notice of Violation to Tenergy,  
27 Amazon, and various public enforcement agencies pursuant to Health & Safety Code §25249.7(d)  
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1 alleging that Tenergy was in violation of Proposition 65 for failing to warn California consumers  
2 that the Covered Products exposed them to LEAD ("60 Day Notice") in excess of the safe harbor  
3 levels as established by the California Office of Environmental Health Hazard Assessment. The  
4 60 Day Notice is referred to herein as "Notice". No public enforcer diligently prosecuted the  
5 claims threatened in the Notice within sixty days plus service time after service of the Notice to  
6 them by Cheng.

8 **1.4 Complaint**

9 On or about April 17, 2018, Cheng filed a Complaint against Tenergy for civil penalties  
10 and injunctive relief ("Complaint") in San Diego Superior Court, Case No. 37-2018-00018928-  
11 CU-NP-CTL. The Complaint alleges, among other things, that Tenergy violated Proposition 65  
12 by failing to give clear and reasonable warnings of exposure to lead and lead compounds from the  
13 Covered Products.

15 **1.5 Consent to Jurisdiction/ No Admission**

16 For purposes of this Consent Judgment only, the Parties consent that this Court has  
17 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
18 over the named Defendant as to the acts alleged in the Complaint, that venue is proper in the  
19 County of San Diego and that this Court has jurisdiction to enter this Consent Judgment as a full  
20 settlement and resolution of the allegations contained in the Notices, Complaint, and of all claims  
21 which were or could have been raised by any person or entity based in whole or in part, directly  
22 or indirectly, on the prior conduct of the Parties or on the facts alleged in the Complaint or arising  
23 therefrom or related to.

25 **1.6 No Admission**

26 Tenergy denies the material, factual, and legal allegations contained in Cheng's Notice  
27 and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent  
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1 Judgment shall be construed as an admission by Tenergy of any fact, finding, conclusion of law,  
2 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or  
3 be construed as an admission by Tenergy of any fact, finding, conclusion of law, issue of law, or  
4 violation of law, such being specifically denied by Tenergy. However, this section shall not  
5 diminish or otherwise affect the obligations, responsibilities and duties under this Consent  
6 Judgment.  
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8 **1.7 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that  
10 the Motion to Approve the Consent Judgment has been granted by the Court. For purposes of this  
11 Consent Judgment, the term "Execution Date" shall mean the date this Consent Judgment is  
12 signed by all parties.  
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14 **2. Injunctive Relief**

15 Any Covered Product manufactured after the Effective Date that is sold, offered for sale,  
16 or distributed for sale in California shall either (a) be reformulated pursuant to Section 2.1 or  
17 (b) include a warning as provided in Section 2.3. Compliance with the terms of this Consent  
18 Judgment shall constitute compliance with Proposition 65 by Tenergy and the Releasees with  
19 respect to lead or lead compounds in Covered Products.  
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21 **2.1 Reformulation Option.**

22 The Covered Products shall be deemed to comply with Proposition 65 with regard to lead,  
23 and be exempt from any Proposition 65 warning requirements for lead, if the exposed  
24 components of the Covered Products meet the following criteria: the alloy from which the  
25 components are made shall have a lead content by weight of no more than 0.30% (3,000 parts per  
26 million, or "3,000 ppm"). Tenergy may comply with the above requirements by relying on  
27 information obtained from its suppliers regarding the content of the alloy from which the  
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1 components are made, provided such reliance is in good faith. Obtaining test results showing that  
2 the lead content is no more than 0.30%, using a method of sufficient sensitivity to establish a limit  
3 of quantification (as distinguished from detection) of less than 3,000 ppm shall be deemed to  
4 establish good faith reliance. For purposes of this Consent Judgment, Covered Products in  
5 compliance with this standard are “Reformulated Products”.

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7 **2.2 Warning Alternative.**

8 As an alternative to reformulating the Covered Products, Covered Products manufactured  
9 after the Effective Date that Tenery ships for sale, sells, or offers for sale in or into California  
10 that are not Reformulated Products as set forth in Section 2.1 above shall be accompanied by a  
11 clear and reasonable warning as described in Section 2.3 below.

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13 **2.3 Clear and Reasonable Warnings.**

14 Where required under Section 2.2 above, Tenery shall provide Proposition 65 warnings  
15 substantially as follows:

16  **WARNING:** This product can expose you to chemicals including lead, which is  
17 known to the State of California to cause cancer and birth defects or other reproductive harm. For  
18 more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

19  
20 OR

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

23 OR other warning content and methods allowed now or in the future pursuant to  
24 Proposition 65 or its implementing regulations.

25 Where the unit packaging, label, package insert, or product is not printed using the color  
26 yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of  
27 the text of the warning, in a size no smaller than the height of the word “WARNING.”  
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1           2.3.1 Where utilized as an alternative to meeting the criteria set forth in Section 2.1,  
2 Tenergy shall provide the warning language set forth in Section 2.3 either with the unit package  
3 of the Covered Products or affixed to the Covered Products. Such warning shall be prominently  
4 affixed to or printed on each Product's label, package, package insert, or the 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 Product. Tenergy may continue to utilize, on an  
7 ongoing basis, unit packaging that is not identical but contains substantively the same  
8 Proposition 65 warnings as those set forth in Section 2.3 above, but only to the extent such  
9 packaging materials have already been printed no later than ninety days after the Effective Date.  
10 Any such warnings comply with both Proposition 65 and the terms of this Consent Judgment.  
11

12           2.3.2 The requirements for warnings set forth in Section 2.3 above are imposed pursuant  
13 to the terms of this Consent Judgment. The Parties recognize that these are not the exclusive  
14 methods of providing a warning under Proposition 65 and its implementing regulations and that  
15 they may or may not be appropriate in other circumstances. Moreover, the Parties acknowledge  
16 that nothing in this Consent Judgment shall prohibit Tenergy from providing additional  
17 information in connection with the warnings required herein.  
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19           **2.4 Products Manufactured Prior to the Effective Date**

20           Notwithstanding anything else in this Consent Judgment, Covered Products that were  
21 manufactured prior to the Effective Date shall be subject to the release of liability pursuant to  
22 Section 5 of this Consent Judgment, without regard to when such Covered Products were or are in  
23 the future distributed or sold to customers. As a result, the obligations of Tenergy as set forth in  
24 this Consent Judgment, including but not limited to reformulation or warning pursuant to  
25 Section 2, do not apply to these products manufactured prior to the Effective Date.  
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**3. Entry of Consent Judgment**

3.1 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 Covered Products, Tenergy 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 (“OEHHA”) and the remaining 25% of the penalty remitted to Cheng, as provided by California Health & Safety Code § 25249.12(c)(1) and (d) and the instructions directly below.

**3.2 Payment Procedures**

Tenergy 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 Cheng. Tenergy shall mail these payments within five (5) days after the Effective Date to the following addresses respectively:

To Office of Environmental Health Hazard Assessment:

For United States Postal Service Delivery:  
Attn: Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS #19B  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:  
Attn: Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street, MS #19B  
Sacramento, CA 95814

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

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

7 The Parties reached an accord on the compensation due to Cheng and his counsel under the  
8 private attorney general doctrine and principles of contract law. Under these legal principles,  
9 Tenergy shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating,  
10 bringing this matter to Tenergy's attention, and negotiating a settlement. Tenergy shall pay  
11 Cheng's counsel \$15,000 for all attorneys' fees, expert and investigation fees, and related costs  
12 associated with this matter and the Notices. Tenergy shall send a check payable to "Sy and  
13 Smith, PC" within five (5) days of the Effective Date. Sy and Smith, PC will provide Tenergy  
14 with their tax identification information on or before the Effective Date if requested. Other than  
15 the payment required hereunder, each side is to bear its own attorneys' fees and costs.

16 **5. Release of all Claims**

17 **5.1 Release of Tenergy and Downstream Customers, Retailers, and Entities**

18 Cheng, acting on behalf of himself and in a representative capacity in the public interest,  
19 releases Tenergy and its respective officers, directors, attorneys, representatives, shareholders,  
20 agents, and employees, sister and parent entities, successors, and assigns, and each entity to  
21 whom it directly or indirectly distributed or distributes or sold or sells the Covered Products  
22 including, but not limited to, their downstream distributors, wholesalers, licensors, licensees,  
23 auctioneers, retailers (including, but not limited to Amazon, their parents and all affiliates and  
24 subsidiaries thereof), their respective employees, agents and assigns, franchisees, dealers,  
25 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,  
26 (collectively "Releasees") from all claims for violations of Proposition 65 up through the  
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1 Effective Date, and consistent with the provisions of Section 2.4, above, based on exposure to  
2 lead from the Covered Products as set forth in the Notices. The release in this Section applies to  
3 all Covered Products that were manufactured prior to the Effective Date, regardless of the date  
4 any Releasee distributes or sells the Covered Products. Compliance with the terms of this  
5 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead  
6 from the Covered Products.  
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8 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
9 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity,  
10 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
11 action and releases any other claims, cause of action, obligation, costs, expenses, attorneys' fees,  
12 damages, losses, liabilities, and demands that he could make against Tenergy or the Releasees  
13 with respect to violations of Proposition 65 based upon the Covered Products. The Parties  
14 acknowledge that the claims released above may include unknown claims, and with respect to the  
15 foregoing waivers and releases in this paragraph, Cheng hereby specifically waives any and all  
16 rights and benefits which he now has, or in the future may have, conferred by virtue of the  
17 provisions of Section 1542 of the California Civil Code, which provides as follows:  
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19  
20 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
21 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**  
22 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
23 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**  
24 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**  
25 **HER SETTLEMENT WITH THE DEBTOR.**

26 Cheng acknowledges and understands the significance and consequences of this specific  
27 waiver of California Civil Code section 1542.  
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**5.2 Tenergy Release of Cheng**

Tenergy waives any and all claims against Cheng, his attorneys and other representatives, for any and all actions taken or statements made by Cheng and his attorneys and other representatives whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Products.

**6. 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 Consent Judgment, 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 Consent Judgment 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.

**8. Governing Law**

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California.

Compliance with the terms of this Consent Judgment resolves any issue, now or in the future, regarding the requirements of Proposition 65 with respect to alleged exposures to lead and lead compounds arising from the Covered Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products,

1 then Tenergy shall provide written notice to Cheng of any asserted change in the law, and shall  
2 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
3 that, the Covered Products are so affected.

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5 **9. Notices**

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

10 For Tenergy:

11 Tenergy Corp.  
12 Attn. Jun Xu  
13 436 Kato Terrace  
14 Fremont CA 94539

15 With a copy to:

16 Jeffrey Parker, Esq.  
17 Sheppard Mullin Richter & Hampton LLP  
18 333 South Hope Street, 43rd Floor  
19 Los Angeles, CA 90071-1422  
20 jparker@sheppardmullin.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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**10. Counterparts; Facsimile Signatures**

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

**11. Post Execution Activities**

Cheng agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, Cheng agrees to employ his best efforts, and those of his counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of this Consent Judgment in a timely manner.

**12. Modification**

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

**13. Attorney Fees**

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

**14. Authorization**

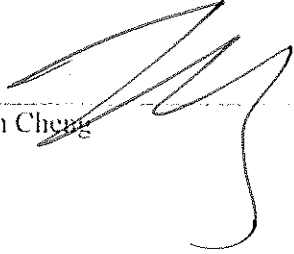
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certifies that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment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

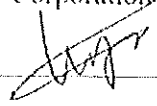
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IT IS SO STIPULATED:

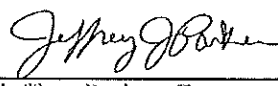
Dated: 2018-5-10

Dated: 05/08/2018

By:   
Kingpun Cheng

Tenergy Corporation  
By:   
Jun Xu

Dated: May 8, 2018

SHEPPARD MULLIN RICHTER &  
HAMPTON LLP  
By:   
Jeffrey Parker, Esq.  
Attorneys for Defendant,  
TENERGY CORPORATION

Dated: May 9, 2018

SY & SMITH  
By:   
Parker A. Smith, Esq.  
Attorneys for Plaintiff,  
KINGPUN CHENG

IT IS SO ORDERED, ADJUDGED AND DECREED:

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

Judge of the Superior Court