

Cheng Hillman Group Settlement Agreement

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 The Hillman Group, Inc. (hereafter "Hillman"). Hillman 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. Hillman is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. ("Proposition 65").

1.2 Allegations and Representations

Cheng alleges that Hillman has offered for sale and sold in the State of California, lamp raisers containing lead and lead compounds ("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 and other reproductive harm. Cheng has cited #54011 1 1/4" – 27 Lamp Raiser UPC008236050202 as an example of the products which are the subject of his allegations.

1.3 Product Description

The products that are covered by this Settlement are defined as all lamp raisers manufactured by or for Hillman and sold in California. All such items shall be referred to herein as the "Products."

1.4 Notice of Violation

On or about May 11, 2018, Cheng served Hillman and Amazon.com, Inc. ("Amazon"), 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 Hillman and Amazon were in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to Lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time after service of the Notice to them by Cheng.

1.5 Stipulation as to Jurisdiction/No Admission

For purposes of this Settlement only, the Parties stipulate that in the event that a dispute arises regarding this Settlement, the Superior Court of California, County of San Diego has proper jurisdiction over Hillman as to the allegations contained in the Notice, and that venue is proper in the County of San Diego.

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Nothing in this Settlement shall be construed as an admission by Hillman or Amazon 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 Hillman or Amazon of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Hillman under this Settlement.

1.6 Effective Date




For purposes of this Settlement, the term “Effective Date” shall mean the date this Settlement is signed by all parties.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, Hillman shall not manufacture or cause to be manufactured any Products for sale or distribution in California that are not compliant with Section 2.1 or 2.2 below.

2.1 Reformulation Option. The Products shall be deemed to be exempt from any Proposition 65 warning requirements for Lead if the brass or other metal components that are part of the Products and which may be reasonably mouthed or handled by an ordinary consumer 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”). Hillman may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the alloy from which the relevant components are made, provided such reliance is in good faith. (Without limitation, 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 reformulation as set forth in Section 2.1 and as otherwise required under the Section 2, Hillman shall provide one of the following Proposition 65 warning statements:

-  WARNING: This product can expose you to 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.
-  WARNING: This product can expose you to chemicals, including lead, which are 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.
-  WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov

The warning statement selected by Hillman from the above shall either appear on the unit package of the Products or be affixed to the Products in at least 6 point font so that an ordinary individual will be able to read and understand it prior to purchase or use. Hillman 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

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materials have already been printed within ninety days after the Effective Date. Plaintiff agrees any such warnings comply with both Proposition 65 and the terms of this Settlement Agreement.

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 Products and taking into consideration the prompt and cooperative manner with which Hillman has corrected the violation, Hillman shall pay a civil penalty of \$500.00 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.

Hillman 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., \$375.00); and (b) one check in an amount representing 25% of the total penalty (i.e., \$125.00) made payable directly to Cheng. Hillman shall mail these payments within five (5) days after the Effective Date at which time such payments shall be mailed to the following addresses respectively:

Mike Gyurics
Office of Environmental Health Hazard Assessment
Fiscal Operations
Attn. Prop 65 Penalties (Cheng v. Hillman)
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 the private attorney general doctrine and principles of contract law. Under these legal principles, Hillman shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Hillman's attention, and negotiating a settlement in the public interest. Hillman shall pay Cheng's counsel \$8,000.00 for all attorneys' fees, expert and investigation fees and related costs associated with this matter and the Notice. Within five (5) days of the Effective Date, Hillman shall mail said monies to "Sy and Smith, PC" at the following address:

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Parker Smith
Sy and Smith, PC
11622 El Camino Real, Suite 100
San Diego, CA 92130

Cheng shall provide Hillman with completed W9s for Cheng and Sy and Smith, PC following the Effective Date.

Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

5. RELEASE OF ALL CLAIMS

5.1 Release of Hillman and Its Customers

Cheng, on behalf of himself and not in his representative capacity, releases Hillman, and each of their downstream distributors, wholesalers, licensors, licensees, auctioneers, users, customers, retailers (including, but not limited to, Amazon.com) and the parents, affiliates, subsidiaries, officers, employees, agents, and assigns of any of the foregoing, (collectively "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead from the Products as set forth in the Notice of Violation. As between Cheng and the Releasees, compliance with the terms of this Settlement Agreement shall be deemed to constitute compliance with Proposition 65 relative to Lead in 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 releases any other claims that he could make against Hillman or the Releasees arising with respect to violations of Proposition 65 or any other law or claim prior to the Effective Date. With respect to the foregoing, 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.

5.2 Hillman's Release of Cheng

Hillman 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 it in this matter.

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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 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.

8. 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 Products, then Hillman shall have no further obligations pursuant to this Settlement with respect to the products to the extent the Products are 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 Hillman:

Douglas Roberts
General Counsel
The Hillman Group, Inc.
10590 Hamilton Ave
Cincinnati, Ohio 45231
(Email: Doug.Roberts@HillmanGroup.com)

And a copy to

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John E. Dittoe
Law Office of John E. Dittoe
70 Hazel Lane
Piedmont, CA 94611
(Email: jack@jdittoe.com)

and

For Cheng:

Parker A. Smith
Sy and Smith, PC
11622 El Camino Real, Suite 100
San Diego, CA 92130
(Email: 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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

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.

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 with neither Party to unreasonably withhold consent or agreement to modification or (2) pursuant to court Order.

13. ATTORNEY'S 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 attorney's 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 document 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 legally bind that Party.

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IT IS HEREBY AGREED TO:

By: Kingpun Cheng
Kingpun Cheng

Date: 2019-3-12

IT IS HEREBY AGREED TO:

By: [Signature]
On Behalf of: The Hillman Group, Inc.

Date: 3/19/19