

Settlement Agreement

1. INTRODUCTION

1.1 The Parties

This Private Settlement Agreement (hereinafter "Private Settlement") is hereby entered into by and between Kingpun Cheng, as an individual, (hereinafter "Cheng") and Bully Tools, Inc. (hereafter "Bully"). Bully 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.

1.2 Allegations and Representations

Cheng alleges that Bully has offered for sale and sold in the State of California (either directly or through third party distributors or retailers), Bully Tools Pro-Grade Flooring Scraper (UPC735390913004) containing Di[2--Ethylhexyl] Phthalate ("DEHP"), and that such sales have not been accompanied by warnings which comply with the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65" or "Prop 65"). DEHP is regulated under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and reproductive toxicity. Cheng has cited the Bully Tools Pro-Grade Flooring Scraper as an example of a broader category of "Pro-Grade Flooring Scrapers" that are the subject of his allegation.

For purposes of this Private Settlement only, Bully represents that the Bully Tools Pro-Grade Flooring Scrapers are items it either sells directly or distributes to retailers in the state of California.

1.3 Product Description

The products that are covered by this Private Settlement are defined as Pro-Grade Flooring Scrapers manufactured and distributed by Bully, including but not limited to the Bully Tools Pro-Grade Flooring Scrapers, and sold in California. All such items shall be referred to herein as the "Products."

1.4 Notices of Violation

On or about May 16, 2018, Cheng served Bully Tools, Inc., QPI Tools, Inc., Home Depot, Inc., Home Depot U.S.A., Inc., 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 a violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to DEHP. No public enforcer diligently prosecuted the claims threatened in the Notices within sixty days plus service time after service of the Notices to them by Cheng.

1.5 Stipulation as to Jurisdiction/No Admission

For purposes of this Private Settlement only, the Parties stipulate that in the event that enforcement of this Private Settlement or a dispute arises regarding this Private Settlement, the Superior Court of California, County of San Diego has proper jurisdiction over Bully as to the allegations

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contained in the 60 day notice served on or about May 16, 2018, and that venue is proper in the County of San Diego.

Nothing in this Private Settlement shall be construed as an admission by Bully of any fact, finding, issue of law, or violation of law; nor shall compliance with this Private Settlement constitute or be construed as an admission by Bully 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 Bully under this Private Settlement.

1.6 Effective Date

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

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, Bully shall not ship for sale, sell, or offer for sale in California Products that are manufactured, distributed or sold by Bully containing more than 0.1% (1,000 parts per million, or "1,000 ppm") DEHP unless they comply with this section. Commencing on the Effective Date, Bully shall 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.

2.1 Reformulation Option. The Products shall be deemed to comply with Proposition 65 with regard to DEHP and be exempt from any Proposition 65 warning requirements for DEHP if the plastic components that are part of the Products meet the following criteria: the plastic from which the components are made shall have a DEHP content by weight of no more than 0.1% (1,000 parts per million, or "1,000 ppm"). Bully 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. Obtaining test results showing that the DEHP content is no more than 1,000 ppm, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 1,000 ppm shall be deemed to establish good faith reliance.

2.2 Warning Alternative. As an alternative to reformulating the Products, commencing on the Effective Date, Products that Bully 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, Bully shall provide Proposition 65 warnings substantially as follows:


WARNING: This product can expose you to chemicals including phthalates such as DEHP, 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.

OR

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

OR

 **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (“DEHP”), 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.

OR

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov/product.

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

With the unit package of the Products or affixed to the Products. Such warning shall be prominently affixed to or printed on each Product’s label or package or the Product itself. If printed on the label, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the Product; Bully 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 ninety (90) days after the Effective Date. Plaintiff 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.

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 the failure to warn pursuant to Proposition 65 with regard to DEHP in the Products, Bully shall pay a civil penalty of eight hundred dollars (\$800) 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.

Bully 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.*, \$600; and (b) one check in an amount representing 25% of the total penalty (*i.e.*, \$200) made payable directly to Cheng. Bully 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
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, Bully shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Bully's attention, and negotiating a settlement in the public interest. Bully shall pay Cheng's counsel eight thousand dollars (\$8,000) for all attorneys' fees, expert and investigation fees and related costs associated with this matter and the Notice. Bully shall wire said monies to "Sy and Smith, PC" within five (5) business days of the Effective Date. Sy and Smith, PC will provide Bully with wire instruction and tax identification information on or before 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 Bully, Home Depot, and Downstream Customers

Cheng, on behalf of himself only, releases Bully and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Home Depot, Inc. and Home Depot U.S.A., Inc.), their corporate parents, 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 DEHP from the Products as set forth in the Notices of Violation. Compliance with the terms of this Private Settlement constitutes compliance with Proposition 65 with respect to exposures to DEHP 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 releases any other claims that he could make against Bully or the Releasees arising prior to the Effective

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Date with respect to violations of Proposition 65 based upon the Products. 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.

5.2 Bully and Home Depot Release of Cheng

Bully, Home Depot, Inc., and Home Depot U.S.A., Inc. waive 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.

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 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 Private 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 Private 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 Bully shall have no further obligations pursuant to this Private 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 Private 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:

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For Bully:

Kevin R. Crisp
Lester & Cantrell, LLP
1770 Iowa Ave., Ste. 110
Riverside, CA 92507

and

For Cheng:

Parker A. Smith
Sy and Smith, PC
11622 El Camino Real, Suite 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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

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

13. ATTORNEY'S FEES

A Party who unsuccessfully brings or contests an action arising out of this Private 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 Private 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 Private 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: 2018-9-4

IT IS HEREBY AGREED TO:

By: Mark S. Tracy
On Behalf of: Bully

Date: 8/27/2018

APPROVED AS TO FORM:

By: Kevin R. Crisp
Kevin R. Crisp
Attorney for Defendant, Bully

Date: 8/29/18

By: Parker A. Smith
Parker A. Smith
Attorney for Plaintiff, Kingpun Cheng

Date: 9/4/18