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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 LORRAINE HOME FASHIONS  
14 Defendants.  
15

Case No.37-2018-00063040-CU-NP-CTL

UNLIMITED JURISDICTION

**STIPULATION AND [PROPOSED]  
ORDER RE ENTRY OF CONSENT  
JUDGMENT AS TO LORRAINE  
HOME FASHIONS**

Complaint Filed: December 13, 2018

16  
17 **1. Introduction**

18 **1.1 Parties**

19 This Consent Judgment is hereby entered into by and between Kingpun Cheng, as an  
20 individual and acting in the interest of the public, (hereinafter “Cheng”) and Lorraine Home  
21 Fashions (hereinafter “Lorraine”). Lorraine and Cheng shall be collectively referred to as the  
22 “Parties” and each of them as a “Party.” Cheng is an individual residing in California who seeks  
23 to promote awareness of exposures to toxic chemicals and improve human health by reducing or  
24 eliminating hazardous substances contained in consumer products. Lorraine employs ten or more  
25 persons as required for purposes of Cal. Health & Safety Code §§ 25249.5 *et seq.* (“Proposition  
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27 65”).  
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**1.2 General Allegations**

Cheng alleges that Lorraine offered for sale and sold in the State of California one rod pocket ruffled panels, including but not limited to “Gypsy One Rod Pocket Ruffled Panel RN84120, item #07388-63-00001” UPC748779004507, that were packaged in material containing DEHP, a chemical listed under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, and/or other reproductive harm, and that Lorraine did so without providing a warning required by California Proposition 65. One rod pocket ruffled panels, including Gypsy One Rod Pocket Ruffled Panels RN84120, item #07388-63-00001, are referred to herein as “Covered Products”.

**1.3 Notice of Violation**

On or about August 23, 2018, Cheng issued a 60 Day Notice of Violation to Lorraine, Bed Bath & Beyond Inc. and various public enforcement agencies pursuant to Health & Safety Code §25249.7(d) alleging that Lorraine Home Fashions was in violation of Proposition 65 for failing to warn California consumers that the Covered Products exposed them to DEHP (hereinafter "Notice"). 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.

**1.4 Complaint**

On or about December 13, 2018 Cheng filed a Complaint against Lorraine for civil penalties and injunctive relief (“Complaint”) in San Diego Superior Court, Case No. 37-2018-00063040-CU-NP-CTL. The Complaint alleges, among other things, that Lorraine violated Proposition 65 by failing to give clear and reasonable warnings of exposure to DEHP from the Covered Products.

**1.5 Consent to Jurisdiction**

1 For purposes of this Consent Judgment, the Parties consent that this Court has jurisdiction  
2 over the allegations of violations contained in the Complaint and personal jurisdiction over the  
3 named Defendant as to the acts alleged in the Complaint, that venue is proper in the County of  
4 San Diego and that this Court has jurisdiction to enter this Consent Judgment as a full settlement  
5 and resolution of the allegations contained in the Notices, Complaint, and of all claims which  
6 were or could have been raised by any person or entity based in whole or in part, directly or  
7 indirectly, on the prior conduct of the Parties or on the facts alleged in the Complaint or arising  
8 therefrom or related thereto.

10 **1.6 No Admission**

11 Nothing in this Consent Judgment shall be construed as an admission by Lorraine of any  
12 fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this  
13 Consent Judgment constitute or be construed as an admission by Lorraine of any fact, finding,  
14 conclusion of law, issue of law, or violation of law. However, this section shall not diminish or  
15 otherwise affect the obligations, responsibilities and duties under this Consent Judgment.

17 1.7 For purposes of this Consent Judgment, the term “Effective Date” shall mean the  
18 date on which notice of entry of this Consent Judgment by the Court is served on Lorraine.

19 **2. Injunctive Relief**

20 Lorraine shall not manufacture, distribute, sell or offer for sale in California any Covered  
21 Products with a production date after the Effective Date except for Reformulated Products, as that  
22 term is defined in Section 2.1 below.

24 **2.1 Reformulation**

25 The Covered Products shall be deemed to comply with Proposition 65 with regard to  
26 DEHP, and be exempt from any Proposition 65 warning requirements for DEHP, if the Covered  
27 Products have a DEHP content by weight of not more than 0.10% (1,000 ppm). Lorraine may  
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1 comply with the above requirements by relying on information obtained from its suppliers  
2 regarding the content of the materials from which the Covered Products are made, provided such  
3 reliance is in good faith. Obtaining test results showing that the DEHP content is no more than  
4 0.10% (1,000 ppm), using a method of sufficient sensitivity to establish a limit of quantification  
5 (as distinguished from detection) of less than 1,000 ppm, shall be deemed to establish good faith  
6 reliance. For purposes of this Consent Judgment, Covered Products in compliance with this  
7 standard are “Reformulated Products”.

9           **2.2     Warning Alternative.**

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

15           **2.3     Clear and Reasonable Warnings.**

16           Where required under Section 2.2 above, Lorraine shall provide Proposition 65 warnings  
17 substantially as follows:

18            $\triangle$ **WARNING:** The bag in which this product is located can expose you to  
19 DEHP, which is known to the State of California to cause cancer and birth  
20 defects or other reproductive harm. For more information go to  
21 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov). Please dispose of the bag after removing the  
product.

22           2.3.1   Where utilized as an alternative to meeting the criteria set forth in Section 2.1,  
23 Lorraine shall provide the warning language set forth in Section 2.3 either on the package of the  
24 Covered Products or affixed to the Covered Products. Such warning shall be prominently affixed  
25 to or printed on each Product’s label or package or the Product itself. If printed on the label, the  
26 warning shall be contained in the same section that states other safety warnings, if any,  
27 concerning the use of the Product.  
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1           2.3.2 The requirements for warnings, set forth in Section 2.3 above are imposed  
2 pursuant to the terms of this Consent Judgment. The Parties recognize that these are not the  
3 exclusive methods of providing a warning under Proposition 65 and its implementing regulations  
4 and that they may or may not be appropriate in other circumstances.  
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6           **2.4 Products Manufactured Prior to the Effective Date**

7           Notwithstanding anything else in this Consent Judgment, Covered Products that were  
8 manufactured prior to the Effective Date shall be subject to the release of liability pursuant to  
9 Section 5 of this Consent Judgment, without regard to when such Covered Products were, or are  
10 in the future, distributed or sold to customers. As a result, the obligations of Lorraine as set forth  
11 in this Consent Judgment, including but not limited to Section 2, do not apply to these products  
12 manufactured prior to the Effective Date.  
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14           **3. Payments**

15           3.1 **Payments by Lorraine.** Within ten (10) calendar days of the Effective Date,  
16 Lorraine shall pay the total sum of \$14,400 as a settlement payment as further set forth in this  
17 Section.  
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19           3.2 **Allocation of Payments.** The total settlement amount shall be paid in three (3)  
20 separate checks in the amounts specified below and delivered as set forth below.

21           3.2.1 With regard to all claims that have been raised or which could be raised with  
22 respect to failure to warn pursuant to Proposition 65 with regard to DEHP in the Covered  
23 Products, Lorraine shall pay a civil penalty of \$800.00 pursuant to Health and Safety Code  
24 section 25249.7(b), to be apportioned in accordance with California Health & Safety Code §  
25 25192, with 75% of these funds remitted to the State of California's Office of Environmental  
26 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Cheng,  
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1 as provided by California Health & Safety Code § 25249.12(c)(1) and (d) and the instructions  
2 directly below.

3 **3.2.2 Payment Procedures**

4 Lorraine shall issue two separate checks for the penalty payment: (a) one check made  
5 payable to “OEHHA” (tax identification number: 68-0284486) in an amount representing 75% of  
6 the total penalty (i.e., \$600.00); and (b) one check in an amount representing 25% of the total  
7 penalty (i.e., \$200.00) made payable directly to Cheng. Lorraine shall mail these payments  
8 within ten (10) calendar days after the Effective Date at which time such payments shall be  
9 mailed to the following addresses respectively:  
10

11 Attn: Mike Gyurics  
12 Fiscal Operations Branch Chief  
13 Office of Environmental Health Hazard Assessment  
14 P.O. Box 4010, MS #19B  
15 Sacramento, CA 95812-4010

16 and

17 Mr. Kingpun Cheng  
18 C/O Sy and Smith, PC  
19 11622 El Camino Real, Suite 100  
20 San Diego, CA 92130

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

22 The Parties reached an accord on the compensation due to Cheng and his counsel under  
23 the private attorney general doctrine and principles of contract law. Under these legal principles,  
24 Lorraine shall reimburse Cheng’s counsel for fees and costs incurred as a result of investigating,  
25 bringing this matter to Lorraine’s attention, and negotiating a settlement. Lorraine shall pay  
26 Cheng’s counsel \$13,600.00 for all attorneys’ fees, expert and investigation fees, and related costs  
27 associated with this matter, the Notices and associated fees and costs Lorraine shall wire said  
28 monies or send a check payable to “Sy and Smith, PC” within ten (10) calendar days of the  
Effective Date. Sy and Smith, PC will provide Lorraine with wire instruction and tax

1 identification information on or before the Effective Date. Other than the payment required  
2 hereunder, each side is to bear its own attorneys' fees and costs.

3           5.       **Release of all Claims**

4           5.1       **Release of Lorraine and Downstream Customers, Retailers and Entities**

5           Cheng, acting on behalf of himself and in the public interest, releases Lorraine and their  
6           respective officers, directors, attorneys, representatives, shareholders, agents, and employees,  
7           sister and parent entities, successors, and assigns, and each entity to whom it directly or indirectly  
8           distributed or distributes or sold or sells the Covered Products including, but not limited to, their  
9           downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but  
10          not limited to Bed Bath & Beyond Inc., their parent and all affiliates and subsidiaries thereof ),  
11          their respective employees, agents and assigns, franchisees, dealers, customers, owners,  
12          purchasers, users, parent companies, corporate affiliates, subsidiaries, (collectively "Releasees")  
13          from all claims for violations of Proposition 65 up through the Effective Date, and consistent with  
14          the provisions of Section 2.4, above, based on exposure to DEHP from the Covered Products as  
15          set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes  
16          compliance with Proposition 65 with respect to exposures to DEHP from the Covered Products.

17                 In addition to the foregoing, Cheng, on behalf of himself, his past and current agents,  
18                 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,  
19                 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
20                 action and releases any other claims, cause of action, obligation, costs, expenses, attorneys' fees,  
21                 damages, losses, liabilities, and demands that he could make against Lorraine or the other  
22                 Releasees with respect to violations of Proposition 65 based upon the Covered Products. The  
23                 Parties acknowledge that the claims released above may include unknown claims, and with  
24                 respect to the foregoing waivers and releases in this paragraph, Cheng hereby specifically waives  
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1 any and all rights and benefits which he now has, or in the future may have, conferred by virtue of  
2 the provisions of Section 1542 of the California Civil Code, which provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
5 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY  
6 AFFECTED HIS SETTLEMENT WITH THE DEBTOR.  
7

8 Cheng acknowledges and understands the significance and consequences of this specific  
9 waiver of California Civil Code section 1542.

10 **5.2 Lorraine Release of Cheng**

11 Lorraine waives any and all claims against Cheng, his attorneys and other representatives,  
12 for any and all actions taken or statements made (or those that could have been taken or made) by  
13 Cheng and his attorneys and other representatives in the course of investigating claims or  
14 otherwise seeking enforcement of Proposition 65 against it in this matter.  
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16 **6. Non-Disparagement**

17 The Parties agree to refrain from taking action or making statements, written, oral or  
18 through any form of social media, which disparage or defame the goodwill or reputation of the  
19 other Party.  
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21 **7. Severability and Merger**

22 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
23 document are held by a court to be unenforceable, the validity of the enforceable provisions  
24 remaining shall not be adversely affected.

25 This Consent Judgment contains the sole and entire agreement of the Parties and any and  
26 all prior negotiations and understandings related hereto shall be deemed to have been merged  
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1 within it. No representations or terms of agreement other than those contained herein exist or  
2 have been made by any Party with respect to the other Party or the subject matter hereof.

3 **8. Governing Law**

4 The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
6 reason of law generally, or as to the Covered Products, then Lorraine shall have no further  
7 obligations pursuant to this Consent Judgment with respect to the Covered Products to the extent  
8 the Covered Products are so affected.

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10 **9. Notices**

11 9.1 Unless specified herein, all correspondence and notices required to be provided  
12 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by:  
13 electronic mail and either (i) first-class, (registered or certified mail) return receipt requested; or  
14 (ii) overnight courier on any Party by the other Party at the following addresses:

15 Lorraine:

16  
17 David P. Callet  
18 Callet Law, LLC  
19 5335 Wisconsin Avenue NW  
20 Suite 440  
21 Washington, DC 20015  
22 [Dcallet@Calletlaw.com](mailto:Dcallet@Calletlaw.com)

23 and

24 John V. Picone III  
25 Hopkins & Carley  
26 70 South First Street  
27 San Jose, CA 95113

28 For Cheng:

Parker A. Smith  
Sy and Smith, PC  
11622 El Camino Real, Suite 100

1 San Diego, CA 92130  
2 [parker@sysmithlaw.com](mailto:parker@sysmithlaw.com)

3 Any Party, from time to time, may specify in writing by the means set forth above to the  
4 other Party a change of address to which all notices and other communications shall be sent.

5 **10. Counterparts; Facsimile Signatures**

6 10.1 This Consent Judgment may be executed in counterparts and by facsimile or  
7 exchange by electronic means, each of which shall be deemed an original, and all of which, when  
8 taken together, shall constitute one and the same document.

9 **11. Modification**

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

12 **12. Attorney Fees**

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

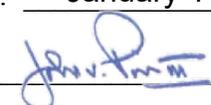
17 The undersigned are authorized to execute this Consent Judgment on behalf of their  
18 respective Parties and have read, understood and agree to all of the terms and conditions of this  
19 document and certifies that he or she is fully authorized by the Party he or she represents to  
20 execute the Consent Judgment on behalf of the Party and legally bind that Party.  
21

22 **IT IS SO STIPULATED:**

23 Dated: 1/2/19

Dated: January 11, 2019

24 By: 

25 By: 

26 Parker A. Smith, Attorney for Plaintiff

27 John V. Picone III, Attorney for Defendant

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Dated: 2019-1-24

By: Kingpun Cheng

Kingpun Cheng

Dated: 1/11/19

By: [Signature]

On Behalf of: Lorraine Home Fashions

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

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

\_\_\_\_\_

Judge of the Superior Court