

Town & Country Cheng Settlement

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 Town & Country Linen Corp. (hereafter "Town & Country"). Town & Country 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 Town & Country is responsible for the sale in the State of California of Ellen Degeneres ("ED") Tablecloth 70" Round Linen UPC028332648318 in button snap packaging containing DEHP (Di[2--Ethylhexyl] Phthalate), and that such sales have not been accompanied by Proposition 65 warnings. DEHP (Di[2--Ethylhexyl] Phthalate) is listed under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and reproductive toxicity. Cheng has cited the ED Tablecloth 70" Round Linen UPC028332648318 as an example of the 70" Round Tablecloth Linens that are the subject of his allegation.

For purposes of this Private Settlement only, Town & Country does not dispute that the ED Tablecloth 70" Round Linen UPC028332648318 is an item it had distributed to companies that have retailer locations in the state of California.

1.3 Product Description

The products that are covered by this Settlement are defined as ED Tablecloths sold in California in button snap packaging. All such items shall be referred to herein as the "Products."

1.4 Notices of Violation

On or about August 23, 2018, Cheng served Town & Country, Bed Bath & Beyond, Inc. ("BBB"), 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 Town & Country was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to DEHP (Di[2--Ethylhexyl] Phthalate). 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

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 Francisco has proper jurisdiction over Town & Country as to the allegations contained in the 60 day notice served on or about August 23, 2018, and that venue is proper in the County of San Francisco.

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1.6 No Admission

Nothing in this Settlement nor compliance with its terms, shall constitute or be construed, considered, offered or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Town & Country, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency or forum of any fact, finding, issue of law, or violation of law; nor shall the Settlement or compliance with this Settlement constitute or be construed as an admission by Town & Country of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Town & Country. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Town & Country under this Settlement.

This Settlement resolves claims that are denied and disputed by Town & Country. The Parties enter into this Settlement pursuant to a full and final settlement and release of all claims between the Parties related to the allegations alleged by Cheng for the purpose of avoiding prolonged litigation. Town & Country denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to DEHP, or any chemical listed under Proposition 65, through the reasonably foreseeable use of the Products and otherwise contends that all Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws.

1.7 Effective Date

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

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, Town & Country shall not ship for sale, sell, or offer for sale in California, Products that are manufactured, distributed or sold by Town & Country containing more than 0.1% (1,000 parts per million, or "1,000 ppm") DEHP (Di[2--Ethylhexyl] Phthalate), excluding any Products currently offered for sale, set for distribution and/or manufactured prior to the Effective Date, unless they comply with this section. Commencing on the Effective Date, Town & Country 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 (Di[2--Ethylhexyl] Phthalate) and be exempt from any Proposition 65 warning requirements for DEHP (Di[2--Ethylhexyl] Phthalate) if the packaging around the Products meet the following criteria: the packaging shall have a DEHP (Di[2--Ethylhexyl] Phthalate) content of no more than 0.1% (1,000 parts per million, or "1,000 ppm"). Town & Country may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the packaging, provided such reliance is in good faith. Obtaining test results showing that the DEHP (Di[2--Ethylhexyl] Phthalate) content is no more than 1,000 ppm, using a method of sufficient sensitivity to

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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 and excluding any product currently offered for sale, set for distribution and/or manufactured prior to the Effective Date, Products that Town & Country 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, Town & Country shall provide Proposition 65 warnings substantially as follows:

 **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.

2.4 Where utilized as an alternative to meeting the criteria set forth in Section 2.1, Town & Country 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; Town & Country 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 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 above 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 the alleged failure to warn pursuant to Proposition 65 with regard to DEHP (Di[2--Ethylhexyl] Phthalate) in the Products and taking into consideration the prompt and cooperative manner with which Town & Country has taken in correcting the alleged violation, including expending great resources to reformulate the Products, Town & Country 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

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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.

Town & Country shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHHA" (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. Town & Country shall mail these payments within ten (10) business days after the Effective Date and receipt of necessary taxpayer information at which time such payments shall be mailed to the following addresses respectively:

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, Town & Country shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this matter to Town & Country's attention, and negotiating a settlement in the public interest. Town & Country shall pay Cheng's counsel \$8,750.00 for all attorneys' fees, expert and investigation fees and related costs associated with this matter and the Notice. Town & Country shall wire said monies to "Sy and Smith, PC" within ten (10) business days of the Effective Date and receipt of relevant taxpayer information. Sy and Smith, PC will provide Town & Country 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 Town & Country, BBB, and Downstream Customers

The Settlement is a full, binding and final resolution between Cheng and Town & Country of any violation of Proposition 65 that was or could have been asserted by Cheng, individually and on behalf of himself and his behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assigns ("Releasers") against Town & Country and Releasees. Cheng, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, releases Town &

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Country, its predecessor, successor and assigns, and its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to BBB), their parent, 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, and predecessors and successor of each (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 Notice of Violation. Compliance with the terms of this Settlement constitutes compliance with Proposition 65 with respect to exposures to DEHP (Di[2-Ethylhexyl] Phthalate) from the Products.

In addition to the foregoing, in further consideration of the promises and agreements contained herein, Cheng, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assigns, 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 Town & Country or the Releasees arising prior to the Effective 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 acknowledges that he is familiar with and 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 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

Cheng represents and warrants that he is unaware of any other alleged violation of Proposition 65 by Town & Country.

5.2 Town & Country Release of Cheng

Town & Country 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.

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.

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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 Town & Country 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 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 Town & Country:

Lauren Michals, Esq.
Nixon Peabody LLP
One Embarcadero Center, 32nd Floor
San Francisco, CA 94111

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.

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10. COUNTERPARTS; FACSIMILE SIGNATURES; BINDING EFFECT

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. This Settlement shall apply to, be binding upon, and inure to the benefit of, Cheng, Town & Country and the Releasees identified above.

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.

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.

IT IS HEREBY AGREED TO:

By: Kingpun Cheng
Kingpun Cheng

Date: 2018-12-6

IT IS HEREBY AGREED TO:

By: [Signature]
On Behalf of: Town & Country Linen Corp.
Title: Chairman

Date: 12/5/2018