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FILED
Clerk of the Superior Court

JUL 27 2012

By: T. CURRY, Deputy

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11 *Attorneys for Plaintiff, Evelyn Wimberley*

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO**
15 **UNLIMITED CIVIL JURISDICTION**

16 **EVELYN WIMBERLEY,**

17 **Plaintiff**

18 **PRIME-LINE SLIDE, CO.**

19 **Defendant.**

) **CASE NO.:**

) **37-2012-00091285-CU-NP -CTL**

) ~~[PROPOSED]~~ **ORDER APPROVING**
) **STIPULATION AND ORDER RE:**
) **CONSENT JUDGMENT**

) *"IMAGED FILE"*

) **Date: June 8, 2012**

) **Time: 08:30 AM**

) **Dept. C-64**

) **Hon. Lorna Alksne**

) **Action Filed: January 26, 2012**

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21
22 Plaintiff, Evelyn Wimberley and Defendant, Prime Line Slide, Co. having agreed
23 through their respective counsel that judgment be entered pursuant to the terms of the
24 Stipulation and Order Re: Consent Judgment entered into by the parties, and attached to the
25 Judgment pursuant to the terms of the Stipulation and Order Re: Consent Judgment as Exhibit 1.
26 After consideration of the papers submitted and arguments presented, the Court finds that the
27 settlement agreement set out in the attached Consent Judgment meets the criteria established by
28 Health & Safety Code §25249.7, in that:

- 1 a) the health hazard warning required by the Stipulation and Order Re: Consent
2 Judgment complies with Health & Safety Code §25249.7;
3 b) the reimbursement of fees and costs to be paid pursuant to the parties'
4 Stipulation and Order Re: Consent Judgment is reasonable under California
5 law; and
6 c) the civil penalty amount to be paid pursuant to the parties' Stipulation and
7 Order Re: Consent Judgment is reasonable
8

9 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to Code of Civil
10 Procedure §664.6, judgment is entered in accordance with the Consent Judgment attached hereto
11 as Exhibit 1.
12

13 **IT IS SO ORDERED.**

14
15 Dated: JUL 30 2012

LORNA ALKSNE

16 JUDGE OF THE SAN DIEGO SUPERIOR COURT
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EXHIBIT 1

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Attorneys for Plaintiff EVELYN WIMBERLEY

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO
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11 EVELYN WIMBERLEY,

12 Plaintiff,

13 v.

14 PRIME-LINE SLIDE CO., et al,

15 Defendants.
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Case No. 37-2012-00091285-CU-NP-CTL

CONSENT JUDGMENT [PROPOSED]

18 **1. INTRODUCTION**

19 1.1 On January 26, 2012, Plaintiff Evelyn Wimberley (“Wimberley”) filed a complaint
20 (“Complaint”) in San Diego County Superior Court, entitled *Evelyn Wimberley v. Prime-Line*
21 *Slide Co. et al.*, in San Diego County Superior Court Case Number 37-2012-00091285-CU-NP-
22 CTL, for civil penalties and injunctive relief pursuant to the provisions of California Health &
23 Safety Code §25249.5 *et seq.* (“Proposition 65”).

24 1.2 The parties to this Consent Judgment (“Parties”) are Wimberley and Defendant
25 Prime-Line Products Co., Inc. (“Prime-Line”) erroneously named herein as Prime-Line Slide Co.,
26 a company that employs 10 or more persons.
27
28

1 1.3 On or about March 7, 2011, Wimberley served Prime-Line and the appropriate
2 public enforcement agencies with a pre-suit notice pursuant to Health and Safety Code Section
3 25249.7(d), alleging that Prime-Line was in violation of Proposition 65. Wimberley's notice and
4 the Complaint in this Action allege that Prime-Line exposes individuals who use or otherwise
5 handle door hardware, including entry bolts and entry door viewers, to lead, a chemical known to
6 the State of California to cause cancer, birth defects and other reproductive harm, without first
7 providing clear and reasonable warning to such persons. The notice and Complaint allege that
8 Prime-Line's conduct violates Health & Safety Code §25249.6, the warning provision of
9 Proposition 65.

10 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
11 has jurisdiction over the subject matter of the violations alleged in the Complaint and personal
12 jurisdiction over Prime-Line as to the acts alleged in the Complaint, that venue is proper in the
13 County of San Diego, and that this Court has jurisdiction to enter this Consent Judgment as a full
14 and final resolution of all claims which were or could have been raised in the Complaint based on
15 the facts alleged therein.

16 1.5 The Parties enter into this Consent Judgment pursuant to a settlement of certain
17 disputed claims between the Parties as alleged in the Complaint. By executing this Consent
18 Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that
19 nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,
20 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent
21 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,
22 issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or
23 impair any right, remedy, argument or defense the Parties may have in this or any other or future
24 legal proceedings.

25 **2. DEFINITIONS**

26 2.1 The term "Covered Products" means door hardware, including viewers, locks, and
27 bolts, that Prime-Line distributes, markets and/or sells within the State of California.
28

1 2.2 The term "Effective Date" means the date on which this Consent Judgment is
2 entered by the Court.

3 **3. INJUNCTIVE RELIEF**

4 3.1 A Covered Product that is manufactured on or after 60 days after the Effective
5 Date for sale in California shall contain a warning affixed to or printed on the Covered Product's
6 packaging or labeling. The warning shall be displayed with such conspicuousness, as compared
7 with other words, statements, designs, or devices on the Covered Product, or its packaging or
8 labeling as to render it likely to be read and understood by an ordinary individual under
9 customary conditions of purchase or use. The warning shall include the following statement:

10 "WARNING: This product contains one or more chemicals known to the State of
11 California to cause cancer and birth defects or other reproductive harm."

12 3.2 **Direct to Consumer Sales.** If Prime-Line sells or offers for sale any Covered
13 Product direct to consumer through internet websites or catalogs, it shall provide a warning
14 pursuant to Section 3.1 to the consumer at or prior to completion of the purchase transaction.

15 **4. SETTLEMENT PAYMENTS**

16 4.1 Prime-Line shall pay a settlement amount of \$25,000 to Wimberley, to be
17 allocated by Wimberley as follows:

18 4.1.1 **Civil Penalty:** \$1,000 as a civil penalty pursuant to Health and Safety
19 Code Section 25249.7(b). Wimberley shall remit 75% of the civil penalty to the
20 California Office of Environmental Health Hazard Assessment ("OEHHA"), pursuant to
21 Health and Safety Code Section 25192.

22 4.1.2 **Attorneys' Fees and Costs:** \$24,000 to reimburse Wimberley and her
23 attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other
24 costs incurred as a result of investigating, bringing this matter to Prime-Line's attention,
25 litigating and negotiating a settlement in the public interest, pursuant to Code of Civil
26 Procedure Section 1021.5.

27 4.2 **Timing of payments.** Prime-Line shall deliver the payments required under this
28 section to its' Attorney's escrow account within 10 days of the Execution date. Prime-Line's



1 Attorney shall deliver the payments required under this section to the address set forth in Section
2 13 below within 10 days of the Effective Date.

3 **5. CLAIMS COVERED AND RELEASED**

4 5.1 This Consent Judgment is a full, final, and binding resolution between Wimberley
5 on behalf of herself and the public interest and Prime-Line, and its parents, shareholders,
6 divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
7 successors and assigns ("Defendant Releasees"), and all entities to whom they directly or
8 indirectly distribute or sell Covered Products, including but not limited to distributors,
9 wholesalers, customers, retailers, franchisees, cooperative members, and Defendant Releasee's
10 licensors and licensees ("Downstream Defendant Releasees") of any violation of Proposition 65
11 that was or could have been asserted in the Complaint against Prime-Line, Defendant Releasees,
12 and Downstream Defendant Releasees, based on failure to warn about alleged exposure to lead
13 contained in Covered Products, with respect to any Covered Products manufactured, shipped, or
14 sold by Prime-Line prior to the Effective Date. The Parties further understand and agree that this
15 release shall not extend upstream to any entities that manufactured the Covered Products for
16 Prime-Line or any component parts thereof or to any distributors or suppliers who sold the
17 Covered Products or any component parts thereof to Prime-Line.

18 5.2 In further consideration of the promises and agreements herein contained, the
19 injunctive relief commitments set forth in Section 3, and for the payments to be made pursuant to
20 Section 4, Wimberley, on behalf of herself, her past and current agents, representatives, attorneys,
21 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to
22 institute or participate in, directly or indirectly, any form of legal action and release all claims,
23 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
24 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
25 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
26 known or unknown, fixed, or contingent (collectively "claims"), against Prime-Line, Defendant
27 Releasees, and Downstream Defendant Releasees. This release is limited to those claims that
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1 arise under Proposition 65 with respect to lead in the Covered Products, as such claims relate to
2 the alleged failure to warn under Health & Safety Code Section 25249.6.

3 5.3 On behalf of itself and Defendant Releasees, Prime-Line waives all rights to
4 institute any form of action against Wimberley, her attorneys, consultants, and representatives for
5 all actions taken or statements made in the course of this Action prior to the date of the execution
6 of this Consent Judgment.

7 5.4 Compliance with the terms of this Consent Judgment by Prime-Line shall
8 constitute compliance with Proposition 65 with respect to lead in any Covered Products that are
9 manufactured, shipped, or sold by Prime-Line following the Effective Date.

10 6. COURT APPROVAL

11 6.1 This Consent Judgment is not effective until it is approved and entered by the
12 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
13 within one year after it has been fully executed by all Parties.

14 6.2 If the Court does not approve the Consent Judgment, the Parties shall meet and
15 confer as to whether to modify the terms of this Consent Judgment or appeal the ruling. If the
16 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal
17 course on the trial court's calendar.

18 6.3 If the Court approves this Consent Judgment and is reversed or vacated by an
19 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
20 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
21 that have been paid to Plaintiff pursuant to Section 4 shall be refunded within 15 days after
22 remittitur to the trial court, and the case shall proceed on its normal course on the trial court's
23 calendar.

24 7. ENFORCEMENT

25 7.1 Any Party may, by motion or application for an order to show cause before this
26 Court, enforce the terms and conditions contained in this Consent Judgment. A Party may
27 enforce any of the terms and conditions of this Consent Judgment only after that Party first
28 provides 30 days notice to the Party allegedly failing to comply with the terms and conditions of

1 this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good
2 faith manner.

3 **8. MODIFICATION**

4 8.1 This Consent Judgment may be modified from time to time by express written
5 agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion
6 and in accordance with law. A Party seeking to modify this Consent Judgment shall attempt in
7 good faith to meet and confer with all affected Parties prior to filing a motion to modify the
8 Consent Judgment.

9 **9. ACCURACY OF SALES DATA**

10 Prime-Line understands that the sales data provided to counsel for Wimberley by Prime-
11 Line was a material factor upon which Wimberley has relied to determine the amount of
12 payments made pursuant to Health and Safety Code §25249.7(b) under this Agreement. Prime-
13 Line represents that the sales data provided to plaintiff is true and accurate.

14 **10. ENTIRE AGREEMENT**

15 10.1 This Consent Judgment contains the sole and entire agreement and understanding
16 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
17 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
18 and therein. No representations, oral or otherwise, express or implied, other than those
19 specifically referred to in this Consent Judgment have been made by any Party hereto. No
20 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
21 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
22 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
23 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

24 **11. GOVERNING LAW AND APPLICATION**

25 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California and shall apply only to Covered Products that are sold or offered for sale in the State of
27 California.

1 11.2 This Consent Judgment shall apply to and be binding upon Wimberley and Prime-
2 Line and its divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns .

3 11.3 The Parties, including their counsel, have participated in the preparation of this
4 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
5 Consent Judgment was subject to revision and modification by the Parties and has been accepted
6 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
7 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
8 of the manner of the preparation of this Consent Judgment.

9 **12. RETENTION OF JURISDICTION**

10 12.1 This Court shall retain jurisdiction of this matter to implement, modify, and
11 enforce the terms this Consent Judgment.

12 **13. PROVISION OF NOTICE**

13 13.1 All notices required pursuant to this Consent Judgment and correspondence shall
14 be sent to the following:

15 For Wimberley:

16 Law Offices of Stephen Ure, PC
17 1518 Sixth Avenue
18 San Diego, CA 92101

19 For Prime-Line:

20 Les Burns
21 Senior Vice President
22 Prime-Line Products Co., Inc.
23 26950 San Bernardino Avenue
24 Redlands, CA 92374

25 With a copy to:

26 Jeffrey B. Margulies
27 Fulbright & Jaworski L.L.P.
28 555 South Flower Street, 41st Floor
 Los Angeles, CA 90071

1 **14. COURT APPROVAL**

2 14.1 This Consent Judgment shall become effective upon entry by the Court.
3 Wimberley shall prepare and file a Motion for Approval of this Consent Judgment pursuant to
4 Health and Safety Code Section 25249.7(f).

5 14.2 If this Consent Judgment is not approved by the Court, it shall be of no further
6 force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for
7 any purpose.

8 **15. ATTORNEY'S FEES**

9 15.1 A party who unsuccessfully brings or contests an action arising out of this Consent
10 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
11 unless the unsuccessful party has acted with substantial justification. For purposes of this
12 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
13 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

14 15.2 Nothing in this Section 15 shall preclude a Party from seeking an award of
15 sanctions pursuant to law.

16 **16. EXECUTION AND COUNTERPARTS**

17 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
18 means of facsimile and/or portable document format (pdf), which taken together shall be deemed
19 to constitute one document.

20 **17. AUTHORIZATION**

21 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
22 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
23 execute the Consent Judgment on behalf of the party represented and legally bind that party. The
24 undersigned have read, understand and agree to all of the terms and conditions of this Consent
25 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

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1 AGREED TO:

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3 Dated:

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Evelyn Wimberley

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Dated: 2/8/12

PRIME-LINE PRODUCTS CO., INC.

9

By David M. Richards

10

Name: David M. Richards

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Title: Chief Financial Officer

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