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**F I L E D**  
Clerk of the Superior Court

JUL 01 2013

7 *Attorneys for Plaintiff, Maureen Parker*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO  
10 UNLIMITED CIVIL JURISDICTION

13 Maureen Parker, )

14 )  
15 Plaintiff )

16 )  
17 and )

18 AllStar Products Group, LLC. )  
19 AllStar Marketing Group, LLC. )  
20 Sears, Roebuck and Co. )  
21 K-Mart Corporation )  
22 Bed Bath & Beyond, Inc. )  
23 Walmart, Inc. )  
24 and Does 1-25 Inclusive )

25 Defendants. )  
26 )  
27 )  
28 )

CASE NO.:

37-2012-00096711-CU-PO-CTL

~~PROPOSED~~ <sup>109</sup>

JUDGMENT APPROVING  
PROP 65 STIPULATION AND  
CONSENT JUDGMENT

*(Cal. Health & Safety Code § 25249.6 et seq.)*

[IMAGED FILE]

Date: June 21, 2013

Time: 11:00 AM

Dept. C-70

Hon. Randa Trapp

Action Filed: May 3, 2012

1 In the above entitled action, Plaintiff, Maureen Parker and Defendant, Allstar  
2 Marketing Group, LLC, having agreed through their respective counsel that judgment be  
3 entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a  
4 ~~Proposed~~ Consent Judgment entered into by the parties, and following issuance of an order  
5 approving this Proposition 65 settlement agreement and entering this Consent Judgment on  
6 7/1/13, 2013.

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

10  
11 **IT IS SO ORDERED.**

12  
13 Dated: July 1, 2013

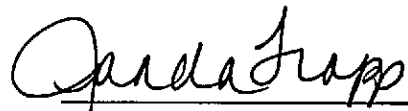
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15 \_\_\_\_\_  
16 JUDGE OF THE SUPERIOR COURT  
17 RANDA TRAPP  
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Exhibit 1

1 STEPHEN URE, ESQ.  
LAW OFFICES OF STEPHEN URE, PC  
2 1518 Sixth Avenue  
San Diego, CA 92101  
3 Telephone: 619-235-5400

4 Attorneys for Plaintiff, Maureen Parker

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

COUNTY OF SAN DIEGO

10 MAUREEN PARKER,

11 Plaintiff,

12 v.

13 SEARS, ROEBECK AND CO., K-MART  
CORPORATION, BED BATH AND BEYOND,  
14 INC., WALMART STORES, INC., ALLSTAR  
MARKETING GROUP, LLC., ALLSTAR  
15 PRODUCTS GROUP., LLC AND DOES 1-25  
INCLUSIVE  
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Case No. 37-2012-00096711-CU-PO-CTL

UNLIMITED JURISDICTION

CONSENT JUDGMENT AS TO  
ALLSTAR MARKETING GROUP,  
LLC

Complaint Filed: May 3, 2012

1           **1. INTRODUCTION**

2           1.1    **The Parties.** This Consent Judgment is entered into by and between Maureen  
3 Parker acting on behalf of the public interest (hereinafter "Parker") and Allstar Marketing Group,  
4 LLC, (hereinafter "Allstar"), with Parker and Allstar collectively referred to as the "Parties" and  
5 each of them as a "Party." Parker is an individual residing in California who seeks to promote  
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating  
7 hazardous substances contained in consumer products. Allstar employs ten or more persons and  
8 is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety  
9 Code §§ 25249.6 et seq.

10           1.2    **Allegations and Representations.**

11           1.2.1 Parker alleges that Allstar has offered for sale in the State of California and  
12 has sold in California, tool accessories containing lead, and that such sales have not been  
13 accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical  
14 known to the State of California to cause cancer and birth defects or other reproductive harm.  
15 Parker has cited "Half-Time Drill Driver" UPC 740275007761, hereafter ("Driver"), as a specific  
16 example of the tool accessories that are the subject of her allegations.

17           1.2.2 Allstar represents that: 1) UPC 740275007761 is an item it manufactures,  
18 distributes and sells to others including K-Mart, Sears, Walmart, Bed, Bath & Beyond and 2) it  
19 had no reason to believe that the item contained lead until receiving Parker's 60-Day Notice on or  
20 about December 23, 2011.

21           1.3    **Notices of Violation/Complaint.** On or about December 23, 2011, Parker served  
22 Allstar, and various public enforcement agencies with a document entitled "60-Day Notice of  
23 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Allstar was  
24 in violation of Proposition 65 for failing to warn consumers and customers that the Covered  
25 Product exposed users in California to lead. No public enforcer diligently prosecuted the claims  
26 threatened in the Notice within sixty days plus service time relative to the provision of the Notice  
27

1 to them by Parker, such that Parker filed a complaint in the matter as captioned above on May 3,  
2 2012 ("Complaint").

3 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
4 has jurisdiction over Allstar as to the allegations contained in the complaint filed in this matter,  
5 that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve,  
6 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution  
7 of all claims which were or could have been raised in the Complaint based on the facts alleged  
8 therein and/or in the Notices.

9 1.5 Allstar denies the material allegations contained in Parker's Notice and Complaint  
10 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be  
11 construed as an admission by Allstar of any fact, finding, issue of law, or violation of law; nor  
12 shall compliance with this Consent Judgment constitute or be construed as an admission by  
13 Allstar of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
14 denied by Allstar. However, this section shall not diminish or otherwise affect the obligations,  
15 responsibilities, and duties of Allstar under this Consent Judgment.

16 **2. DEFINITIONS**

17 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.

18 2.2 **Covered Product.** The term "Covered Product" means Half-Time Drill Drivers.

19 2.3 **Effective Date.** The term "Effective Date" shall mean the date this Consent  
20 Judgment is entered as a Judgment of the Court.

21 2.4 **Notice.** The term "Notice" shall have the meaning given in Section 1.3.

22 2.5 **Releasees.** The terms "Defendant Releasees" and "Downstream Defendant  
23 Releasees" shall have the meanings given in Section 5.1.

24 **3. INJUNCTIVE RELIEF: REFORMULATION**

25 3.1 Covered Products manufactured by Allstar on or after the Effective Date for sale in  
26 California, if any, shall include a date code on the packaging or Covered Product sufficient to  
27 demonstrate the date of manufacture.  
28

1           3.2     Commencing 90 days after the Effective Date, Allstar shall not sell, offer for sale,  
2 or ship for sale in California Covered Products that contain exposed brass or other exposed metal  
3 components with a lead content by weight in excess of 0.03% (300 parts per million, or “300  
4 ppm”).

5           3.3     Covered Products that do not meet the warning exemption standard set forth in  
6 section 3.2 above shall be accompanied by the following warning: “Warning: This product  
7 contains lead, a chemical known to the State of California to cause birth defects or other  
8 reproductive harm.”

9           3.4     Allstar’s compliance with the terms of this Consent Judgment constitutes  
10 compliance with Proposition 65 with respect to exposure to lead from Covered Products.

11     **4.     MONETARY TERMS**

12           4.1     **Civil Penalty.** Allstar shall pay a civil penalty of \$3,000 pursuant to Health and  
13 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
14 Code § 25192, with 75% of these funds remitted to the State of California’s Office of  
15 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to  
16 Parker, as provided by California Health & Safety Code § 25249.12(d).

17           4.2     **Attorney Fees.** Allstar agrees to pay and will not oppose an application made by  
18 Parker’s counsel for an award of attorney fees, inclusive of all expenses and costs incurred as a  
19 result of investigating, bringing this matter to Allstar’s attention, litigating and negotiating and  
20 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil  
21 Procedure section 1021.5, in an amount not to exceed \$28,000. Other than the payment required  
22 hereunder, each side is to bear its own attorneys’ fees and costs.

23           4.3     Allstar shall wire Parker’s counsel the total sum of \$31,000, representing the civil  
24 penalty and attorney fees in Sections 4.1 and 4.2 within ten days following receipt of a fully-  
25 executed copy of this Consent Judgment and wire instruction information from Parker’s counsel.  
26

1           **5. RELEASE OF ALL CLAIMS**

2           5.1 Parker, on behalf of herself and in the public interest, releases Allstar and its  
3 parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and  
4 affiliates, and their successors and assigns ("Defendant Releasees"), and all entities from whom  
5 they obtain and to whom they directly or indirectly distribute or sell Covered Products, including  
6 but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors,  
7 licensees retailers, franchisees, and cooperative members, including but not limited to Sears,  
8 Roebuck and Co., K-Mart Corporation, Bed Bath & Beyond, Inc., and Wal-Mart Stores, Inc., and  
9 their subsidiaries and affiliates ("Downstream Defendant Releasees"), of all claims for violations  
10 of Proposition 65 based on exposure to lead from Covered Products as set forth in her Notice of  
11 Violation, with respect to any Covered Products manufactured, distributed, or sold by Allstar  
12 prior to the Effective Date.

13           5.2 In addition to the foregoing, Parker, on behalf of herself, her past and current  
14 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative  
15 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
16 legal action and releases any Allstar, Defendant Releasees, and Downstream Defendant Releasees  
17 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,  
18 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
19 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or  
20 contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to  
21 or arising from Covered Products manufactured distributed or sold by Allstar or Defendant  
22 Releasees. With respect to the foregoing waivers and releases in this paragraph, Parker hereby  
23 specifically waives any and all rights and benefits which she now has, or in the future may have,  
24 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which  
25 provides as follows:

26  
27           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
28           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR  
              AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY



1 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH  
2 THE DEBTOR.

3 5.3 Allstar waive(s) any and all claims against Parker, her attorneys and other  
4 representatives, for any and all actions taken or statements made (or those that could have been  
5 taken or made) by Parker and her attorneys and other representatives, whether in the course of  
6 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
7 and/or with respect to Covered Products.

8 **6. SEVERABILITY AND MERGER**

9 6.1 If, subsequent to the execution of this Consent Judgment, any of the provisions of  
10 this document are held by a court to be unenforceable, the validity of the enforceable provisions  
11 remaining shall not be adversely affected.

12 6.2 This Consent Judgment contains the sole and entire agreement of the Parties and  
13 any and all prior negotiations and understandings related hereto shall be deemed to have been  
14 merged within it. No representations or terms of agreement other than those contained herein  
15 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

16 **7. GOVERNING LAW**

17 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
18 California and apply within the State of California. In the event that Proposition 65 is repealed or  
19 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
20 Allstar shall provide written notice to Parker of any asserted change in the law, and shall have no  
21 further obligations pursuant to this Consent Judgment with respect to, and to the extent that,  
22 Covered Products are so affected.

23 **8. NOTICES**

24 8.1 Unless specified herein, all correspondence and notices required to be provided  
25 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)  
26 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any  
27 party by the other party at the following addresses:

28 For Allstar:

1 Jennifer De Marco  
2 Allstar Marketing Group, LLC  
3 2 Skyline Drive  
4 Hawthorne, NY 10532

5 With a copy to:

6 Jeffrey Margulies  
7 Fulbright & Jaworski L.L.P.  
8 555 South Flower St.  
9 Forty First Floor  
10 Los Angeles, CA 90071

11 and

12 For Parker:

13 Stephen Ure  
14 Law Offices of Stephen Ure, PC.  
15 1518 Sixth Avenue  
16 San Diego, California 92101

17 Any party, from time to time, may specify in writing to the other party a change of address to  
18 which all notices and other communications shall be sent.

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

20 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
22 the same document.

23 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
24 **APPROVAL**

25 10.1 Parker agrees to comply with the requirements set forth in California Health &  
26 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment  
27 and Allstar agrees it shall support approval of such Motion.

28 10.2 This Consent Judgment shall not be effective until it is approved and entered by  
the Court and shall be null and void if, for any reason, it is not approved and entered by the Court  
within twelve months after it has been fully executed by the Parties. In such case, the Parties

1 agree to meet and confer on how to proceed and if such agreement is not reached within 30-days  
2 and the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this  
5 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies  
6 that have been paid to Plaintiff pursuant to Section 4 shall be refunded within 15 days after  
7 remittitur to the trial court, and the case shall proceed on its normal course on the trial court's  
8 calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
11 and the approval of the Court or upon the granting of a motion brought to the Court by either  
12 Party.

13 **12. ATTORNEY'S FEES**

14 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
15 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
16 unless the unsuccessful party has acted with substantial justification. For purposes of this  
17 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
18 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

19 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
20 pursuant to law.

21 **13. RETENTION OF JURISDICTION**


22 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
23 Consent Judgment.

24 **14. AUTHORIZATION**

25 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of  
26 their respective Parties and have read, understood and agree to all of the terms and conditions of  
27 this document and certifies that he or she is fully authorized by the Party he or she represents to  
28

1 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.  
2 Except as explicitly provided herein each Party is to bear its own fees and costs.  
3

4 **APPROVED AS TO FORM:**

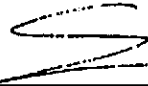
5 6 7 8 9 10 11	AGREED TO: Date : _____, 2012 By: _____ On Behalf of Maureen Parker Stephen Ure, Law Offices of Stephen Ure, PC	AGREED TO: Date: <u>December 13</u> , 2012 By:  On Behalf of Allstar Marketing Group, LLC Jeffrey Margulies, Fulbright & Jaworski L.L.P.
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12 **IT IS HEREBY SO STIPULATED:**

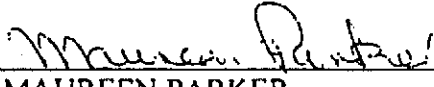

13	<b>AGREED TO:</b>	<b>AGREED TO:</b>
14		
15	Date: _____	Date: _____
16	By: _____	By: _____
17	MAUREEN PARKER	ALLSTAR MARKETING GROUP, LLC

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**APPROVED AS TO FORM:**

<b>AGREED TO:</b> Date: <u>December 10</u> , 2012  By: <u></u>  On Behalf of Maureen Parker Stephen Ure, Law Offices of Stephen Ure, PC	<b>AGREED TO:</b> Date: _____, 2012  By: _____  On Behalf of Allstar Marketing Group, LLC Jeffrey Margulies, Fulbright & Jaworski L.L.P.
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**IT IS HEREBY SO STIPULATED:**

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <u>12-10-12</u>	Date: <u>12/11/12</u>
By: <u></u> MAUREEN PARKER	By: <u></u> ALLSTAR MARKETING GROUP, LLC