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FILED
Clerk of the Superior Court

MAY 21 2018

By: M. Garland

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11 **UNLIMITED CIVIL JURISDICTION**

12
13 **EVELYN WIMBERLEY,**)

14)
15 **Plaintiff**)

16)
17 **and**)

18 **ROYAL OAK ENTERPRISES, LLC,**)
19 **WINCO FOODS LLC. ,**)
20 **SMART & FINAL,**)
21 **AMERIFOODS TRADING CO.,**)
22 **THE HOME DEPOT, INC**)
23 **AND DOES 1-25 INCLUSIVE**)

24 **Defendants.**)

CASE NO.:

37-2017-00004680-CU-NP-NC

^{mg}
[PROPOSED]

**JUDGMENT APPROVING
PROP 65 STIPULATION AND
CONSENT JUDGMENT**

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

Date: April 6, 2018

Time: 01:30PM

Dept. N-27

Hon. Jacqueline M. Steern

Action Filed: February 7, 2017

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1 In the above entitled action, Plaintiff, Evelyn Wimberley and Defendant Royal
2 Oak Enterprises LLC, having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Proposition 65 settlement agreement in the form of a [Proposed]
4 Consent Judgment entered into by the parties, and following issuance of an order approving this
5 Proposition 65 settlement agreement and entering this Consent Judgment on May 21, 2018.

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

9
10 **IT IS SO ORDERED.**

11
12 **Dated:** 5/21/18

13 
14 _____
15 **JUDGE OF THE SUPERIOR COURT**
16 **Jacqueline M. Stern**

Exhibit No. 1

1 STEPHEN URE, ESQ.
LAW OFFICES OF STEPHEN URE, PC
2 11622 El Camino Real, Suite 100
San Diego, CA 92130
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4 Attorneys for Plaintiff Evelyn Wimberley

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

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EVELYN WIMBERLEY,

Case No.

11

Plaintiff,

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANT ROYAL OAK
ENTERPRISES, LLC**

12

v.

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Royal Oak Enterprises, LLC., et al.

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Defendants,

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1. INTRODUCTION

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1.1 **The Parties.** This Consent Judgment is entered into by and between Evelyn Wimberley acting on behalf of the public interest (hereinafter "Wimberley"), and Royal Oak Enterprises, LLC (hereinafter "Royal Oak"), with Wimberley and Royal Oak collectively referred to as the "Parties" and each of them as a "Party." Wimberley 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. Royal Oak employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

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1.2 **Allegations and Representations.** Wimberley alleges that Royal Oak has offered for sale in the State of California and has sold in California, charcoal starters that expose

1 individuals to carbon monoxide and soot, and that such sales have not been accompanied by
2 Proposition 65 warnings. Carbon monoxide and soot are listed under Proposition 65 as chemicals
3 known to the State of California to cause birth defects or other reproductive harm.

4 **1.3 Notices of Violation/Complaint.** On or about April 11, 2016, Wimberley served
5 Royal Oak and various public enforcement agencies with a document entitled "60-Day Notice of
6 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Royal Oak
7 was in violation of Proposition 65 for failing to warn consumers and customers that the charcoal
8 fire starters exposed users in California to carbon monoxide and soot. No public enforcer
9 diligently prosecuted the claims threatened in the Notice within sixty days plus service time
10 relative to the provision of the Notice to them by Wimberley, such that Wimberley will file a
11 complaint in the matter as captioned above within 6 months of the parties fully executing this
12 agreement..

13 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court
14 has jurisdiction over Royal Oak as to the allegations contained in the complaint filed in this
15 matter, that venue is proper in the County of San Diego, and that this Court has jurisdiction to
16 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
17 resolution of all claims which were or could have been raised in the Complaint based on the facts
18 alleged therein and/or in the Notices.

19 **1.5** Royal Oak denies the material allegations contained in Wimberley's Notice and
20 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
21 Judgment shall be construed as an admission by Royal Oak of any fact, finding, issue of law, or
22 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
23 an admission by Royal Oak of any fact, finding, conclusion, issue of law, or violation of law,
24 such being specifically denied by Royal Oak. However, this section shall not diminish or
25 otherwise affect the obligations, responsibilities, and duties of Royal Oak under this Consent
26 Judgment.

1 **2. DEFINITIONS**

2 **2.1 Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.

3 **2.2 Covered Product.** The term "Covered Product" means all lighter fluid products
4 produced by Royal Oak, including, but not limited to the following noticed products:
5 Embers fast lighting Charcoal Starter, First Street Charcoal Lighter Fluid and Winco
6 Foods Charcoal Lighter Fluid.

7 **2.3 Effective Date.** The term "Effective Date" shall mean the date this Consent
8 Judgment is entered as a Judgment of the Court.

9 **2.4 Listed Chemicals:** The term "Listed Chemicals" shall mean carbon monoxide and
10 soot.


11 **2.5 Notice.** The term "Notice" shall have the meaning given in Section 1.3.

12 **2.6 Releasees.** The terms "Defendant Releasees" and "Downstream Defendant
13 Releasees" shall have the meanings given in Section 5.1.

14 **2.7 Execution Date.** The term "Execution Date" shall mean the date this Consent
15 Judgment is signed by the parties

16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 **3.1** Commencing on sixty (60) days after the Effective Date, Royal Oak shall not sell,
18 offer for sale, or ship for sale in California any Covered Product, unless the Covered Product is
19 accompanied by the following on-product warning:

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

21 **3.2** The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
22 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
23 on the packaging or labeling, and displayed with such conspicuousness, as compared with other
24 words, statements, or designs as to render it likely to be read and understood by an ordinary
25 individual under customary conditions of purchase or use. A warning may be contained in the
26 same section of the packaging or labeling that states other safety warnings, if any, concerning the
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1 use of the product and shall be at least the same size as those other safety warnings, but no less
2 than 6 point font.

3 3.3 For warnings that are not on-product warnings, including but not limited to
4 warnings printed in an instruction booklet for any Covered Product, the following warning shall
5 be used:



8 **WARNING:** This product can expose you to carbon monoxide and soot, which are
9 known to the State of California to cause cancer and birth defects or other reproductive
10 harm. For more information go to www.P65Warnings.ca.gov.

11 **4. MONETARY TERMS**

12 4.1 **Civil Penalty. Royal Oak** shall pay a civil penalty of \$2,000.00 pursuant to
13 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California
14 Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's
15 Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty
16 remitted to Wimberley, as provided by California Health & Safety Code § 25249.12(d).

17 4.2 **Attorney Fees. Royal Oak** agrees to pay and will not oppose an application made
18 by Wimberley's counsel for an award of attorney fees, inclusive of all expenses and costs
19 incurred as a result of investigating, bringing this matter to Royal Oak's attention, litigating and
20 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
21 of Civil Procedure section 1021.5, in an amount of \$41,000.00 Other than the payment required
22 hereunder, each side is to bear its own attorneys' fees and costs.

23 4.3 Royal Oak shall wire Wimberley's counsel the total sum of \$43,000.00
24 representing the civil penalty and attorney fees in Sections 4.1 and 4.2 within two days following
25 receipt of a fully-executed copy of this Consent Judgment, and wire instruction information from
26 Wimberley's counsel.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This consent judgment is a full, final, and binding resolution between Wimberley
3 acting in the public interest, and Royal Oak, it's parents, shareholders, divisions, subdivisions,
4 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns
5 ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly or
6 indirectly distribute or sell Covered Products, including but not limited to manufacturers,
7 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and
8 cooperative members, including but not limited to Royal Oak and its subsidiaries and affiliates
9 ("Downstream Defendant Releasees"), of all claims for violations of Proposition 65 based on
10 exposure to Listed Chemicals from Covered Products as set forth in the Notice, with respect to
11 any Covered Products manufactured, distributed, or sold by Royal Oak prior to the Effective
12 Date. Compliance with the terms of this consent judgment constitutes compliance with
13 Proposition 65 with regard to the Covered Products.

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

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

6 5.3 Royal Oak waives any and all claims against Wimberley, her attorneys and other
7 representatives, for any and all actions taken or statements made (or those that could have been
8 taken or made) by Wimberley and her attorneys and other representatives, whether in the course
9 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
10 matter, and/or with respect to Covered Products.

11 **6. INTEGRATION**

12 6.1 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 Royal Oak shall provide written notice to Wimberley of any asserted change in the law, and shall
21 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
22 that, Covered Products are so affected.

23 **8. ENFORCEMENT**

24 8.1 Wimberley may, by motion or application for an order to show cause before the
25 Superior Court of San Diego County, enforce the terms and conditions contained in this Consent
26 Judgment. Prior to bringing any motion or application to enforce the requirements of this
27 Consent Judgment, Wimberley shall provide Royal Oak with a proposed Notice of Violation, and
28 a copy of any documentary evidence which purportedly supports Wimberley's Notice of
Violation. The Parties shall then meet and confer in good faith for a period of at least sixty (60)

1 days regarding the basis for Wimberley's anticipated motion or application in an attempt to
2 resolve it informally. Should such attempts at informal resolution fail, Wimberley may file her
3 enforcement motion or application. This Consent Judgment may only be enforced by the Parties.

4 **9. NOTICES**

5 9.1 Unless specified herein, all correspondence and notices required to be provided
6 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
7 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
8 party by the other party at the following addresses:

9
10 For Royal Oak:

11 Stanley Landfair
12 Rebecca Woodson
13 Dentons US LLP
14 One Market Plaza
Spear Tower, 24th Floor
San Francisco, CA 94105

15 and

16 For Wimberley:

17 Stephen Ure
18 Law Offices of Stephen Ure, PC.
11622 El Camino Real, Suite 100
19 San Diego, California 92130

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

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

23 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and
25 the same document.

1 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 11.1 Wimberley agrees to comply with the requirements set forth in California Health
4 & Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent
5 Judgment and Royal Oak agrees it shall support approval of such Motion.

6 11.2 This Consent Judgment shall not be effective until it is approved and entered by
7 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
8 within twelve months after it has been fully executed by the Parties. In such case, the Parties
9 agree to meet and confer on how to proceed and if such agreement is not reached within 30-days,
10 any monies that have been paid pursuant to Section 4 shall be refunded and the case shall proceed
11 on its normal course.

12 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
13 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
14 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
15 that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the
16 trial court, and the case shall proceed on its normal course on the trial court's calendar.

17 **12. MODIFICATION**

18 12.1 This Consent Judgment may be modified only by further stipulation of the Parties
19 and the approval of the Court or upon the granting of a motion brought to the Court by either
20 Party.

21 **13. ATTORNEY'S FEES**

22 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
24 unless the unsuccessful party has acted with substantial justification. For purposes of this
25 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
26 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

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


14. RETENTION OF JURISDICTION

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

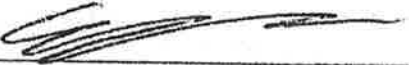
15. AUTHORIZATION

15.1 The undersigned are authorized to execute this Consent Judgment 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 Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

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AGREED TO: Date : <u>January 17</u> , 2017 By: <u></u> On Behalf of Evelyn Wimberley Stephen Ure, Law Offices of Stephen Ure, PC	AGREED TO: Date: _____, 2017 By: _____ On Behalf of The Home Depot Inc. Jeffrey Margulies, Norton Rose Fulbright US LLP
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IT IS HEREBY SO STIPULATED:

AGREED TO: Date: <u>1/17/17</u> By: <u></u> EVELYN WIMBERLEY	AGREED TO: Date: _____ By: _____ THE HOME DEPOT, INC.
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APPROVED AS TO FORM:

AGREED TO: Date: _____, 2017 By: _____ On Behalf of Evelyn Wimberley Stephen Ure, Law Offices of Stephen Ure, PC	AGREED TO: Date: <u>1/18</u> , 2017 By: <u>R. Woodson</u> On Behalf of Royal Oak Stanley Landfair Rebecca L. Woodson Dentons US, LLP
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IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: _____

Date: JANUARY 17, 2017

By: _____
EVELYN WIMBERLEY

By: Thomas P. Ashward
Royal Oak Enterprises, LLC