

1 Stephen Ure, Esq., (CSB# 188244)
2 LAW OFFICES OF STEPHEN URE, PC
3 11622 El Camino Real, Suite 100
4 San Diego, CA California 92130
5 Telephone: 619-235-5400

6 *Attorneys for Plaintiff, EVELYN WIMBERLEY*

RECEIVED

2019 APR -2 P 1:48

FILED
Clerk of the Superior Court
APR 15 2019
By: N. McKinley, Deputy

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

13 EVELYN WIMBERLEY,)

14)
15 Plaintiff)

16)
17 AND)

18 DICKS SPORTING GOODS, INC)
19 AND DOES 1-25 INCLUSIVE)

CASE NO.:
37-2018-00006053-CU-NP-NC

[PROPOSED] ORDER APPROVING
STIPULATION AND ORDER RE:
CONSENT JUDGMENT

20) Date: April 26, 2019
21) Time: 01:30 PM
22) Dept. N-28
23) Hon. Earl H. Maas, III
24) Action Filed: February 5, 2018

25 Plaintiff, EVELYN WIMBERLEY and Defendant, Dicks Sporting Goods, Inc, having
26 agreed through their respective counsel that judgment be entered pursuant to the terms of the
27 Stipulation and Order Re: Consent Judgment entered into by the parties, hereby attach same to
28 the Judgment as "Exhibit 1." After consideration of the papers submitted and arguments

1 presented, the Court finds that the settlement agreement set out in the attached Consent Judgment
2 meets the criteria established by Health & Safety Code §25249.7, in that:

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

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

14

15 **IT IS SO ORDERED.**

16

17 Dated: 4-15-11



Earl H. Maas III

18 _____
19 **JUDGE OF THE SAN DIEGO SUPERIOR COURT**

Exhibit No. 1

1 STEPHEN URE, ESQ.
2 LAW OFFICES OF STEPHEN URE, PC
3 11622 El Camino Real, Suite 100
4 San Diego, CA 92130
5 Telephone: 619-235-5400
6
7 Attorneys for Plaintiff Evelyn Wimberley

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 EVELYN WIMBERLEY,
11 Plaintiff,
12 v.
13 DICK'S SPORTING GOODS, INC.
14 AND DOES 1-25 INCLUSIVE
15 Defendants,

Case No. 37-2018-00006053-CU-NP-NC

STIPULATION TO CONSENT
JUDGMENT AS TO DEFENDANT
DICK'S SPORTING GOODS, INC.
AND CROSS-DEFENDANT
STANDARD BRANDS (UK) LTD

Filing Date: February 5, 2018

The Hon. Earl H. Maas, III

17 DICK'S SPORTING GOODS, INC.,
18 Cross-Complainant,
19 v.
20 STANDARD BRANDS (UK), LTD., AND DOES 1
21 through 10, inclusive,
22 Cross-Defendants,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION

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 DICK'S SPORTING GOODS, INC., ("DICK'S") and STANDARD BRANDS (UK) LTD, ("STANDARD") (DICK'S and STANDARD collectively the "Defendants") with Wimberley and Defendants collectively referred to as the "Parties" and each of them as a "Party."

1.2 Allegations and Representations. Wimberley alleges that Defendants have offered for sale in the State of California and has sold in California, "2 in 1 Zip Wood Firestarter" that exposes individuals to carbon monoxide and soot, and that such sales have not been accompanied by Proposition 65 warnings.

1.3 Notices of Violation/Complaint. On or about May 8, 2017, Wimberley served the distributor Maurice Sporting Goods, Inc., its retailer, DICK'S, 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 Defendants were in violation of Proposition 65 for failing to warn consumers and Defendants' customers that the "2 in 1 Zip Wood Firestarter" exposed users in California to carbon monoxide and soot. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Wimberley.

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

1.5 Defendants deny the material allegations contained in Wimberley's Notice and Complaint and maintain that they have not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law, or

1 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
2 an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law,
3 such being specifically denied by Defendants. However, this section shall not diminish or
4 otherwise affect the obligations, responsibilities, and duties of Defendants under this Consent
5 Judgment.

6 1.6 On March 28, 2018, DICK'S filed a Cross-Complaint against STANDARD for
7 equitable indemnity, comparative indemnity, implied indemnity, declaratory relief, and
8 contribution. The Cross-Complaint alleged that Standard, as manufacturer of the product at issue
9 in the Complaint, is responsible for any liability or violation of Proposition 65 concerning its
10 products sold by retailers such as DICK'S such as alleged in this action.

11 **2. DEFINITIONS**

12 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.

13 2.2 **Covered Product.** The term "Covered Product" means "2 in 1 Zip Wood
14 Firestarter."

15 2.3 **Effective Date.** The term "Effective Date" shall mean the date this Consent
16 Judgment is entered as a Judgment of the Court.

17 2.4 **Listed Chemicals:** The term "Listed Chemicals" shall mean carbon monoxide and
18 soot.

19 2.5 **Notice.** The term "Notice" shall have the meaning given in Section 1.3.

20 2.6 **Releasees.** Releasees means the Defendants, Defendant Releasees and
21 Downstream Releasees. The terms "Defendant Releasees" and "Downstream Releasees" shall
22 have the meanings given in Section 5.1.

23 2.7 **Execution Date.** The term "Execution Date" shall mean the date this Consent
24 Judgment is signed by all parties

25 **3. INJUNCTIVE RELIEF; WARNINGS**

26 3.1 Commencing 30 days after the Effective Date, Defendants shall not sell, offer for
27 sale, or ship for sale in California any Covered Product, unless the Covered Product is
28

1 accompanied by one of the following warnings which may not appear identical as to form so long
2 as materially identical in substance:



WARNING: Cancer and Reproductive Harm.

www.P65Warnings.ca.gov.

4
5 or



WARNING: This product can expose you to carbon monoxide and soot, 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.

7
8
9 or



WARNING: The combustion of wood, charcoal, and other fuels can expose you to chemicals, including soot and carbon monoxide, 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.

11
12 or



WARNING: Combustion byproducts, such as carbon monoxide and soot, produced when using this product, contain chemicals 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.

14
15
16
17
18
19
20
21
22
23
24 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
25 Covered Product's packaging, labeling, or instruction booklet. The warning shall be prominently
26 affixed to or printed on the packaging, labeling, or package insert and displayed with such
27 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
28 read and understood by an ordinary individual under customary conditions of purchase or use. A

1 warning may be contained in the same section of the packaging, labeling, or package insert that
2 states other safety warnings, if any, concerning the use of the product and shall be at least the
3 same size as those other safety warnings.

4 3.3 The warning requirements set forth in paragraph 3.1 above shall not apply to:

5 (a) Covered Products manufactured, distributed, marketed or sold by DICK'S, before
6 60 days after entry of this Consent Judgment (the "Effective Date");

7 (c) Covered Products in DICK'S inventory, on or before the Effective Date;

8 (d) Covered Products manufactured, distributed, marketed, sold or shipped for sale or
9 use outside the State of California.

10 **4. MONETARY TERMS**

11 4.1 **Civil Penalty.** Defendants shall pay a civil penalty of \$1,000 to be apportioned in
12 accordance with California Code of Regulations Title 11 Division 4 – Proposition 65 Private
13 Enforcement with 75% of these funds remitted to the State of California's Office of
14 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
15 Wimberley, as provided by California Health & Safety Code § 25249.7.

16 4.2 **Attorney Fees.** Defendants agree to pay and Defendants will not oppose an
17 application made by Wimberley's counsel for an award of attorney fees, inclusive of all expenses
18 and costs incurred as a result of investigating, bringing this matter to Defendants' attention,
19 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
20 pursuant to Code of Civil Procedure section 1021.5, in an amount of \$34,000.00. Other than the
21 payment required hereunder, each side is to bear its own attorneys' fees and costs.

22 4.3 Within 3 business days of execution of this Consent Judgment by the parties,
23 Standard shall wire the total sum of \$35,000.00 representing the civil penalty and attorney fees in
24 Sections 4.1 and 4.2 to the Law Offices of Stephen Ure, PC Attorney Trust Account. If the Court
25 declines to enter this Consent Judgment within-18 months of its submission to the court, the funds
26 will be returned to Standard.
27
28

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 Defendants, their 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, marketplace hosts, wholesalers, customers, licensors, licensees, retailers
8 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to
9 Listed Chemicals from Covered Products as set forth in the Notice, with respect to any Covered
10 Products manufactured, distributed, or sold by Defendants prior to 30 days after the Effective
11 Date. Compliance with the terms of this consent judgment constitutes compliance with
12 Proposition 65 with regard to the Covered Products.

13 5.2 In addition to the foregoing, Wimberley, 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 Defendants, Defendant Releasees, and Downstream Releasees from
17 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
18 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 Defendants, Defendant
22 Releasees and Downstream Releasees. With respect to the foregoing waivers and releases in this
23 paragraph, Wimberley hereby specifically waives any and all rights and benefits which she now
24 has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the
25 California Civil Code, which 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 Defendants THE DEBTOR.

2
3 5.3 Defendants waive any and all claims against Wimborley, 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 Wimborley and her attorneys and other representatives, whether in the course
6 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
7 matter, and/or with respect to Covered Products.

8 5.4 Full Release & Dismissal as to Defendants

9 Compliance with the terms of this Consent Judgment by Defendants resolves any issue,
10 now and in the future, concerning compliance by DICK'S AND STANDARD, whether as
11 Defendants, Defendant Releasees, or Downstream Releasees with the requirements of with
12 Proposition 65 with respect to chemicals in any Covered Products that are manufactured, shipped,
13 or sold by, the Defendant Releasees or the Downstream Releasees following the Effective Date.

14 6. INTEGRATION

15 6.1 This Consent Judgment contains the sole and entire agreement of the Parties with
16 respect to the Complaint and any and all prior negotiations and understandings related hereto
17 shall be deemed to have been merged within it. No representations or terms of agreement other
18 than those contained herein exist or have been made by any Party with respect to the Complaint
19 or the subject matter hereof.

20 7. GOVERNING LAW

21 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
22 California and apply within the State of California and shall apply only to Covered Products that
23 are sold or offered for sale in the State of California. In the event that Proposition 65 is repealed
24 or is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
25 Defendants shall have no further obligations pursuant to this Consent Judgment with respect to,
26 and to the extent that, Covered Products are so affected.

27
28

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
4 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
5 party by the other party at the following addresses:
6

7 For DICK'S:

8 Maureen Gorsen
9 Alston & Bird
10 1121 L Street, Suite 700
 Sacramento, CA 95814

11 For STANDARD:

12 Jerome A. Busch
13 Jeffrey Resnick
14 Vogt Resnick Sherak, LLP
 Attorneys at Law
15 4400 MacArthur Blvd, Ninth Floor
16 Newport Beach, CA, 92658-7849

17 For Wimberley:

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

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

24 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
25 which shall be deemed an original, and all of which, when taken together, shall constitute one and
26 the same document.
27
28

1
2 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(D)/COURT**
3 **APPROVAL**

4 10.1 Wimberley agrees to comply with the requirements set forth in California Health
5 & Safety Code §25249.7(D) and to promptly bring a Motion for Approval of this Consent
6 Judgment and Defendants agree they shall support approval of such Motion.

7 10.2 This Consent Judgment shall not be effective until it is approved and entered by
8 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
9 within twelve months after it has been fully executed by the Parties.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
12 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
13 that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the
14 trial court, and the case shall proceed on its normal course on the trial court's calendar.

15 **11. MODIFICATION**

16 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
17 and the approval of the Court or upon the granting of a motion brought to the Court by either
18 Party.

19 **12. ENTIRE AGREEMENT**

20 This Consent Judgment contains the sole and entire agreement and understanding of
21 Wimberley, on the one hand, and Defendants, on the other hand, with respect to the entire subject
22 matter of the Complaint, and any and all prior discussions, negotiations, commitments, or
23 understandings related thereto, if any, are hereby merged herein and therein. No representations,
24 oral or otherwise, express or implied, other than those specifically referred to in this Consent
25 Judgment have been made by any Party hereto. No supplementation, modification, waiver, or
26 termination of this Consent Judgment shall be binding unless executed in writing by the Party to
27 be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed
28 or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall

1 such waiver constitute a continuing waiver.
2

3 **13. ATTORNEY'S FEES**

4 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent
5 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
6 unless the unsuccessful party has acted with substantial justification. For purposes of this
7 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
8 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.
9

10 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
11 pursuant to law.

12 **14. RETENTION OF JURISDICTION**



13 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
14 Consent Judgment.

15 **15. AUTHORIZATION**

16 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of
17 their respective Parties and have read, understood and agree to all of the terms and conditions of
18 this document and certify that they are fully authorized by the Parties they represent to execute
19 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
20 explicitly provided herein, each Party is to bear its own fees and costs.
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM:

<p>AGREED TO: Date: <u>June 22</u>, 2018 By:  On Behalf of Evelyn Wimberley Stephen Ure, Law Offices of Stephen Ure, PC</p>	<p>AGREED TO: Date: <u>June 21</u>, 2018 By:  On Behalf of STANDARD Stephan H. Andranian Vogt, Resnick & Sherak, LLP</p>
--	--

AGREED TO:

Date: _____, 2018

By: _____

On Behalf of DICK'S
Maureen Gorsen
Alston & Bird, LLP

IT IS HEREBY SO STIPULATED:

AGREED TO:

Date: 06/21/2018


By: 
EVELYN WIMBERLEY

AGREED TO:

Date: _____

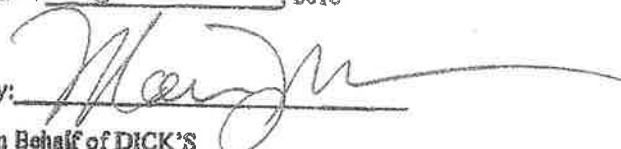
By: _____
DICK'S SPORTING GOODS, INC

1 APPROVED AS TO FORM:

2	3	4	5	6	7	8
AGREED TO:	AGREED TO:	Date : _____, 2018	Date: <u>June 21</u> , 2018	By: _____	By: 	
On Behalf of Evelyn Wimberley Stephen Uro, Law Offices of Stephen Uro, PC	On Behalf of STANDARD Stephan H. Andranian Vogt, Resnick & Sherak, LLP					

9 AGREED TO:

10 Date : June 27, 2018

11 By: 

12 On Behalf of DICK'S
13 Maureen Gorsen
14 Alston & Bird, LLP

15
16 IT IS HEREBY SO STIPULATED:

17 AGREED TO:

18 AGREED TO:

19 Date: _____

20 Date: June 27

21 By: _____
EVELYN WIMBERLEY

22 By: 
DICK'S SPORTING GOODS, INC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date: 21st June 2018

By: Denis McCourt
Operations & Finance Director
STANDARD BRANDS (UK) LTD

