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7 *Attorneys for Plaintiff, Evelyn Wimberley*

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

OCT 2 X 2011

By: A. Taylor, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 **UNLIMITED CIVIL JURISDICTION**

11  
12  
13 **EVELYN WIMBERLEY,** )

14 )  
15 **Plaintiff** )

16 )  
17 **and** )

18 **CEQUENT CONSUMER PRODUCTS,** )  
19 **INC.** )

20 )  
21 **Defendant.** )  
22 )

**CASE NO.:**

**37-2011-00094253-CU-PO-CTL**

~~**PROPOSED**~~

**JUDGMENT APPROVING**

**PROP 65 STIPULATION AND**

**CONSENT JUDGMENT**

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

**Date: October 21, 2011**

**Time: 1:30 PM**

**Dept. C-72**

**Hon. Timothy Taylor**

**Action Filed: JULY 11, 2011**

1  
2  
3 In the above entitled action, Plaintiff, Evelyn Wimberley and Defendant, Cequent  
4 Consumer Products, Inc., having agreed through their respective counsel that judgment be  
5 entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a  
6 [Proposed] Consent Judgment entered into by the parties, and following issuance of an order  
7 approving this Proposition 65 settlement agreement and entering this Consent Judgment on -  
8 Oct 21, 2011.

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

12  
13 **IT IS SO ORDERED.**

14  
15 **Dated:** 10/21/11

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28 **JUDGE OF THE SUPERIOR COURT**

Exhibit 1

1 **LAW OFFICES OF STEPHEN URE, PC**  
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4 Attorneys for Plaintiff EVELYN WIMBERLEY

5  
6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10  
11 EVELYN WIMBERLEY,

12 Plaintiff,

13 v.

14 CEQUENT CONSUMER PRODUCTS, INC.  
et al,

15 Defendants.  
16  
17

Case No. 31-2011-00094253-  
CU-PO-CTL

**CONSENT JUDGMENT [PROPOSED]**

18 **1. INTRODUCTION**

19 1.1 On July 8, 2011, Plaintiff Evelyn Wimberley (“Wimberley”) filed a complaint  
20 (“Complaint”) in San Diego County Superior Court, entitled *Evelyn Wimberley v. Cequent*  
21 *Consumer Products, Inc.*, San Diego County Superior Court Case Number \_\_\_\_\_, for civil  
22 penalties and injunctive relief pursuant to the provisions of California Health & Safety Code  
23 §25249.5 *et seq.* (“Proposition 65”).

24 1.2 The parties to this Consent Judgment (“Parties”) are Wimberley and Defendant  
25 Cequent Consumer Products, Inc. (“Cequent”), a company that employs 10 or more persons.

26 1.3 On or about February 6, 2011, Wimberley served Cequent, and all public  
27 enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the  
28

1 State of California with a document entitled "60-Day Notice of Violation" (the "Notice") that  
2 provided Cequent and such public enforcers with notice that alleged that Cequent was in  
3 violation of California Health & Safety Code § 25249.6 for failing to warn consumers and  
4 customers that the Reese Adjustable Trailer Coupler Lock, UPC 016118043693, exposes users in  
5 California to lead, a chemical known to the State of California to cause cancer, birth defects and  
6 other reproductive harm, without first providing clear and reasonable warning to such persons.  
7 The notice and Complaint allege that Cequent's conduct violates Health & Safety Code §  
8 25249.6, the warning provision of Proposition 65. No public enforcer has diligently prosecuted  
9 the allegations set forth in the Notice.

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 Cequent 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 Reese Adjustable Trailer Coupler Lock, UPC  
27 016118043693, allegedly containing lead.  
28









1     **5.     CLAIMS COVERED AND RELEASED**

2             5.1     In further consideration of the promises and agreements herein contained, and for  
3     the payments to be made pursuant to Sections 3 and 4 above, Wimberley, on behalf of herself, her  
4     past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all  
5     rights to institute or participate in, directly or indirectly, any form of legal action and releases all  
6     claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,  
7     liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,  
8     but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever,  
9     whether known or unknown, fixed or contingent (collectively "Claims"), against Cequent and  
10    each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers  
11    (including, but not limited to, Lowe's HIW, Inc.) franchisees, dealers, customers, owners,  
12    purchasers, users and their respective parent companies, corporate affiliates, subsidiaries, and  
13    each of their respective officers, directors, attorneys, representatives, shareholders, agents, and  
14    employees, and sister and parent entities (collectively "Releasees"). This release is limited to  
15    those claims that arise under Proposition 65, as such claims relate to Cequent's or the Releasees'  
16    alleged failure to warn about exposures to or identification of lead contained in the Products.  
17

18             Wimberley also, in her individual capacity, on behalf of herself, her past and current  
19    agents, representatives, attorneys, successors, and/or assignees and *not* in her representative  
20    capacity, provides a general release herein which shall be effective as a full and final accord and  
21    satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
22    damages, losses, claims, liabilities and demands of any nature, character or kind, known or  
23    unknown, suspected or unsuspected, against Cequent and the Releasees arising under Proposition  
24    65, as such claims relate to Cequent and the Releasees' alleged failure to warn under Proposition  
25    65 about exposures to or identification of lead contained in the Products sold by Cequent and the  
26    27  
28



1 Releasees. Wimberley acknowledges that she is familiar with Section 1542 of the Civil Code,  
2 which provides as follows:

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

7 Plaintiff, in her individual capacity only and *not* in her representative capacity, and on behalf of  
8 herself, her past and current agents, representatives, attorneys, successors, and/or assignees  
9 expressly waives and relinquishes any and all rights and benefits which she may have under, or  
10 which may be conferred on her by the provisions of Civil Code § 1542 as well as under any other  
11 state or federal statute or common law principle of similar effect, to the fullest extent that she may  
12 lawfully waive such rights or benefits pertaining to the released matters.

13  
14 Compliance with the terms of this Consent Judgment resolves any issue, now and in the  
15 future, concerning compliance by Cequent and Cequent's Releasees with the requirements of  
16 Proposition 65 with respect to alleged exposure to lead in the Products.

17 5.2 Cequent waives any and all claims against Wimberley, her attorneys and other  
18 representatives, for any and all actions taken or statements made (or those that could have been  
19 taken or made) by Wimberley and her attorneys and other representatives, whether in the course  
20 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this  
21 matter, and/or with respect to the Products.

22  
23 Cequent acknowledges that it is familiar with Section 1542 of the Civil Code,  
24 which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
26 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
27 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
28 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

1 Cequent on behalf of itself, its past and current agents, representatives, attorneys, successors,  
2 and/or assignees expressly waives and relinquishes any and all rights and benefits which it may  
3 have under, or which may be conferred on it by the provisions of Cal. Civil Code § 1542 as well  
4 as under any other state or federal statute or common law principle of similar effect, to the fullest  
5 extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6 5.3 Compliance with the terms of this Consent Judgment by Cequent shall constitute  
7 compliance with Proposition 65 with respect to lead in any Covered Products that are  
8 manufactured, shipped, or sold by Cequent following the Effective Date.

9 **6. COURT APPROVAL**

10 6.1 This Consent Judgment is not effective until it is approved and entered by the  
11 Court and shall be null and void if, for any reason, it is not approved and entered by the Court  
12 within one year after it has been fully executed by all Parties.

13 6.2 If the Court does not approve the Consent Judgment, the Parties shall meet and  
14 confer as to whether to modify the terms of this Consent Judgment or appeal the ruling. If the  
15 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal  
16 course on the trial court's calendar.

17 6.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
18 appellate court, the Parties shall meet and confer as to whether to modify the terms of this  
19 Consent Judgment. If the Parties do not jointly agree on a course of action to take the case shall  
20 proceed on its normal course on the trial court's calendar.

21 **7. ENFORCEMENT**

22 7.1 Any Party may, by motion or application for an order to show cause before this  
23 Court, enforce the terms and conditions contained in this Consent Judgment. A Party may  
24 enforce any of the terms and conditions of this Consent Judgment only after that Party first  
25 provides 30 days notice to the Party allegedly failing to comply with the terms and conditions of  
26 this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good  
27 faith manner.

28



1 **8. MODIFICATION**

2 8.1 This Consent Judgment may be modified from time to time by express written  
3 agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion  
4 and in accordance with law. A Party seeking to modify this Consent Judgment shall attempt in  
5 good faith to meet and confer with all affected Parties prior to filing a motion to modify the  
6 Consent Judgment.

7 **9. ACCURACY OF SALES DATA**

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

12 **10. ENTIRE AGREEMENT**

13 10.1 This Consent Judgment contains the sole and entire agreement and understanding  
14 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
15 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
16 and therein. No representations, oral or otherwise, express or implied, other than those  
17 specifically referred to in this Consent Judgment have been made by any Party hereto. No  
18 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
19 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
20 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
21 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

22 **11. GOVERNING LAW AND APPLICATION**

23 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California and shall apply only to Covered Products that are sold or offered for sale in the State of  
25 California.

26 11.2 This Consent Judgment shall apply to and be binding upon Wimberley and  
27 Cequent and its divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns.

28

1           11.3 The Parties, including their counsel, have participated in the preparation of this  
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
5 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
6 of the manner of the preparation of this Consent Judgment.

7       **12. RETENTION OF JURISDICTION**

8           12.1 This Court shall retain jurisdiction of this matter to implement, modify, and  
9 enforce the terms this Consent Judgment.

10       **13. PROVISION OF NOTICE**

11           13.1 All notices required pursuant to this Consent Judgment and correspondence shall  
12 be sent to the following:

13 For Cequent:

14           **Cequent Consumer Products, Inc.**  
15           Mr. John Aleva, President  
16           29000-2 Aurora Road  
17           Solon, OH 44139

18 With a copy to:

19           Ms. Elizabeth McNulty  
20           Hewitt Wolensky LLP  
21           4041 MacArthur Blvd., Suite 300  
22           Newport Beach, CA 92660

23 For Wimberley:

24           Law Offices of Stephen Ure, PC  
25           1518 Sixth Avenue  
26           San Diego, CA 92101  
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**14. COURT APPROVAL**

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

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

**15. ATTORNEY'S FEES**

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

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

**16. EXECUTION AND COUNTERPARTS**

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

**17. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Wimberley agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

1 18. AUTHORIZATION

2 18.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
3 by the party he or she represents to stipulate to this Consent Judgment and to enter into and  
4 execute the Consent Judgment on behalf of the party represented and legally bind that party and  
5 further represents it will take all necessary and proper steps to support its entry by the Court. The  
6 undersigned have read, understand and agree to all of the terms and conditions of this Consent  
7 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

8

9 AGREED TO:

10

11 Dated:

12

13

14

\_\_\_\_\_  
Evelyn Wimberley

15

16 Dated:

CEQUENT CONSUMER PRODUCTS, INC.

17

By \_\_\_\_\_

18

Name: \_\_\_\_\_

19

Title: \_\_\_\_\_

20

21

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23

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28

1 Stephen Ure, Esq., (CSB# 188244)  
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7 *Attorneys for Plaintiff, Evelyn Wimberley*

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

OCT 2 X 2011

By: A. Taylor, Deputy

FILED 10/2/11

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 **CEQUENT CONSUMER PRODUCTS,** )  
18 **INC.** )

19 **Defendant.** )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

**CASE NO.:**  
**37-2011-00094253-CU-PO-CTL**

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

**Date: October 21, 2011**  
**Time: 1:30 PM**  
**Dept. C-72**  
**Hon. Timothy Taylor**  
**Action Filed: July 11, 2011**

1  
2 Plaintiff, Evelyn Wimberley and Defendant, Cequent Consumer Products, Inc.,  
3 having agreed through their respective counsel that judgment be entered pursuant to the terms of  
4 the Stipulation and Order Re: Consent Judgment entered into by the parties, and attached to the  
5 Judgment pursuant to the terms of the Stipulation and Order Re: Consent Judgment as Exhibit 1.  
6 After consideration of the papers submitted and arguments presented, the Court finds that the  
7 settlement agreement set out in the attached Consent Judgment meets the criteria established by  
8 Health & Safety Code §25249.7, in that:

- 9 a) the health hazard warning required by the Stipulation and Order Re: Consent  
10 Judgment complies with Health & Safety Code §25249.7;  
11 b) the reimbursement of fees and costs to be paid pursuant to the parties'  
12 Stipulation and Order Re: Consent Judgment is reasonable under California  
13 law; and  
14 c) the civil penalty amount to be paid pursuant to the parties' Stipulation and  
15 Order Re: Consent Judgment is reasonable  
16

17 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to Code of Civil  
18 Procedure §664.6, judgment is entered in accordance with the Consent Judgment attached hereto  
19 as Exhibit 1.  
20

21 **IT IS SO ORDERED.**

22  
23 Dated: 10/21/11

24   
25  
26  
27  
28  
**JUDGE OF THE SAN DIEGO SUPERIOR COURT**



EXHIBIT 1

1 **LAW OFFICES OF STEPHEN URE, PC**  
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Attorneys for Plaintiff EVELYN WIMBERLEY  
5  
6  
7

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

11 EVELYN WIMBERLEY,  
12 Plaintiff,

13 v.

14 CEQUENT CONSUMER PRODUCTS, INC.  
et al,  
15 Defendants.  
16  
17

Case No.

37-2011-00094253-CU-PO-CTL

**CONSENT JUDGMENT [PROPOSED]**

18 **1. INTRODUCTION**  
19

20 1.1 On July 8, 2011, Plaintiff Evelyn Wimberley (“Wimberley”) filed a complaint  
21 (“Complaint”) in San Diego County Superior Court, entitled *Evelyn Wimberley v. Cequent*  
22 *Consumer Products, Inc.*, San Diego County Superior Court Case Number \_\_\_\_\_, for civil  
23 penalties and injunctive relief pursuant to the provisions of California Health & Safety Code  
24 §25249.5 *et seq.* (“Proposition 65”).

25 1.2 The parties to this Consent Judgment (“Parties”) are Wimberley and Defendant  
26 Cequent Consumer Products, Inc. (“Cequent”), a company that employs 10 or more persons.

27 1.3 On or about February 6, 2011, Wimberley served Cequent, and all public  
28 enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the

1 State of California with a document entitled "60-Day Notice of Violation" (the "Notice") that  
2 provided Cequent and such public enforcers with notice that alleged that Cequent was in  
3 violation of California Health & Safety Code § 25249.6 for failing to warn consumers and  
4 customers that the Reese Adjustable Trailer Coupler Lock, UPC 016118043693, exposes users in  
5 California to lead, a chemical known to the State of California to cause cancer, birth defects and  
6 other reproductive harm, without first providing clear and reasonable warning to such persons.  
7 The notice and Complaint allege that Cequent's conduct violates Health & Safety Code §  
8 25249.6, the warning provision of Proposition 65. No public enforcer has diligently prosecuted  
9 the allegations set forth in the Notice.

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 Cequent 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 Reese Adjustable Trailer Coupler Lock, UPC  
27 016118043693, allegedly containing lead.  
28

1           2.2    The term "Effective Date" means June 30, 2011, the date on which the parties  
2 executed this Proposed Consent Judgment.

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 either be reformulated pursuant to Section 3.2 or shall be labeled  
6 with a warning as provided in Section 3.3.

7           3.2    **Reformulation.** The Products shall be deemed to comply with Proposition 65 with  
8 regard to lead and be exempt from any Proposition 65 warning requirements for lead if the  
9 Products do not exceed the following limits for lead: 100 ppm by weight for any accessible  
10 component part. For purposes of this Settlement Agreement, accessible component part shall  
11 mean components of the Product to which a person would be exposed to lead by direct contact  
12 during normal and reasonably foreseeable use.

13           3.3    **Warning Alternative.** Products that do not meet the warning exemption standard  
14 set forth in Section 3.2 above shall be accompanied by a warning as described here in Section  
15 3.3 (a) below. The warning requirements set forth in Section 3.3 (a) below shall apply only to  
16 Products that Cequent offers for sale sixty (60) days after the Effective Date that are distributed,  
17 marketed, sold or shipped for sale or use inside the State of California. The warning requirement  
18 shall not apply to Products that are already in the stream of commerce as of the Effective Date.

19           3.4    Where required under Sections 3.2 and 3.3, Cequent shall provide Proposition 65 warnings  
20 as follows:

21                   (a)    Cequent may use either of the following warning statements:

22                           (1)    **WARNING:** This product contains lead, a chemical known to the  
23   State of California to cause cancer and birth defects or other  
24   reproductive harm.

25   or where Cequent has reason to believe that chemicals listed  
26   under proposition 65 in addition to lead are present in a Product,  
27  
28





1     **5.     CLAIMS COVERED AND RELEASED**

2             5.1     In further consideration of the promises and agreements herein contained, and for  
3     the payments to be made pursuant to Sections 3 and 4 above, Wimberley, on behalf of herself, her  
4     past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all  
5     rights to institute or participate in, directly or indirectly, any form of legal action and releases all  
6     claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,  
7     liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,  
8     but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever,  
9     whether known or unknown, fixed or contingent (collectively "Claims"), against Cequent and  
10    each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers  
11    (including, but not limited to, Lowe's HIW, Inc.) franchisees, dealers, customers, owners,  
12    purchasers, users and their respective parent companies, corporate affiliates, subsidiaries, and  
13    each of their respective officers, directors, attorneys, representatives, shareholders, agents, and  
14    employees, and sister and parent entities (collectively "Releasees"). This release is limited to  
15    those claims that arise under Proposition 65, as such claims relate to Cequent's or the Releasees'  
16    alleged failure to warn about exposures to or identification of lead contained in the Products.  
17

18             Wimberley also, in her individual capacity, on behalf of herself, her past and current  
19    agents, representatives, attorneys, successors, and/or assignees and *not* in her representative  
20    capacity, provides a general release herein which shall be effective as a full and final accord and  
21    satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
22    damages, losses, claims, liabilities and demands of any nature, character or kind, known or  
23    unknown, suspected or unsuspected, against Cequent and the Releasees arising under Proposition  
24    65, as such claims relate to Cequent and the Releasees' alleged failure to warn under Proposition  
25    65 about exposures to or identification of lead contained in the Products sold by Cequent and the  
26  
27  
28



1 Releasees. Wimberley acknowledges that she is familiar with Section 1542 of the Civil Code,  
2 which provides as follows:

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

7 Plaintiff, in her individual capacity only and *not* in her representative capacity, and on behalf of  
8 herself, her past and current agents, representatives, attorneys, successors, and/or assignees  
9 expressly waives and relinquishes any and all rights and benefits which she may have under, or  
10 which may be conferred on her by the provisions of Civil Code § 1542 as well as under any other  
11 state or federal statute or common law principle of similar effect, to the fullest extent that she may  
12 lawfully waive such rights or benefits pertaining to the released matters.

13  
14 Compliance with the terms of this Consent Judgment resolves any issue, now and in the  
15 future, concerning compliance by Cequent and Cequent's Releasees with the requirements of  
16 Proposition 65 with respect to alleged exposure to lead in the Products.

17 5.2 Cequent waives any and all claims against Wimberley, her attorneys and other  
18 representatives, for any and all actions taken or statements made (or those that could have been  
19 taken or made) by Wimberley and her attorneys and other representatives, whether in the course  
20 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this  
21 matter, and/or with respect to the Products.  
22

23 Cequent acknowledges that it is familiar with Section 1542 of the Civil Code,  
24 which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
26 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
27 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
28 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.



1 Cequent on behalf of itself, its past and current agents, representatives, attorneys, successors,  
2 and/or assignees expressly waives and relinquishes any and all rights and benefits which it may  
3 have under, or which may be conferred on it by the provisions of Cal. Civil Code § 1542 as well  
4 as under any other state or federal statute or common law principle of similar effect, to the fullest  
5 extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6 5.3 Compliance with the terms of this Consent Judgment by Cequent shall constitute  
7 compliance with Proposition 65 with respect to lead in any Covered Products that are  
8 manufactured, shipped, or sold by Cequent following the Effective Date.

## 9 6. COURT APPROVAL

10 6.1 This Consent Judgment is not effective until it is approved and entered by the  
11 Court and shall be null and void if, for any reason, it is not approved and entered by the Court  
12 within one year after it has been fully executed by all Parties.

13 6.2 If the Court does not approve the Consent Judgment, the Parties shall meet and  
14 confer as to whether to modify the terms of this Consent Judgment or appeal the ruling. If the  
15 Parties do not jointly agree on a course of action to take, the case shall proceed on its normal  
16 course on the trial court's calendar.

17 6.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
18 appellate court, the Parties shall meet and confer as to whether to modify the terms of this  
19 Consent Judgment. If the Parties do not jointly agree on a course of action to take the case shall  
20 proceed on its normal course on the trial court's calendar.

## 21 7. ENFORCEMENT

22 7.1 Any Party may, by motion or application for an order to show cause before this  
23 Court, enforce the terms and conditions contained in this Consent Judgment. A Party may  
24 enforce any of the terms and conditions of this Consent Judgment only after that Party first  
25 provides 30 days notice to the Party allegedly failing to comply with the terms and conditions of  
26 this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good  
27 faith manner.

1 **8. MODIFICATION**

2 8.1 This Consent Judgment may be modified from time to time by express written  
3 agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion  
4 and in accordance with law. A Party seeking to modify this Consent Judgment shall attempt in  
5 good faith to meet and confer with all affected Parties prior to filing a motion to modify the  
6 Consent Judgment.

7 **9. ACCURACY OF SALES DATA**

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

12 **10. ENTIRE AGREEMENT**

13 10.1 This Consent Judgment contains the sole and entire agreement and understanding  
14 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
15 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
16 and therein. No representations, oral or otherwise, express or implied, other than those  
17 specifically referred to in this Consent Judgment have been made by any Party hereto. No  
18 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
19 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
20 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
21 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

22 **11. GOVERNING LAW AND APPLICATION**

23 11.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California and shall apply only to Covered Products that are sold or offered for sale in the State of  
25 California.

26 11.2 This Consent Judgment shall apply to and be binding upon Wimberley and  
27 Cequent and its divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns.  
28

1           11.3 The Parties, including their counsel, have participated in the preparation of this  
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
5 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
6 of the manner of the preparation of this Consent Judgment.

7 **12. RETENTION OF JURISDICTION**

8           12.1 This Court shall retain jurisdiction of this matter to implement, modify, and  
9 enforce the terms this Consent Judgment.

10 **13. PROVISION OF NOTICE**

11           13.1 All notices required pursuant to this Consent Judgment and correspondence shall  
12 be sent to the following:

13 For Cequent:

14           **Cequent Consumer Products, Inc.**  
15           Mr. John Aleva, President  
16           29000-2 Aurora Road  
17           Solon, OH 44139

18 With a copy to:

19           Ms. Elizabeth McNulty  
20           Hewitt Wolensky LLP  
21           4041 MacArthur Blvd., Suite 300  
22           Newport Beach, CA 92660

23 For Wimberley:

24           Law Offices of Stephen Ure, PC  
25           1518 Sixth Avenue  
26           San Diego, CA 92101  
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**14. COURT APPROVAL**

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

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

**15. ATTORNEY'S FEES**

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

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

**16. EXECUTION AND COUNTERPARTS**

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

**17. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Wimberley agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

1 18. AUTHORIZATION

2 18.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
3 by the party he or she represents to stipulate to this Consent Judgment and to enter into and  
4 execute the Consent Judgment on behalf of the party represented and legally bind that party and  
5 further represents it will take all necessary and proper steps to support its entry by the Court. The  
6 undersigned have read, understand and agree to all of the terms and conditions of this Consent  
7 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

8  
9 AGREED TO:

10  
11 Dated:

\_\_\_\_\_  
Evelyn Wimberley

12  
13  
14  
15 Dated:

CEQUENT CONSUMER PRODUCTS, INC.

By 

Name: John Sheppin

Title: VP, Secretary + General Counsel