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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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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
16 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
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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.
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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.
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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:

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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:

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

With a copy to:

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

and

For Parker:

Stephen Ure
Law Offices of Stephen Ure, PC.
1518 Sixth Avenue
San Diego, California 92101

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

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
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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.

APPROVED AS TO FORM:

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

AGREED TO:

AGREED TO:

Date: _____

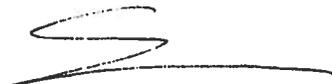
Date: _____

By: _____
MAUREEN PARKER

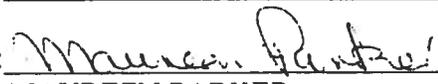
By: _____
ALLSTAR MARKETING GROUP, LLC

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APPROVED AS TO FORM:

AGREED TO: Date: <u>December 10</u> , 2012 By: <u></u> On Behalf of Maureen Parker Stephen Ure, Law Offices of Stephen Ure, PC	AGREED TO: 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:

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