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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

AFS ENTERPRISES, LLC,)	Case No.: BC508073
Plaintiff,)	(Complaint Filed: May 9, 2013)
vs.)	CONSENT JUDGMENT
LAVA PROPANE, LLC; and DOES 1 -)	
50,)	
Defendants.)	

1. Introduction

1.1 On May 9, 2013, AFS Enterprises, LLC (“AFS” or “Plaintiff”), on behalf of the general public, filed a Complaint for Civil Penalty and Injunctive Relief (“Complaint”) in the California Superior Court for the County of Los Angeles, entitled *AFS Enterprises, LLC v. Lava Propane, LLC; and Does 1 to 50*, Case Number BC508073 (“Action”). For purposes of this Consent Judgment, Plaintiff acts on behalf of the People of the State of California only as to those matters described in the “60 Day Notice of Violation” letter dated March 5, 2013, a copy of which is attached as Exhibit 1, which Plaintiff sent to the defendant and to public enforcers as required by California Health and Safety Code section 25249.7. Lava Propane, LLC is the defendant named in the Complaint, and is hereinafter referred to as “Settling Defendant.”

1 1.2 Settling Defendant is an entity that sells propane pursuant to a cylinder
2 exchange program for use in the State of California.

3 1.3 The Complaint alleges that the defendant has violated the Safe Drinking
4 Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 *et seq.*
5 (“Proposition 65”), and Business and Professions Code 17200 (“Unfair Competition Act”),
6 by knowingly and intentionally exposing individuals to chemicals known to the State of
7 California to cause cancer, birth defects, or other reproductive harm, without first
8 providing a clear and reasonable warning.

9 1.4 For purposes of this Consent Judgment only, the parties stipulate that this
10 Court has jurisdiction over the allegations of violations contained in the Complaint and
11 personal jurisdiction over the Settling Defendant as to the acts alleged in the Complaint
12 that occurred in the State of California, that venue is proper in the County of Los Angeles,
13 and that this Court has jurisdiction to enter this Consent Judgment as a resolution of all
14 claims which were or could have been raised in the Complaint based on the facts alleged
15 therein.

16 1.5 For the purpose of avoiding prolonged litigation, the parties enter into this
17 Consent Judgment as a full settlement of all claims that were raised in the Complaint based
18 on the facts alleged therein, or which could have been raised in the Complaint arising out
19 of the facts alleged therein. By execution of this Consent Judgment, the Settling
20 Defendant does not admit any violations of Proposition 65 or the Unfair Competition Act
21 or any other law, and specifically denies that it has committed any such violations.
22 Nothing in this Consent Judgment shall be construed as a decision by the Court on any
23 issue of law or fact or as an admission by any party of any fact, issue of law or violation of
24 law, nor shall compliance with the Consent Judgment constitute or be construed as an
25 admission by any party of any fact, issue of law, or violation of law.

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1 2. Clear and Reasonable Warnings.

2 2.1 The Settling Defendant shall provide warnings in the manner set forth in this
3 Consent Judgment for any propane it sells for use in California. These warning
4 requirements shall take effect ninety (90) days after the entry of this Consent Judgment by
5 the Court.

6 2.2 *Warning Language.*

7 The warning shall state:

8 “Warning: Chemicals known to the State of California to cause cancer, birth
9 defects, or other reproductive harm are created by the combustion of propane.”

10 2.3 *Cylinder Exchange Stations.*

11 Propane cylinder exchange stations located at facilities owned or operated by the
12 Settling Defendant shall be posted with a sign as described in Section 2.2, above. The
13 warning sign shall be posted either on the cylinder exchange station, on the fence (if any
14 exists) surrounding the cylinders, or in such other manner so as to be readable by a
15 customer either purchasing or exchanging a propane cylinder.

16 2.4 *Alternative Warning Requirements.*

17 If, with respect to propane, the People of the State of California or the Plaintiff
18 permit any other warning standard or vary the permissible manner, form, size, or content
19 of warning, as to any particular class of potentially exposed individuals, by way of
20 settlement or compromise with any other person or entity in the course of doing business,
21 then the Settling Defendant may give warnings on the same terms as provided in those
22 judgments. In the event that Proposition 65 is repealed, the Settling Defendant shall have
23 no further obligations pursuant to this Consent Judgment.

24 3. Duties Limited to California

25 This Consent Judgment shall have no effect on propane sold for use outside of the
26 State of California.

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1 4. Payment Pursuant to Health and Safety Code § 25249.7

2 Settling Defendant shall, within thirty (30) days after entry of this Consent
3 Judgment, pay the sum of \$250.00 to the Office of the Attorney General of the State of
4 California, pursuant to Health and Safety Code section 25249.7. Settling Defendant shall
5 pay to AFS the sum of \$5,250 for attorney fees and costs pursuant to Health and Safety
6 Code section 25249.7. Each side shall bear its own attorney's fees and costs, except as
7 specifically provided in this Consent Judgment.

8 5. Modification of Consent Judgment.

9 This Consent Judgment may be modified by written agreement of the Plaintiff and
10 the Settling Defendant, after noticed motion, and upon entry of a modified Consent
11 Judgment by the Court thereon, or upon motion of the Plaintiff or Settling Defendant as
12 provided by law and upon entry of a modified Consent Judgment by the Court.

13 6. Enforcement of Consent Judgment.

14 The Plaintiff may, by motion or order to show cause before the Superior Court of
15 Los Angeles, enforce the terms and conditions contained in this Consent Judgment. In any
16 such proceeding the Plaintiff shall seek to enforce this Consent Judgment by seeking
17 injunctive relief.

18 7. Application of Consent Judgment.

19 This Consent Judgment shall apply to and be binding upon the Plaintiff, acting on
20 behalf of the general public, and the Settling Defendant, its divisions, subdivisions, and the
21 successors or assigns of any of them.

22 8. Authority to Stipulate to Consent Judgment.

23 Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
25 execute the Consent Judgment on behalf of the party represented and legally to bind that
26 party.

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1 9. Claims Covered.

2 This Consent Judgment is a final and binding resolution between Plaintiff, acting on
3 behalf of the general public, and the Settling Defendant, of any violation of Proposition 65,
4 the Unfair Competition Act, or any other statutory or common law claim that could have
5 been asserted against it for failure to provide clear, reasonable, and lawful warnings of
6 exposure to propane or its combustion byproducts, and any other claim based on the facts
7 alleged in the Complaint. This includes all claims based on actions committed by the
8 Settling Defendant, or by any entity within its chain of distribution, including, but not
9 limited to, retail sellers, resellers, and any other person in the course of doing business,
10 with respect to propane sold or distributed by the Settling Defendant. Compliance with the
11 terms of this Consent Judgment resolves any issue, now and in the future, concerning
12 compliance by the Settling Defendant, its parent, subsidiaries or affiliates, regarding the
13 requirements of Proposition 65 and the Unfair Competition Act with respect to listed
14 chemicals in propane or its combustion byproducts, and any resulting consumer or worker
15 exposure. Nothing in this section shall be construed to affect the liability of any defendant
16 in this Action, other than the Settling Defendant.

17 10. Retention of Jurisdiction.

18 This court shall retain jurisdiction of this matter to implement the Consent
19 Judgment.

20 11. Use of Documents.

21 The Plaintiff shall not use documents that the Settling Defendant has produced in
22 the course of this Action or in settlement discussions during the course of this Action.

23 12. Provision of Notice.

24 12.1 When any party is entitled to receive any notice or report under this Consent
25 Judgment, the notice or report shall be sent by overnight courier service to the person and
26 address set forth in this paragraph. Any party may modify the person and address to whom
27 notice is to be sent by sending each other party notice by certified mail, return receipt
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1 requested. Said change shall take effect for any notice mailed at least five days after the
2 date return receipt is signed by the party receiving the change.

3 12.2 Notices or reports shall be sent to the following:

4 For the plaintiff AFS Enterprises, LLC:

5 Daniel N. Greenbaum (SBN 268104)
6 1467 South Holt Ave. #2
7 Los Angeles, CA 90035
8 (310) 200-2631

9 For the defendant Lava Propane, LLC:

10 John R. Fletcher (SBN 97547)
11 FLETCHER, WHITE & ADAIR
12 28925 Pacific Coast Highway, Second Floor
13 Malibu, California 90265
14 (310) 457-4100

15 13. Court Approval.

16 If this Consent Judgment is not approved by the Court, it shall be of no force or
17 effect and cannot be used in any proceeding for any purpose.

18 14. Execution in Counterparts.

19 The stipulations to this Consent Judgment may be executed together in counterparts
20 and/or by facsimile, which taken together shall be deemed to constitute one document.

21 IT IS SO STIPULATED:

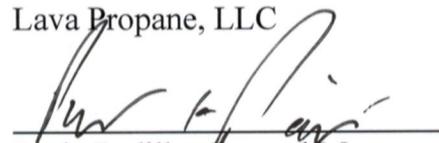
22 DATED:

AFS Enterprises, LLC



23 DATED:

Lava Propane, LLC


Rudy Padilla, General Manager

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IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED:

The Hon. Ralph W. Dau
Los Angeles County Superior Court Judge