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5 Attorney for AFS ENTERPRISES, LLC

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF LOS ANGELES

8 CENTRAL DISTRICT

9 AFS ENTERPRISES, LLC, a California
limited liability company,

10 Plaintiff,

11 vs.

12 LAVA PROPANE, LLC, a California limited
13 liability company; and DOES 1 to 50,
14 Inclusive

15 Defendants.
16
17

Unlimited Jurisdiction

CASE NO. BC508073

Hon. Michael P. Linfield

**[PROPOSED] CONSENT JUDGMENT
AND ORDER FOR ENTRY OF CONSENT
JUDGMENT**

Date: January 29, 2014

Time: 8:30 a.m.

Place: 111 North Hill Street, Los Angeles, CA

Courtroom: Department 34

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20 1. Introduction

21 1.1 On May 9, 2013, AFS Enterprises, LLC (“AFS” or “Plaintiff”), on behalf of the
22 general public, filed a Complaint for Civil Penalty and Injunctive Relief (“Complaint”) in the
23 California Superior Court for the County of Los Angeles, entitled *AFS Enterprises, LLC v. Lava*
24 *Propane, LLC; and Does 1 to 50*, Case Number BC508073 (“Action”).

25 1.2 For purposes of this Consent Judgment, Plaintiff acts on behalf of the People of the
26 State of California only as to those matters described in the “60 Day Notice of Violation” letter dated
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1 March 5, 2013, a copy of which is attached as Exhibit 1, which Plaintiff sent to the defendant and to
2 public enforcers as required by California Health and Safety Code section 25249.7.

3 1.3 Lava Propane, LLC is the defendant named in the Complaint, and is hereinafter
4 referred to as “Settling Defendant.”

5 1.4 Settling Defendant is an entity that sells propane pursuant to a cylinder exchange
6 program for use in the State of California.

7 1.5 The Complaint alleges that the defendant has violated the Safe Drinking Water and
8 Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
9 and Business and Professions Code 17200 (“Unfair Competition Act”), by knowingly and
10 intentionally exposing individuals to chemicals known to the State of California to cause cancer, birth
11 defects, or other reproductive harm, without first providing a clear and reasonable warning.

12 1.6 For purposes of this Consent Judgment only, the parties stipulate that this Court has
13 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
14 over the Settling Defendant as to the acts alleged in the Complaint that occurred in the State of
15 California, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to
16 enter this Consent Judgment as a resolution of all claims which were or could have been raised in the
17 Complaint based on the facts alleged therein.

18 1.7 For the purpose of avoiding prolonged litigation, the parties enter into this Consent
19 Judgment as a full settlement of all claims that were raised in the Complaint based on the facts
20 alleged therein, or which could have been raised in the Complaint arising out of the facts alleged
21 therein.

22 1.8 By execution of this Consent Judgment, the Settling Defendant does not admit any
23 violations of Proposition 65 or the Unfair Competition Act or any other law, and specifically denies
24 that it has committed any such violations.

25 1.9 Nothing in this Consent Judgment shall be construed as a decision by the Court on any
26 issue of law or fact or as an admission by any party of any fact, issue of law or violation of law, nor
27 shall compliance with the Consent Judgment constitute or be construed as an admission by any party
28 of any fact, issue of law, or violation of law.

1 2. Clear and Reasonable Warnings.
2 2.1 The Settling Defendant shall provide warnings in the manner set forth in this Consent
3 Judgment for any propane it sells for use in California.

4 2.2 These warning requirements shall take effect ninety (90) days after the entry of this
5 Consent Judgment by the Court.

6 2.3 *Warning Language.*
7 The warning shall state:
8 “Warning: Chemicals known to the State of California to cause cancer and birth defects, or
9 other reproductive harm are created by the combustion of propane.”

10 2.4 *Cylinder Exchange Stations.*
11 Propane cylinder exchange stations located at facilities owned or operated by the Settling
12 Defendant shall be posted with a sign as described in Section 2.2, above. The warning sign shall be
13 posted either on the cylinder exchange station, on the fence (if any exists) surrounding the cylinders,
14 or in such other manner so as to be readable by a customer either purchasing or exchanging a propane
15 cylinder.

16 2.5 *Alternative Warning Requirements.*
17 If, with respect to propane, the People of the State of California or the Plaintiff permit any
18 other warning standard or vary the permissible manner, form, size, or content of warning, as to any
19 particular class of potentially exposed individuals, by way of an approved Court order, with any
20 other person or entity in the course of doing business, then the Settling Defendant may give warnings
21 on the same terms as provided in those judgments. In the event that Proposition 65 is repealed, the
22 Settling Defendant shall have no further obligations pursuant to this Consent Judgment.

23 3. Duties Limited to California
24 This Consent Judgment shall have no effect on propane sold for use outside of the State of
25 California.

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

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1 4.1 Settling Defendant shall, within thirty (30) days after entry of this Consent Judgment,
2 pay the sum of \$250.00 to the Office of the Attorney General of the State of California, pursuant to
3 Health and Safety Code section 25249.7.

4 4.2 Settling Defendant shall pay to AFS the sum of \$5,250 for attorney fees and costs
5 pursuant to Health and Safety Code section 25249.7.

6 4.3 Each side shall bear its own attorney's fees and costs, except as specifically provided
7 in this Consent Judgment.

8 5. Modification of Consent Judgment.

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

13 6. Enforcement of Consent Judgment.

14 6.1 The Plaintiff may, by motion or order to show cause before the Superior Court of Los
15 Angeles, enforce the terms and conditions contained in this Consent Judgment.

16 6.2 In any such proceeding the Plaintiff shall seek to enforce this Consent Judgment by
17 seeking injunctive relief.

18 7. Application of Consent Judgment.

19 This Consent Judgment shall apply to and be binding upon the Plaintiff, acting on behalf of
20 the general public, and the Settling Defendant, its divisions, subdivisions, and the successors or
21 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 by the
24 party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
25 Consent Judgment on behalf of the party represented and legally to bind that party.

26 9. Claims Covered.

27 9.1 This Consent Judgment is a final and binding resolution between Plaintiff, acting on
28 behalf of the general public, and the Settling Defendant, of any violation of Proposition 65, or any

1 other statutory or common law claim that could have been asserted against it for failure to provide
2 clear, reasonable, and lawful warnings of exposure to propane or its combustion byproducts:
3 benzene, carbon black, and carbon monoxide, and any other claim alleged in the Complaint.

4 9.2 This includes all claims based on actions committed by the Settling Defendant, or by
5 any entity within its chain of distribution, including, but not limited to 7-Eleven, Inc. together with its
6 affiliates, parents, and subsidiaries, and any other retail sellers, resellers, and any other person in the
7 course of doing business, with respect to propane sold or distributed by the Settling Defendant.

8 9.3 Compliance with the terms of this Consent Judgment resolves any issue, now and in
9 the future, concerning compliance by the Settling Defendant, its parent, subsidiaries or affiliates,
10 regarding the requirements of Proposition 65 with respect to listed chemicals in propane or its
11 combustion byproducts: benzene, carbon black, and carbon monoxide.

12 9.4 Nothing in this section shall be construed to affect the liability of any defendant in this
13 Action, other than the Settling Defendant.

14 10. Retention of Jurisdiction.

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

16 11. Use of Documents.

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

19 12. Provision of Notice.

20 12.1 When any party is entitled to receive any notice or report under this Consent
21 Judgment, the notice or report shall be sent by overnight courier service to the person and address set
22 forth in this paragraph.

23 12.2 Any party may modify the person and address to whom notice is to be sent by sending
24 each other party notice by certified mail, return receipt requested.

25 12.3 Said change shall take effect for any notice mailed at least five days after the date
26 return receipt is signed by the party receiving the change.

27 12.4 Notices or reports shall be sent to the following:

28 For the plaintiff AFS Enterprises, LLC:

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Los Angeles, CA 90035
(310) 200-2631

For the defendant Lava Propane, LLC:
John R. Fletcher (SBN 97547)
FLETCHER, WHITE & ADAIR
28925 Pacific Coast Highway, Second Floor
Malibu, California 90265
(310) 457-4100

13. Court Approval.

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

14. Execution in Counterparts.

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

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IT IS SO STIPULATED:

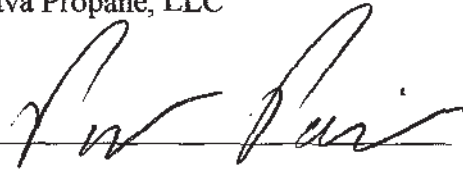
DATED: 12/4/13

AFS Enterprises, LLC



DATED: *December 4, 2013*

Lava Propane, LLC



Rudy Padilla, General Manager

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED:

The Hon. Michael P. Linfield

Los Angeles County Superior Court Judge