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4 Attorneys for Plaintiff, Evelyn Wimberley

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

EVELYN WIMBERLEY,  
Plaintiff,  
v.  
BIG 5 SPORTING GOODS;  
SAFE TGARD CORPORATION  
Defendants.

Case No: 37-2015-00018183-CU-NP-CTL  
UNLIMITED JURISDICTION  
STIPULATION RE ENTRY OF  
CONSENT JUDGMENT AS TO  
SAFETGARD  
Complaint Filed: June 1, 2015  
Judge: Honorable Joel R. Wohlfeil  
Dept. : C-73

19 **I. INTRODUCTION**  
20 **1.1 The Parties**

21 This Stipulation and [Proposed] Order Re Consent Judgment ("Consent Judgment") is  
22 hereby entered into by and between Evelyn Wimberley acting on behalf of the public interest  
23 (hereinafter "Wimberley"), SafeTGard Corporation (hereinafter "SafeTGard"), with Wimberley,  
24 and SafeTGard collectively referred to as the "Parties" and each of them as a "Party." Wimberley  
25 is an individual residing in California who seeks to promote awareness of exposures to toxic  
26 chemicals and improve human health by reducing or eliminating hazardous substances contained  
27 in consumer products. SafeTGard employs ten or more persons and is a person in the course of  
28 doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1           **1.2    Allegations and Representations**

2           Wimberley alleges that SafeTGard has distributed and offered for sale in the State of  
3 California chrome metal whistles containing lead and that Big 5 Sporting Goods retail stores,  
4 among others, have sold in California, chrome metal whistles containing lead, and that such sales  
5 have not been accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a  
6 chemical known to the State of California to cause cancer and birth defects or other reproductive  
7 harm. Wimberley has cited SafeTGard chrome metal whistles (Model no. 50B); (UPC 0 43442  
8 00050 4) (hereafter "Whistles") as a specific example of the Whistles that are the subject of her  
9 allegations. For purposes of this Consent Judgment only, SafeTGard represents that such  
10 Whistles are marketed as a whistle item manufactured for and distributed to Big 5 Sporting Goods  
11 by SafeTGard; and 2) SafeTGard had no reason to believe that the Whistles contained lead until  
12 receiving Wimberley's 60-Day Notice.

13           Wimberley represents that her independent testing confirmed by two independent  
14 laboratories that lead was present and accessible in amounts that would expose users to lead in  
15 excess of the allowable safe harbor number for lead, 0.5 ug/day for reproductive toxicity and for  
16 carcinogens 15 ug/day oral, as established by California Office of Environmental Health Hazard  
17 Assessment. See <http://www.oehha.ca.gov/prop65/pdf/2012StatusReportJune.pdf>.

18           **1.3    DEFINITIONS**

19           **Complaint.** The term "Complaint" shall have the meaning given in Article 1.5

20           **Covered Product.** The term "Covered Product" means SafeTGard Chrome Whistles UPC  
21 043442 00050 4.

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

24           **Execution Date.** The term "Execution Date" shall mean the date this Consent Judgment is signed  
25 by all parties in Article 13 below.

26           **Listed Chemicals.** The term "Listed Chemicals" shall mean lead and lead compounds.

27           **Notice.** The term "Notice" shall have the meaning given in Article 1.5.

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1 **Releasees.** The terms "Defendant Releasees" and "Downstream Defendant Releasees" shall have  
2 the meanings given in Article 5.1.

3 **1.4 Product Description**

4 The products that are covered by this Consent Judgment are defined as Whistles  
5 containing lead which are manufactured for and distributed by SafeTGard and sold through any  
6 means including but not limited to retail sales or internet sales, by Big 5 Sporting Goods in  
7 California whether as standalone items like UPC 0 43442 00050 4 or as parts of sets containing  
8 other products in addition to whistles. All such chrome metal whistles manufactured by  
9 SafeTGard shall be referred to herein as the "Covered Products."

10 **1.5 Notices of Violation/Complaint**

11 On or about June 23, 2014, Wimberley served SafeTGard, Big 5 Sporting Goods and all  
12 public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of  
13 the State of California with a document entitled "60-Day Notice of Violation" (the "Notice") that  
14 provided SafeTGard, Big 5 Sporting Goods, and such public enforcers with notice that alleged  
15 that SafeTGard and Big 5 Sporting Goods were in alleged violation of Proposition 65 for failing  
16 to warn consumers and customers that the Covered Products exposed users in California to lead.  
17 No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days  
18 plus service time relative to the provision of the Notice to them by Wimberley, such that  
19 Wimberley filed a complaint in the matter as captioned above on June 1, 2015 ("Complaint").

20 **1.6 Stipulation as to Jurisdiction/No Admission**

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

27 SafeTGard denies the material allegations contained in Wimberley's Notice and  
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1 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent  
2 Judgment shall be construed as an admission by SafeTGard of any fact, finding, issue of law, or  
3 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as  
4 an admission by SafeTGard of any fact, finding, conclusion, issue of law, or violation of law,  
5 such being specifically denied by SafeTGard. However, this section shall not diminish or  
6 otherwise affect the obligations, responsibilities, and duties of SafeTGard under this Consent  
7 Judgment.

8 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

9 In a case alleging failure to warn, a settlement that provides for the giving of a clear and  
10 reasonable warning, where there had been no warning provided prior to the 60-day notice, for an  
11 exposure that appears to require a warning, is presumed to confer a significant benefit on the  
12 public. If there is no evidence of an exposure for which a warning plausibly is required; there is  
13 no public benefit, even if a warning is given. If the relief consists of minor or technical changes in  
14 the language, appearance, or location of a warning in a manner that is not likely to significantly  
15 increase its visibility or effectiveness in communicating the warning to the exposed persons, there  
16 is no significant public benefit. Where a settlement sets forth a standard or formula for when a  
17 given product requires a warning, supporting evidence should show that at least some of the  
18 products in controversy in the action either are, or at some time were, above the warning level, or  
19 the existence of the standard or formula itself may not establish the existence of a public benefit.  
20 Cal.Code Regs., Title 11 § 3201 (b) (1).

21 **2.1 Reformulation Option**

22 The Covered Products shall be deemed to comply with Proposition 65 with regard to lead  
23 and be exempt from any Proposition 65 warning requirements for lead if components of the  
24 Covered Products from which exposures to lead may arise, including solder used in the Covered  
25 Products, meet the following criteria: (a) alloys from which the components are made shall have  
26 no lead as an intentionally-added constituent; and, regardless of intent, (b) the alloy from which  
27 the components are made and solder used in the Covered Products shall have a lead content by  
28 weight of no more than 0.01% (100 parts per million, or "100 ppm") which complies with the

1 strictest standard for lead in children's items as established by the US Consumer Product Safety  
2 Commission, See 16 CFR Part 1500.90, and significantly reduces the lead content in the Covered  
3 Products, which Wimberley contends were in excess of 0.1% lead. The Covered Products are not  
4 "childrens' products" under either Federal or California law.

5 SafeTGard may comply with the above requirements by relying on information obtained  
6 from its suppliers, provided such reliance is in good faith. Obtaining test results showing that the  
7 lead content is no more than 0.01%, using a method of sufficient sensitivity to establish a limit of  
8 quantification (as distinguished from detection) of less than 100 ppm shall be deemed to establish  
9 good faith reliance, provided that SafeTGard does not receive later test results indicating that lead  
10 at, or in excess of, 100 ppm has been detected in a component of or solder used in the Covered  
11 Products. SafeTGard shall make such test results available to Wimberley upon reasonable  
12 request should it exercise this reformulation option.

13 **2.2 Warning Option.**

14 Pursuant to California Code of Regulations, title 27, § 25603.2 (a), a Proposition 65  
15 warning message must include the following language for consumer products that contain a  
16 chemical known to the state to cause reproductive toxicity: "WARNING: This product contains a  
17 chemical known to the State of California to cause cancer, birth defects or other reproductive  
18 harm."

19 The Parties hereto agree that Covered Products that do not meet the specifications set  
20 forth in Section 2.1 above shall be accompanied by a warning in compliance with § 25603.2, as  
21 described above. The warning requirements shall apply to: (1) Covered Products that SafeTGard  
22 manufactures or causes to be manufactured after the Execution Date; and (2) Covered Products  
23 manufactured, distributed, marketed, sold or shipped for sale or use inside the State of California  
24 after the Execution Date. Warnings required hereunder 2.2 shall be provided on the Covered  
25 Products within ten (10) days of Execution Date.

26 Where utilized as an alternative to meeting the criteria set forth in Section 2.1, SafeTGard  
27 shall provide the warning language set forth with the unit package of the Covered Products. Such  
28 warning shall be prominently affixed to or printed on each Product's label or package. If printed

1 on the label itself, the warning shall be contained in the same size font and same section that  
2 states other safety warnings, if any, concerning the use of the Product. If no other warnings are  
3 present then printed in a conspicuous location and in same size font as other printed words such to  
4 be noticed by the normal user of the product. SafeTGard may continue to utilize, on an ongoing  
5 basis, unit packaging containing substantively the same Proposition 65 warnings as those set forth  
6 herein, but only to the extent such packaging materials have already been printed within ninety  
7 days following the Execution Date. SafeTGard shall provide Wimberley with information  
8 sufficient to establish the date labeling was changed to be in compliance with this consent  
9 judgment.

10 The Parties also recognize that the requirements set forth in sections 2.2 above are not the  
11 exclusive methods of providing a warning under Proposition 65 and its implementing regulations  
12 and that they may or may not be appropriate in other circumstances.

13 If Proposition 65 warnings for lead or lead compounds should no longer be required,  
14 SafeTGard shall have no further warning obligations pursuant to this Consent Judgment. Except  
15 as provided in Section 2.1 above, in the event that SafeTGard ceases to implement or modifies the  
16 warnings required under this Consent Judgment (because of a change in the law or otherwise),  
17 SafeTGard shall provide written notice to Wimberley (through counsel) of its intent to do so, and  
18 of the basis for its intent, no less than thirty (30) days in advance.

19 2.3 SafeTGard may also comply by ceasing all sales of the Covered Products within  
20 California.

21 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

22 With regard to all claims that have been raised or which could be raised with respect to  
23 failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products, SafeTGard  
24 shall pay a civil penalty of \$500.00 pursuant to Health and Safety Code section 25249.7(c), to be  
25 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these  
26 funds remitted to the State of California's Office of Environmental Health Hazard Assessment  
27 and the remaining 25% of the penalty remitted to Wimberley, as provided by California Health &  
28 Safety Code § 25249.12(d) and the instructions directly below.

1 SafeTGard shall issue two separate checks or wire transfers for the penalty payment: (a)  
2 one check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount  
3 representing 75% of the total penalty (i.e., \$375.00); and (b) one check in an amount representing  
4 25% of the total penalty (i.e., \$125.00) made payable directly to Wimberley. SafeTGard shall  
5 wire or send these payments within five (5) days following the Execution Date, to the following  
6 address and shall provide copies of transmittals letters to Wimberley's counsel at that time as  
7 well:

8 Evelyn Wimberley  
9 C/O Law Offices of Stephen Ure, PC  
11622 El Camino Real, Suite 100, San Diego, CA 92130

10 **4. REIMBURSEMENT OF FEES AND COSTS**

11 The parties reached an accord on the compensation due to Wimberley and her counsel  
12 under the private attorney general doctrine and principles of contract law. Under these legal  
13 principles, SafeTGard shall reimburse Wimberley's counsel for fees and costs, incurred as a result  
14 of investigating, bringing this matter to SafeTGard's attention, and negotiating a settlement in the  
15 public interest. Such fees are proper and reasonable under the private attorney general doctrine.  
16 SafeTGard shall pay Wimberley's counsel pursuant to Code of Civil Procedure section 1021.5,  
17 \$26,500.00 for all attorneys' fees, expert and investigation fees, and related costs associated with  
18 this matter and the Notice. SafeTGard shall issue a certified check for or wire this payment  
19 within five (5) days following the Execution Date to the "Trust Account Law Offices of Stephen  
20 Ure, PC," (tax identification number 42-1641673). The Law Offices of Stephen Ure, PC will  
21 provide SafeTGard with wire instruction and tax identification information. Other than the  
22 payment required hereunder, each side is to bear its own attorneys' fees and costs. If payments  
23 called for in Article 3 and above herein Article 4 are not made by the required dates then this  
24 Agreement shall be null and void and the case shall proceed on its normal course.

25 **5. RELEASE OF ALL CLAIMS**

26 **5.1 Release of SafeTGard and Downstream Customers**

27 Wimberley, on behalf of herself and in the public interest, releases SafeTGard and each of  
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1 its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but  
2 not limited to, Big 5 Sporting Goods), franchisees, dealers, customers, owners, purchasers, users,  
3 parent companies, corporate affiliates, subsidiaries, and their respective officers, directors,  
4 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities  
5 (collectively "Releasees") from all claims for violations of Proposition 65, including product  
6 presently in the stream of commerce, from the beginning of time up through the Effective Date  
7 based on exposure to lead from the Covered Products as set forth in her Notice of Violation.  
8 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
9 with respect to exposures to lead from the Covered Products.

10 In addition to the foregoing, Wimberley, on behalf of herself, her past and current agents,  
11 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,  
12 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
13 action and releases any other Claims that she could make against SafeTGard or its Releasees  
14 arising up to the Effective Date with respect to violations of Proposition 65 based upon the  
15 Covered Products. With respect to the foregoing waivers and releases in this paragraph,  
16 Wimberley hereby specifically waives any and all rights and benefits which she now has, or in the  
17 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil  
18 Code, which provides as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO  
20 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR  
21 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
22 EXECUTING THE RELEASE, WHICH IF KNOWN BY  
23 HIM MUST HAVE MATERIALLY AFFECTED HIS  
24 SETTLEMENT WITH THE DEBTOR.

### 23 5.2 SafeTGard Release of Wimberley

24 SafeTGard waive any and all claims against Wimberley, her attorneys and other  
25 representatives, for any and all actions taken or statements made (or those that could have been  
26 taken or made) by Wimberley and her attorneys and other representatives, whether in the course  
27 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this  
28 matter, and/or with respect to the Covered Products.

1     **6. SEVERABILITY AND MERGER**

2             If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
3 document are held by a court to be unenforceable, the validity of the enforceable provisions  
4 remaining shall not be adversely affected.

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

9     **7. GOVERNING LAW**

10            The terms of this Consent Judgment shall be governed by the laws of the State of  
11 California and apply within the State of California. Compliance with the terms of this Consent  
12 Judgment resolves any issue, now or in the future, with the requirements of Proposition 65 with  
13 respect to alleged exposures to lead arising from the Covered Products. In the event that  
14 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as  
15 to the Covered Products, then SafeTGard shall provide written notice to Wimberley of any  
16 asserted change in the law, and shall have no further obligations pursuant to this Consent  
17 Judgment with respect to, and to the extent that, the Covered Products are so affected.

18    **8. NOTICES**

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

23    For SafeTGard:

24            SafeTGard Corporation  
25            Sheila Gottsch, President  
26            12980 W. Cedar Drive  
27            Lakewood, CO 80228

1 With a copy to:

2 Alyssa Milman White, Esq.  
3 ANGELO & WHITE  
4 610 Newport Center Drive  
5 Suite 830  
6 Newport Beach, CA 92660

7 and

8 For Wimberley:

9 Stephen Ure  
10 Law Offices of Stephen Ure, PC.  
11 11622 El Camino Real, Suite 100  
12 San Diego, California 92130

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

15 **9. COUNTERPARTS: FACSIMILE SIGNATURES**

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

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

20 Wimberley agrees to comply with the requirements set forth in California Health & Safety  
21 Code §25249.7(f) and to promptly bring a motion for approval of this Consent Judgment.  
22 SafeTGard agree to cooperate with Wimberley and to support Wimberley's motion for approval  
23 of this Consent Judgment.

24 In the event the Court does not grant Wimberley's motion for approval of or enter this  
25 Consent Judgment within eighteen months after it has been fully executed by the parties, the  
26 parties shall meet and confer as to (and jointly agree on) whether to modify the language or  
27 appeal the ruling. If the parties do not jointly agree on a course of action to take, then the case  
28 shall proceed in its normal course on the trial court's calendar and Wimberley's counsel shall  
refund SafeTGard the payment provided pursuant Article 4 in full within thirty (30) days of

1 SafeTGard providing written notice thereof.

2 **11. MODIFICATION**

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

5 **12. RETENTION OF JURISDICTION**

6 This Court shall retain jurisdiction of this matter to implement, modify and enforce this  
7 Consent Judgment.

8 **13. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their  
10 respective Parties and have read, understood and agree to all of the terms and conditions of this  
11 document. This document must be signed and fully executed not later than August 6, 2015 or it  
12 shall be null and void.

13 **14. REQUEST FOR DISMISSAL**

14 Wimberly shall dismiss the Subject Lawsuit with prejudice as against Big 5, and  
15 shall deliver a duly completed request for dismissal to counsel for Big 5 upon entry of the  
16 Consent Judgment. When counsel for Big 5 files the request for dismissal with the court, she will  
17 deliver a conformed copy to counsel for Wimberly.

18 **APPROVED AS TO FORM:**

19 Dated: August 6, 2015

ANGELO AND WHITE, APC

20  
21 By:   
22 Alyssa Milman White  
23 Attorney for Defendants.  
24 SAFETGARD CORPORATION  
25 BIG 5 SPORTING GOODS  
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Dated: August 6, 2015

LAW OFFICES OF STEPHEN URE, PC

By:   
Stephen Ure, Esq.  
Attorneys for Plaintiff,  
EVELYN WIMBERLEY

IT IS HEREBY SO STIPULATED:

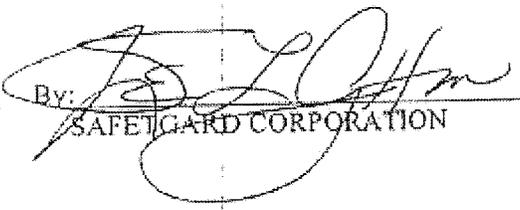
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AGREED TO:

Date: \_\_\_\_\_

Date: 8.6.2015

By: \_\_\_\_\_  
EVELYN WIMBERLEY

By:   
SAFEGUARD CORPORATION

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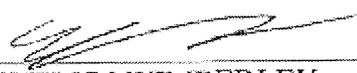
IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: 8-5-15

Date: \_\_\_\_\_

By:   
EVELYN WIMBERLEY

By: \_\_\_\_\_  
SafeTGard Corporation