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4 Attorneys for Plaintiff Evelyn Wimberley

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

10 EVELYN WIMBERLEY,  
11 Plaintiff,  
12 v.  
13 SUNJOY INDUSTRIES GROUP LIMITED, et al.  
14 Defendants,

Case No.  
**STIPULATION FOR ENTRY OF  
CONSENT JUDGMENT AS TO  
DEFENDANT SUNJOY  
INDUSTRIES GROUP LIMITED**

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**1. INTRODUCTION**

1.1 **The Parties.** This Consent Judgment is entered into by and between Evelyn Wimberley acting on behalf of the public interest (hereinafter “Wimberley”) and Sunjoy Industries Group Limited, (hereinafter “Sunjoy”), with Wimberley and Sunjoy collectively referred to as the “Parties” and each of them as a “Party.” Wimberley is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Sunjoy employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Wimberley alleges that Sunjoy has offered for sale in the State of California and has sold in California, outdoor fire pits that expose individuals to carbon monoxide and carbon black, and that such sales have not been accompanied by Proposition 65 warnings. Carbon black is listed under Proposition 65 as a chemical known to the State of California to cause cancer and carbon monoxide is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 **Notices of Violation/Complaint.** On or about November 18, 2014, Wimberley served Sunjoy and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Sunjoy was in violation of Proposition 65 for failing to warn consumers and customers that the outdoor fire pits exposed users in California to carbon monoxide and carbon black. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Wimberley, such that Wimberley filed a complaint in the matter as captioned above on June 23, 2015 (“Complaint”).

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Sunjoy as to the allegations contained in the complaint filed in this matter, that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution

1 of all claims which were or could have been raised in the Complaint based on the facts alleged  
2 therein and/or in the Notices.

3 1.5 Sunjoy denies the material allegations contained in Wimberley's Notice and  
4 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent  
5 Judgment shall be construed as an admission by Sunjoy of any fact, finding, issue of law, or  
6 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as  
7 an admission by Sunjoy of any fact, finding, conclusion, issue of law, or violation of law, such  
8 being specifically denied by Sunjoy. However, this section shall not diminish or otherwise affect  
9 the obligations, responsibilities, and duties of Sunjoy under this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.

12 2.2 **Covered Product.** The term "Covered Product" means Hampton Bay Collette  
13 Fire Pit.

14 2.3 **Effective Date.** The term "Effective Date" shall mean the date this Consent  
15 Judgment is entered as a Judgment of the Court.

16 2.4 **Listed Chemicals:** The term "Listed Chemicals" shall mean carbon monoxide and  
17 carbon black.

18 2.5 **Notice.** The term "Notice" shall have the meaning given in Section 1.3.

19 2.6 **Releasees.** The terms "Defendant Releasees" and "Downstream Defendant  
20 Releasees" shall have the meanings given in Section 5.1.

21 2.7 **Execution Date.** The term "Execution Date" shall mean the date this Consent  
22 Judgment is signed by the parties

23 **3. INJUNCTIVE RELIEF: WARNINGS**

24 3.1 Commencing on the Effective Date, Sunjoy shall not sell, offer for sale, or ship for  
25 sale in California any Covered Product, unless the Covered Product is accompanied by the  
26 following warning: "WARNING: Fuels used in wood or charcoal burning appliances, and the  
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1 products of combustion of such fuels, contain chemicals known to the State of California to cause  
2 cancer and birth defects or other reproductive harm.”

3           3.2     The warning provided pursuant to Section 3.1 shall be affixed to or printed on the  
4 Covered Product’s packaging, labeling, or instruction booklet. The warning shall be prominently  
5 affixed to or printed on the packaging, labeling, or instruction booklet and displayed with such  
6 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
7 read and understood by an ordinary individual under customary conditions of purchase or use. A  
8 warning may be contained in the same section of the packaging, labeling, or instruction booklet  
9 that states other safety warnings, if any, concerning the use of the product and shall be at least the  
10 same size as those other safety warnings.

11 **4.     MONETARY TERMS**

12           4.1     **Civil Penalty.** Sunjoy shall pay a civil penalty of \$500.00 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 Wimberley, as provided by California Health & Safety Code § 25249.12(d).

17           4.2     **Attorney Fees.** Sunjoy agrees to pay and will not oppose an application made by  
18 Wimberley’s counsel for an award of attorney fees, inclusive of all expenses and costs incurred as  
19 a result of investigating, bringing this matter to Sunjoy’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 \$27,500.00 Other than the payment  
22 required hereunder, each side is to bear its own attorneys’ fees and costs.

23           4.3     Sunjoy shall mail or wire Wimberley’s counsel the total sum of \$28,000.00  
24 representing the civil penalty and attorney fees in Sections 4.1 and 4.2 within ten days following  
25 receipt of a fully-executed copy of this Consent Judgment, W-9, and wire instruction information  
26 from Wimberley’s counsel.  
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1                   **5. RELEASE OF ALL CLAIMS**

2                   5.1       This consent judgment is a full, final, and binding resolution between Wimberley  
3 acting in the public interest, and Sunjoy and its parents, shareholders, divisions, subdivisions,  
4 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns  
5 (“Defendant Releasees”), and all entities from whom they obtain and to whom they directly or  
6 indirectly distribute or sell Covered Products, including but not limited to manufacturers,  
7 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and  
8 cooperative members, including but not limited to The Home Depot and its subsidiaries and  
9 affiliates (“Downstream Defendant Releasees”), of all claims for violations of Proposition 65  
10 based on exposure to Listed Chemicals from Covered Products as set forth in the Notice, with  
11 respect to any Covered Products manufactured, distributed, or sold by Sunjoy prior to the  
12 Effective Date. Compliance with the terms of this consent judgment constitutes compliance with  
13 Proposition 65 with regard to the Covered Products.

14                   5.2       In addition to the foregoing, Wimberley, on behalf of herself, her past and current  
15 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative  
16 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
17 legal action and releases any Sunjoy, Defendant Releasees, and Downstream Defendant Releasees  
18 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,  
19 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
20 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or  
21 contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to  
22 or arising from Covered Products manufactured distributed or sold by Sunjoy or Defendant  
23 Releasees. With respect to the foregoing waivers and releases in this paragraph, Wimberley  
24 hereby specifically waives any and all rights and benefits which she now has, or in the future may  
25 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which  
26 provides as follows:  
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A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

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

**6. INTEGRATION**

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

**7. GOVERNING LAW**

7.1 The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then Sunjoy shall provide written notice to Wimberley of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered Products are so affected.

**8. NOTICES**

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

For Sunjoy:

Hugo A. Delevie  
General Counsel

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Sunjoy Industries Group Limited  
619 Slack Street  
Steubenville, OH 43952

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With a copy to:

Jeffrey Margulies  
Norton Rose Fulbright US LLP  
555 South Flower St.  
Forty First Floor  
Los Angeles, CA 90071

and

For Wimberley:

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

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 Wimberley 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 Sunjoy 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 agree to meet and confer on how to proceed and if such agreement is not reached within 30-days, any monies that have been paid pursuant to Section 4 shall be refunded and the case shall proceed on its normal course.



1           10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this  
3 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies  
4 that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the  
5 trial court, and the case shall proceed on its normal course on the trial court's calendar.

6           **11. MODIFICATION**

7           11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
8 and the approval of the Court or upon the granting of a motion brought to the Court by either  
9 Party.

10           **12. ATTORNEY'S FEES**

11           12.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
12 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
13 unless the unsuccessful party has acted with substantial justification. For purposes of this  
14 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
15 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

16           12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
17 pursuant to law.

18           **13. RETENTION OF JURISDICTION**


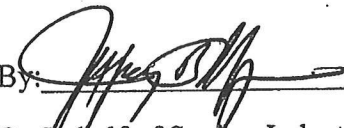
19           13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
20 Consent Judgment.

21           **14. AUTHORIZATION**

22           14.1 The undersigned are authorized to execute this Consent Judgment on behalf of  
23 their respective Parties and have read, understood and agree to all of the terms and conditions of  
24 this document and certifies that he or she is fully authorized by the Party he or she represents to  
25 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.  
26 Except as explicitly provided herein each Party is to bear its own fees and costs.  
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**APPROVED AS TO FORM:**

<p>AGREED TO: Date : <u>10/6</u>, 2015</p> <p>By: <u></u></p> <p>On Behalf of Evelyn Wimberley Stephen Ure, Law Offices of Stephen Ure, PC</p>	<p>AGREED TO: Date: <u>October 6, 2015</u>, 2015</p> <p>By: <u></u></p> <p>On Behalf of Sunjoy Industries Group Limited Jeffrey Margulies, Norton Rose Fulbright US LLP</p>
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**IT IS HEREBY SO STIPULATED:**

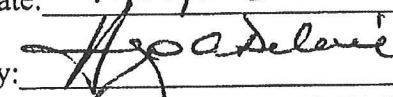
**AGREED TO:**

**AGREED TO:**

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

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

Date: 10/06/2015

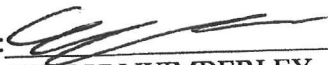
By:   
SUNJOY INDUSTRIES GROUP  
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**APPROVED AS TO FORM:**

<b>AGREED TO:</b> Date : _____, 2015  By: _____  On Behalf of Evelyn Wimberley Stephen Ure, Law Offices of Stephen Ure, PC	<b>AGREED TO:</b> Date: _____, 2015  By: _____  On Behalf of Sunjoy Industries Group Limited Jeffrey Margulies, Norton Rose Fulbright US LLP
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**IT IS HEREBY SO STIPULATED:**

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <u>10-5-15</u>	Date: _____
By: <u></u> EVELYN WIMBERLEY	By: _____ SUNJOY INDUSTRIES GROUP LIMITED