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

9 Maureen Parker,

10 Plaintiff,

11 v.

12 The Vons Companies INC., et al.

13 Defendants,
14
15

Case No. 37-2017-00004689-CU-NP-NC

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANTS HOC INDUSTRIES,
INC**

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 HOC Industries, Inc.
4 (hereinafter "HOC"), with Parker and HOC collectively referred to as the "Parties" and each of
5 them as a "Party." Parker is an individual residing in California who seeks to promote awareness
6 of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. Parker served a 60 Day Notice dated April 25, 2016
8 on Albertson's LLC, Better Living Brands, LLC, The Vons Companies, Inc and various public
9 enforcement agencies. An Amended Notice to be served on HOC Industries, Inc will be served
10 within 60 days of the parties signatures herein. HOC Industries, Inc. employs ten or more
11 persons and is a "person in the course of doing business" for purposes of Proposition 65, Cal.
12 Health & Safety Code §§ 25249.6 et seq.

13 **1.2 Allegations and Representations.** Parker alleges that HOC has offered for sale in
14 the State of California and has sold in California, Charcoal Lighter Fluids that expose individuals
15 to carbon monoxide and soot, and that such sales have not been accompanied by Proposition 65
16 warnings. Carbon monoxide and soot are listed under Proposition 65 as chemicals known to the
17 State of California to cause birth defects or other reproductive harm. Parker specifically
18 identified in her initial 60 Day Notice the Signature Home Lighter Fluid (UPC021130541218) as
19 an example of product within the outdoor/BBQ/Lighter Fluids category that is subject to the
20 allegations.

21 **Notices of Violation/Complaint.** On or about April 25, 2016, Parker served Albertson's LLC,
22 Better Living Brands, LLC, The Vons Companies, Inc and various public enforcement agencies
23 with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code
24 §25249.7(d) (the "Notice"), alleging that Albertson's LLC, Better Living Brands, LLC, and The
25 Vons Companies, Inc were in violation of Proposition 65 for failing to warn consumers and
26 customers that the Covered Products exposed users in California to carbon monoxide and soot.
27 The Covered Products sold by Albertson's LLC, Better Living Brands, LLC, and The Vons
28

1 Companies, Inc are manufactured by HOC Industries, Inc. No public enforcer diligently
2 prosecuted the claims threatened in the Notice within sixty days plus service time relative to the
3 provision of the Notice to them by Parker, such that Parker filed a complaint in the matter as
4 captioned above on February 7, 2017. Subsequently, and pursuant to negotiations regarding
5 settlement of this matter, Parker will send the Amended 60 Day Notice letter to HOC Industries,
6 Inc (hereafter "HOC" or "the Settling Defendant") within 60 days of the parties executing this
7 Agreement.

8 1.3 For purposes of this Consent Judgment only, the Parties stipulate that this Court
9 has jurisdiction over HOC as to the allegations contained in the complaint filed in this matter, that
10 venue is proper in the County of San Diego, and that this Court has jurisdiction to approve, enter,
11 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
12 claims which were or could have been raised in the Complaint based on the facts alleged therein
13 and/or in the Notices.

14 1.4 Albertson's LLC, Better Living Brands, LLC, and The Vons Companies, Inc and
15 HOC deny the material allegations contained in Parker's Notice and Complaint and maintain that
16 they have not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an
17 admission by Albertson's LLC, Better Living Brands, LLC, The Vons Companies, Inc and HOC
18 of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent
19 Judgment constitute or be construed as an admission by Albertson's LLC, Better Living Brands,
20 LLC, The Vons Companies, Inc and HOC of any fact, finding, conclusion, issue of law, or
21 violation of law, such being specifically denied by Albertson's LLC, Better Living Brands, LLC,
22 The Vons Companies, Inc and HOC. However, this section shall not diminish or otherwise affect
23 the obligations, responsibilities, and duties of HOC under this Consent Judgment.

24 **2. DEFINITIONS**

25 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 0.

26 2.2 **Covered Products.** The term "Covered Products" refers to charcoal lighter fluid
27 manufactured by HOC and sold in California, including Signature Home Lighter Fluid.
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1 **2.3 Effective Date.** The term “Effective Date” shall mean the date this Consent
2 Judgment is entered as a Judgment of the Court.

3 **2.4 Listed Chemicals:** The term “Listed Chemicals” shall mean carbon monoxide
4 and soot.

5 **2.5 Notice.** The term “Notice” shall have the meaning given in Section 0.

6 **2.6 Releasees.** The terms “Defendant Releasees” and “Downstream Defendant
7 Releasees” shall have the meanings given in Section 5.1.

8 **2.7 Execution Date.** The term “Execution Date” shall mean the date this Consent
9 Judgment is signed by the parties

10 **3. INJUNCTIVE RELIEF: WARNINGS**

11 **3.1** Commencing on the Effective Date, HOC shall not sell, offer for sale, or ship for
12 sale in California any Covered Product, unless the Covered Product is accompanied by the
13 following warning: “Warning: This product and combustion products emitted when this product
14 is burning contain chemicals known to the State of California to cause cancer, birth defects or
15 reproductive harm.”

16 **3.2** The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
17 Covered Product’s packaging, labeling, or instruction booklet. The warning shall be prominently
18 affixed to or printed on the packaging, labeling, or instruction booklet and displayed with such
19 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
20 read and understood by an ordinary individual under customary conditions of purchase or use. A
21 warning may be contained in the same section of the packaging, labeling, or instruction booklet
22 that states other safety warnings, if any, concerning the use of the product.

23 **4. MONETARY TERMS**

24 **4.1 Civil Penalty.** HOC shall pay a civil penalty of \$500.00 pursuant to Health and
25 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
26 Code § 25192, with 75% of these funds remitted to the State of California’s Office of
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1 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
2 Parker, as provided by California Health & Safety Code § 25249.12(d).

3 4.2 **Attorney Fees.** HOC agrees to pay and will not oppose an application made by
4 Parker's counsel for an award of attorney fees, inclusive of all expenses and costs incurred as a
5 result of investigating, bringing this matter to HOC's attention, litigating and negotiating and
6 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
7 Procedure section 1021.5, in an amount of \$16,000.00. Other than the payment required
8 hereunder, each side is to bear its own attorneys' fees and costs.

9 4.3 HOC shall wire Parker's counsel the total sum of \$16,500.00 representing the civil
10 penalty and attorney fees in Sections 4.1 and 4.2 within two days following receipt of a fully-
11 executed copy of this Consent Judgment, W-9, and wire instruction information from Parker's
12 counsel.

13 4.4 At the time the consent judgment is approved by the court, the Defendant
14 Releasees and Downstream Defendant Releasees, as applicable, will be dismissed from this
15 action—with prejudice—effective as to the Covered Products that HOC shipped before the
16 effective date of this judgment.

17 **5. RELEASE OF ALL CLAIMS**

18 5.1 This consent judgment is a full, final, and binding resolution and release between
19 Parker acting in the public interest, and HOC, it's parents, shareholders, divisions, subdivisions,
20 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns
21 ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly or
22 indirectly distribute or sell Covered Products, including but not limited to manufacturers,
23 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and
24 cooperative members, including but not limited to Albertson's LLC, Better Living Brands, LLC
25 and The Vons Companies, Inc., its parent and all subsidiary companies, and affiliates thereof,
26 their respective employees, agents, and assigns ("Downstream Defendant Releasees"), of all
27 claims for violations of Proposition 65 based on exposure from Covered Products as set forth in
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1 the Notice, with respect to any Covered Products prior to the Effective Date. Compliance with
2 the terms of this consent judgment constitutes compliance with Proposition 65 with regard to the
3 Covered Products. HOC shall date stamp the Covered Products or otherwise provide sufficient
4 documentation to Parker that it is in compliance.

5 5.2 In addition to the foregoing, Parker, on behalf of herself, her past and current
6 agents, representatives, attorneys, and successors and/or assignees, and not in her representative
7 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
8 legal action and releases any Defendant Releasees, and Downstream Defendant Releasees from
9 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
10 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
11 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or
12 contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to
13 or arising from Covered Products manufactured distributed or sold by Albertson's LLC, Better
14 Living Brands, LLC and The Vons Companies, Inc., or Defendant Releasees. With respect to
15 the foregoing waivers and releases in this paragraph, Parker hereby specifically waives any and
16 all rights and benefits which she now has, or in the future may have, conferred by virtue of the
17 provisions of Section 1542 of the California Civil Code, which provides as follows:
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19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
21 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
22 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
23 THE DEBTOR.

24 5.3 Albertson's LLC, Better Living Brands, LLC and The Vons Companies, Inc., and
25 HOC waives any and all claims against Parker, her attorneys and other representatives, for any
26 and all actions taken or statements made (or those that could have been taken or made) by Parker
27 and her attorneys and other representatives, whether in the course of investigating claims or
28 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to
Covered Products.

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein
5 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

7 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California. In the event that Proposition 65 is repealed or
9 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
10 HOC shall provide written notice to Parker of any asserted change in the law, and shall have no
11 further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
12 Covered Products are so affected.

13 **8. NOTICES**

14 8.1 Unless specified herein, all correspondence and notices required to be provided
15 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
16 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
17 party by the other party at the following addresses:

18 For HOC:

19 Luke Nath
20 HOC Industries Inc.
21 3511 N. Ohio
22 Wichita, KS 67219
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1 and

2 For Parker:

3 Stephen Ure
4 Law Offices of Stephen Ure, PC.
5 11622 El Camino Real, Suite 100
6 San Diego, California 92130

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

10 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
11 which shall be deemed an original, and all of which, when taken together, shall constitute one and
12 the same document. Copies of such counterparts sent via e-mail to the other party shall constitute
13 originals.

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

16 10.1 Parker agrees to comply with the requirements set forth in California Health &
17 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
18 and HOC agrees it shall support approval of such Motion.

19 10.2 This Consent Judgment will not be submitted to the court until such time as the 60
20 day notice served upon HOC has expired and the complaint currently filed with the court is
21 amended to include HOC as a defendant. Further this Consent Judgment shall not be effective
22 until it is approved and entered by the Court and shall be null and void if, for any reason, it is not
23 approved and entered by the Court within twelve months after it has been submitted to the court
24 for approval . In such case, the Parties agree to meet and confer on how to proceed and if such
25 agreement is not reached within 30-days, any monies that have been paid pursuant to Section 4
26 shall be refunded and the case shall proceed on its normal course.

27 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
28 appellate court, the Parties shall meet and confer as to whether to modify the terms of this

1 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
2 that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the
3 trial court, and the case shall proceed on its normal course on the trial court's calendar.

4 **11. MODIFICATION**

5 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
6 and the approval of the Court or upon the granting of a motion brought to the Court by either
7 Party.

8 **12. ATTORNEY'S FEES**

9 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
10 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
11 unless the unsuccessful party has acted with substantial justification. For purposes of this
12 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
13 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

14 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
15 pursuant to law.

16 **13. RETENTION OF JURISDICTION**

17 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
18 Consent Judgment.

19 **14. AUTHORIZATION**

20 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of
21 their respective Parties and have read, understood and agree to all of the terms and conditions of
22 this document and certifies that he or she is fully authorized by the Party he or she represents to
23 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
24 Except as explicitly provided herein each Party is to bear its own fees and costs.
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1 **APPROVED AS TO FORM:**

3 AGREED TO:	3 AGREED TO:
4 Date : _____, 2017	4 Date: <u>4-18</u> , 2017
5	5
6 By: _____	6 By: <u>ZA</u>
7 On Behalf of Maureen Parker	7 On Behalf of HOC Industries, Inc.
8 Stephen Ure,	8 Luke Nath
9 Law Offices of Stephen Ure, PC	

9 **IT IS HEREBY SO STIPULATED:**

10 AGREED TO:	10 AGREED TO:
11	11
12 Date: _____	12 Date: <u>4-18-17</u>
13	13
14 By: _____	14 By: <u>ZA</u>
15 MAUREEN PARKER	15 HOC INDUSTRIES, INC.
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1 **APPROVED AS TO FORM:**

3 AGREED TO:	3 AGREED TO:
4 Date: <u>April 18</u> , 2017	4 Date: _____, 2017
5 By: <u>[Signature]</u>	5 By: _____
6 On Behalf of Maureen Parker	6 On Behalf of HOC Industries, Inc.
7 Stephen Ure,	7 Luke Nath
8 Law Offices of Stephen Ure, PC	

9 **IT IS HEREBY SO STIPULATED:**

10 AGREED TO:	10 AGREED TO:
11	11
12 Date: <u>April 18, 2017</u>	12 Date: _____
13 By: <u>Maureen Parker</u>	13 By: _____
14 MAUREEN PARKER	14 HOC INDUSTRIES, INC.
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