

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 The Parties

This Settlement Agreement is hereby entered into by and between Evelyn Wimberley ("Wimberley") and Lowe's Home Centers, LLC (hereinafter "Lowe's"), with Wimberley and Lowe's 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.

#### 1.2 Allegations and Representations

(a) Wimberley alleges that Lowe's is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code § 25249.6 et seq., and offered for sale in the State of California, a product identified as "Mountaineer All Natural Kindling," UPC No. 79357392828993, that when used as intended is alleged to produce combustion byproducts soot and carbon monoxide, and that such sales have not been accompanied by Proposition 65 warnings. Soot and carbon monoxide are potentially subject to Proposition 65 warnings because the California Office of Environmental Health Hazard Assessment has listed soot as a chemical known to cause cancer, and carbon monoxide as a chemical known to cause reproductive toxicity.

(b) Lowe's does not admit and denies the material, factual and legal allegations contained in the Notices, and maintains that all products sold, distributed or offered for sale in California have been and are in compliance with all laws, including, without limitation, Proposition 65.

(c) The Parties enter into this Settlement Agreement to resolve all Proposition 65 claims concerning the Products as identified in Paragraph and 1.3.

#### 1.3 Covered Items

The products that are covered by this Settlement Agreement are defined as "Mountaineer All Natural Kindling," identified by UPC No. 793573928993, distributed to Lowe's by Retail

Lowe's of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Lowe's. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Lowe's under this Settlement Agreement.

**1.7 Execution Date**

1.7.1 For purposes of this Settlement Agreement, the term "Execution Date" shall mean the date this Settlement Agreement is fully executed.

1.7.2 For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date that Prop 65 warnings shall be implemented pursuant to Article 2.

**2. COMPLIANCE**

2.1 Within thirty (30) days after the Execution Date (the "Effective Date"), Lowe's shall condition the purchase of Products from RMS, to be sold in California, on RMS providing clear and reasonable Proposition 65 warnings as required under Article 6 of Title 27 of the California Code of Regulations, with regard to soot and carbon monoxide, or consistent with such regulations as they may be amended in the future.

2.2 Lowe's compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to carbon monoxide and soot from the Products.

**3. CIVIL PENALTY & REIMBURSEMENT OF FEES AND COSTS**

3.1 Payment Pursuant to Health & Safety Code Section 25249.7(b). Lowe's Shall pay a Civil Penalty of \$1,000.00 to be apportioned in accordance with California Code of Regulations Title 11 Division 4 – Proposition 65 Private Enforcement with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Wimberley, as provided by California Health & Safety Code Section 25249.7. The Law Offices of Stephen Ure, PC will provide Lowe's with relevant tax identification information and information for payment by check required by this Paragraph on or before the Execution Date.

3.2 Lowe's shall pay Wimberley's counsel \$24,000.00 for reasonable attorneys' fees,

expert and investigation fees, and related costs associated with this matter and the Notice and incurred as a result of investigating, bringing this matter to Lowe's attention, preparing and filing a complaint with the court, dismissing said complaint and negotiating a settlement. Lowe's shall provide said monies via a check issued to the "Law Offices of Stephen Ure, PC" (tax identification number 42-1641673) no later than twenty (20) calendar days following the Execution Date. Other than the payment specified hereunder, each side is to bear its own attorneys' fees and costs.

3.3 Time is of the essence with regard to the receipt of payments specified in Article 3.

#### 4. CLAIMS COVERED AND RELEASED

##### 4.1 Release of Lowe's and Downstream Customers

Wimberley releases Lowe's, its parents (including Lowe's Companies, Inc., its subsidiaries and affiliates thereof and their respective employees, agents, and assigns), subsidiaries, shareholders, directors, members, officers, employees, agents, attorneys, successors, and assignees, as well as all entities and persons from whom they obtain and to whom they directly or indirectly distribute or sell the Products, including but not limited to each of its manufacturers, distributors, marketplace hosts, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, and users, and their respective parent companies, corporate affiliates, subsidiaries, officers, directors, attorneys, representatives, shareholders, agents, successors, and employees, and sister entities (collectively "Releasees") from any and all claims for alleged violations of Proposition 65 asserted in the Notice regarding the Products sold and/or offered for sale by Lowe's before and up to the Execution date.

##### 4.2 Waiver of Unknown Claims

Wimberley hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other claims, actions, causes of action, demands, rights, suits, liabilities, damages, losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future that she could make against Lowe's or the other Releasees relating to the alleged violations of Proposition 65

related to or arising from the Products. With respect to the foregoing waiver and release in this paragraph, Wimberley hereby specifically waives any and all rights and benefits which she now has, or in the future may have, conferred by virtue of Section 1542 of the California Civil Code, which provides:

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

#### 4.3 LOWE'S Release of Wimberley

Lowe's waives any and all claims against Wimberley, her attorneys and other representatives, for any and all actions taken or statements made by Wimberley and her attorneys and other representatives undertaken in connection with the Proposition 65 claims asserted in the Notice regarding the Products, whether in the course of investigating the claims or otherwise seeking enforcement of Proposition 65 against Lowe's in this matter. The waiver in this Paragraph does not extend to, and shall not affect, any claims that Lowe's may have against RMS due to the alleged failure to label the Products, provide a warning on the Products, or due to any other alleged violation of Proposition 65 and its implementing regulations.

#### 5. SEVERABILITY AND MERGER

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

#### 6. GOVERNING LAW

6.1 This Settlement Agreement shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of California, USA without regard to conflicts of law principles. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Lowe's shall provide written notice to Wimberley of any asserted change in

the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

6.2 This Settlement Agreement shall apply to and be binding upon Wimberley and Lowe's, its divisions, subdivisions, and subsidiaries, if any, and the Parties' successors and assigns.

6.3 The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement.

## 7. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement 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 LOWE'S:

Tom Boer  
Hunton Andrews Kurth LLP  
50 California Street, Suite 1700  
San Francisco, CA 94111

and

For Wimberley:

Stephen Ure, Esq.  
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.

8. COUNTERPARTS; FACSIMILE SIGNATURES

The stipulations to this Settlement Agreement may be executed in counterparts and by means of facsimile and/or portable document format (pdf), which taken together shall be deemed to constitute one document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Wimberley agrees to promptly comply with the requirements set forth in California Health & Safety Code §25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by further written agreement of the Parties.

11. ENFORCEMENT OF SETTLEMENT AGREEMENT

Either Party may bring an action to enforce the terms of this Settlement Agreement. A Party who unsuccessfully brings or contests an action arising out of this Settlement Agreement may be ordered by the court to pay the prevailing Party's reasonable attorney's fees and costs.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing

waiver.

**14. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document.

**APPROVED AS TO FORM:**


Dated: \_\_\_\_\_

HUNTON ANDREWS KURTH LLP

By: \_\_\_\_\_  
J. Tom Boer, Hunton Andrews Kurth  
Attorneys for Lowe's Home Centers, LLC

Dated: 5/22/18

LAW OFFICES OF STEPHEN URE, PC

By:   
Stephen Ure  
Attorneys for Plaintiff,  
EVELYN WIMBERLEY

**AGREED TO:**

Date: 5/22/18

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

By:   
EVELYN WIMBERLEY

By: \_\_\_\_\_  
Lowe's Home Centers, LLC

waiver.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document.

APPROVED AS TO FORM:

Dated: 5/22/2018

HUNTON ANDREWS KURTH LLP

By:   
J. Tom Boer, Hunton Andrews Kurth  
Attorneys for Lowe's Home Centers, LLC

Dated: \_\_\_\_\_

LAW OFFICES OF STEPHEN URE, PC

By: \_\_\_\_\_  
Stephen Ure  
Attorneys for Plaintiff,  
EVELYN WIMBERLEY

AGREED TO:

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

Date: 5/28/18

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

By:   
Lowe's Home Centers, LLC