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3 11622 El Camino Real, Suite 100  
4 San Diego, CA 92130  
5 Telephone: 619-235-5400

6 Attorneys for Plaintiff Evelyn Wimberley

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 EVELYN WIMBERLEY,

11 Plaintiff,

12 v.

13 DICK'S SPORTING GOODS, INC.  
14 AND DOES 1-25 INCLUSIVE

15 Defendants,

Case No. 37-2018-00006053-CU-NP-NC

**STIPULATION TO CONSENT  
JUDGMENT AS TO DEFENDANT  
DICK'S SPORTING GOODS, INC.  
AND CROSS-DEFENDANT  
STANDARD BRANDS (UK) LTD**

Filing Date: February 5, 2018

The Hon. Earl H. Maas, III

17 DICK'S SPORTING GOODS, INC.,

18 Cross-Complainant,

19 v.

20 STANDARD BRANDS (UK), LTD., AND DOES 1  
21 through 10, inclusive,

22 Cross-Defendants,

1           **1. INTRODUCTION**

2           **1.1 The Parties.** This Consent Judgment is entered into by and between Evelyn  
3 Wimberley acting on behalf of the public interest (hereinafter "Wimberley"), and DICK'S  
4 SPORTING GOODS, INC., ("DICK'S") and STANDARD BRANDS (UK) LTD,  
5 ("STANDARD") (DICK'S and STANDARD collectively the "Defendants") with Wimberley  
6 and Defendants collectively referred to as the "Parties" and each of them as a "Party."

7           **1.2 Allegations and Representations.** Wimberley alleges that Defendants have  
8 offered for sale in the State of California and has sold in California, "2 in 1 Zip Wood Firestarter"  
9 that exposes individuals to carbon monoxide and soot, and that such sales have not been  
10 accompanied by Proposition 65 warnings.

11           **1.3 Notices of Violation/Complaint.** On or about May 8, 2017, Wimberley served  
12 the distributor Maurice Sporting Goods, Inc., its retailer, DICK'S, and various public enforcement  
13 agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety  
14 Code §25249.7(d) (the "Notice"), alleging that Defendants were in violation of Proposition 65 for  
15 failing to warn consumers and Defendants' customers that the "2 in 1 Zip Wood Firestarter"  
16 exposed users in California to carbon monoxide and soot. No public enforcer diligently  
17 prosecuted the claims threatened in the Notice within sixty days plus service time relative to the  
18 provision of the Notice to them by Wimberley.

19           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court  
20 has jurisdiction over Defendants as to the allegations contained in the complaint filed in this  
21 matter, that venue is proper in the County of San Diego, and that this Court has jurisdiction to  
22 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding  
23 resolution of all claims which were or could have been raised in the Complaint based on the facts  
24 alleged therein and/or in the Notices.

25           **1.5** Defendants deny the material allegations contained in Wimberley's Notice and  
26 Complaint and maintain that they have not violated Proposition 65. Nothing in this Consent  
27 Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law, or  
28

1 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as  
2 an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law,  
3 such being specifically denied by Defendants. However, this section shall not diminish or  
4 otherwise affect the obligations, responsibilities, and duties of Defendants under this Consent  
5 Judgment.

6 1.6 On March 28, 2018, DICK'S filed a Cross-Complaint against STANDARD for  
7 equitable indemnity, comparative indemnity, implied indemnity, declaratory relief, and  
8 contribution. The Cross-Complaint alleged that Standard, as manufacturer of the product at issue  
9 in the Complaint, is responsible for any liability or violation of Proposition 65 concerning its  
10 products sold by retailers such as DICK'S such as alleged in this action.

11 **2. DEFINITIONS**

12 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.

13 2.2 **Covered Product.** The term "Covered Product" means "2 in 1 Zip Wood  
14 Firestarter."

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

17 2.4 **Listed Chemicals:** The term "Listed Chemicals" shall mean carbon monoxide and  
18 soot.

19 2.5 **Notice.** The term "Notice" shall have the meaning given in Section 1.3.

20 2.6 **Releasees.** Releasees means the Defendants, Defendant Releasees and  
21 Downstream Releasees. The terms "Defendant Releasees" and "Downstream Releasees" shall  
22 have the meanings given in Section 5.1.

23 2.7 **Execution Date.** The term "Execution Date" shall mean the date this Consent  
24 Judgment is signed by all parties

25 **3. INJUNCTIVE RELIEF: WARNINGS**

26 3.1 Commencing 30 days after the Effective Date, Defendants shall not sell, offer for  
27 sale, or ship for sale in California any Covered Product, unless the Covered Product is  
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1 accompanied by one of the following warnings which may not appear identical as to form so long  
2 as materially identical in substance:



**WARNING: Cancer and Reproductive Harm.**

[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

4  
5 or



**WARNING: This product can expose you to carbon monoxide and soot,  
7 which are known to the State of California to cause cancer and birth  
8 defects or other reproductive harm. For more information go  
9 to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

10  
11 or



**WARNING: The combustion of wood, charcoal, and other fuels can  
13 expose you to chemicals, including soot and carbon monoxide, which are  
14 known to the State of California to cause cancer and birth defects or other  
15 reproductive harm. For more information go to,  
16 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

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18 or



**WARNING: Combustion byproducts, such as carbon monoxide and soot,  
20 produced when using this product, contain chemicals known to the State  
21 of California to cause cancer and birth defects or other reproductive harm.  
22 For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

23  
24 **3.2** The warning provided pursuant to Section 3.1 shall be affixed to or printed on the  
25 Covered Product's packaging, labeling, or instruction booklet. The warning shall be prominently  
26 affixed to or printed on the packaging, labeling, or package insert and displayed with such  
27 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
28 read and understood by an ordinary individual under customary conditions of purchase or use. A

1 warning may be contained in the same section of the packaging, labeling, or package insert that  
2 states other safety warnings, if any, concerning the use of the product and shall be at least the  
3 same size as those other safety warnings.

4 3.3 The warning requirements set forth in paragraph 3.1 above shall not apply to:

5 (a) Covered Products manufactured, distributed, marketed or sold by DICK'S, before  
6 60 days after entry of this Consent Judgment (the "Effective Date");

7 (c) Covered Products in DICK'S inventory, on or before the Effective Date;

8 (d) Covered Products manufactured, distributed, marketed, sold or shipped for sale or  
9 use outside the State of California.

10 **4. MONETARY TERMS**

11 4.1 **Civil Penalty.** Defendants shall pay a civil penalty of \$1,000 to be apportioned in  
12 accordance with California Code of Regulations Title 11 Division 4 – Proposition 65 Private  
13 Enforcement with 75% of these funds remitted to the State of California's Office of  
14 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to  
15 Wimberley, as provided by California Health & Safety Code § 25249.7.

16 4.2 **Attorney Fees.** Defendants agree to pay and Defendants will not oppose an  
17 application made by Wimberley's counsel for an award of attorney fees, inclusive of all expenses  
18 and costs incurred as a result of investigating, bringing this matter to Defendants' attention,  
19 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,  
20 pursuant to Code of Civil Procedure section 1021.5, in an amount of \$34,000.00. Other than the  
21 payment required hereunder, each side is to bear its own attorneys' fees and costs.

22 4.3 Within 3 business days of execution of this Consent Judgment by the parties,  
23 Standard shall wire the total sum of \$35,000.00 representing the civil penalty and attorney fees in  
24 Sections 4.1 and 4.2 to the Law Offices of Stephen Ure, PC Attorney Trust Account. If the Court  
25 declines to enter this Consent Judgment within-18 months of its submission to the court, the funds  
26 will be returned to Standard.

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 Defendants, their 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, marketplace hosts, wholesalers, customers, licensors, licensees, retailers  
8 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to  
9 Listed Chemicals from Covered Products as set forth in the Notice, with respect to any Covered  
10 Products manufactured, distributed, or sold by Defendants prior to 30 days after the Effective  
11 Date.     Compliance with the terms of this consent judgment constitutes compliance with  
12 Proposition 65 with regard to the Covered Products.

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

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Defendants THE DEBTOR.

5.3 Defendants waive 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.

5.4 Full Release & Dismissal as to Defendants

Compliance with the terms of this Consent Judgment by Defendants resolves any issue, now and in the future, concerning compliance by DICK'S AND STANDARD, whether as Defendants, Defendant Releasees, or Downstream Releasees with the requirements of with Proposition 65 with respect to chemicals in any Covered Products that are manufactured, shipped, or sold by, the Defendant Releasees or the Downstream Releasees following the Effective Date.

6. INTEGRATION

6.1 This Consent Judgment contains the sole and entire agreement of the Parties with respect to the Complaint 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 Complaint 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 and shall apply only to Covered Products that are sold or offered for sale in 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 Defendants shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered Products are so affected.

1 **8. NOTICES**

2 **8.1** Unless specified herein, all correspondence and notices required to be provided  
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)  
4 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any  
5 party by the other party at the following addresses:  
6

7 For DICK'S:

8 Maurcen Gorsen  
9 Alston & Bird  
10 1121 L Street, Suite 700  
Sacramento, CA 95814

11 For STANDARD:

12 Jerome A. Busch  
13 Jeffrey Resnick  
14 Vogt Resnick Sherak, LLP  
15 Attorneys at Law  
4400 MacArthur Blvd, Ninth Floor  
16 Newport Beach, CA, 92658-7849

17 For Wimberley:

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

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

24 **9.1** This Consent Judgment may be executed in counterparts and by facsimile, each of  
25 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
26 the same document.  
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1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
2 **APPROVAL**

3 10.1 Wimberley agrees to comply with the requirements set forth in California Health  
4 & Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent  
5 Judgment and Defendants agree they shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by  
7 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court  
8 within twelve months after it has been fully executed by the Parties.

9 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
10 appellate court, the Parties shall meet and confer as to whether to modify the terms of this  
11 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies  
12 that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the  
13 trial court, and the case shall proceed on its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
16 and the approval of the Court or upon the granting of a motion brought to the Court by either  
17 Party.

18 **12. ENTIRE AGREEMENT**

19 This Consent Judgment contains the sole and entire agreement and understanding of  
20 Wimberley, on the one hand, and Defendants, on the other hand, with respect to the entire subject  
21 matter of the Complaint, and any and all prior discussions, negotiations, commitments, or  
22 understandings related thereto, if any, are hereby merged herein and therein. No representations,  
23 oral or otherwise, express or implied, other than those specifically referred to in this Consent  
24 Judgment have been made by any Party hereto. No supplementation, modification, waiver, or  
25 termination of this Consent Judgment shall be binding unless executed in writing by the Party to  
26 be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed  
27 or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
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1 such waiver constitute a continuing waiver.  
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3 **13. ATTORNEY'S FEES**

4 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
5 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
6 unless the unsuccessful party has acted with substantial justification. For purposes of this  
7 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
8 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

9 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
10 pursuant to law.

11 **14. RETENTION OF JURISDICTION**

12 14.1 This Court shall retain jurisdiction of this matter to implement or modify the  
13 Consent Judgment.

14 **15. AUTHORIZATION**

15 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of  
16 their respective Parties and have read, understood and agree to all of the terms and conditions of  
17 this document and certify that they are fully authorized by the Parties they represent to execute  
18 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
19 explicitly provided herein, each Party is to bear its own fees and costs.  
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1 **APPROVED AS TO FORM:**

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3 **AGREED TO:**

4 Date: June 22, 2018

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6 By: 

7 On Behalf of Evelyn Wimberley  
8 Stephen Ure,  
Law Offices of Stephen Ure, PC

3 **AGREED TO:**

4 Date: June 21, 2018

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6 By: 

7 On Behalf of STANDARD  
8 Stephan H. Andranian  
Vogt, Resnick & Sherak, LLP

9 **AGREED TO:**

10 Date: \_\_\_\_\_, 2018

11  
12 By: \_\_\_\_\_

13 On Behalf of DICK'S  
14 Maureen Gorsen  
15 Alston & Bird, LLP

16 **IT IS HEREBY SO STIPULATED:**

17 **AGREED TO:**

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19 Date: 06/21/2018

20  
21 By: 

22 EVELYN WIMBERLEY

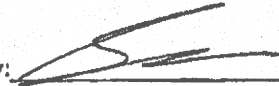
17 **AGREED TO:**

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

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21 By: \_\_\_\_\_

22 DICK'S SPORTING GOODS, INC

1 **APPROVED AS TO FORM:**

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AGREED TO:	AGREED TO:	Date : _____, 2018	Date: <u>June 21</u> , 2018	By: _____	By: 	
On Behalf of Evelyn Wimberley Stephen Ure, Law Offices of Stephen Ure, PC	On Behalf of STANDARD Stephan H. Andranian Vogt, Resnick & Sherak, LLP					

9 **AGREED TO:**

10 Date : June 27, 2018

11 By: \_\_\_\_\_

12   
13 On Behalf of DICK'S  
14 Maureen Gorsen  
15 Alston & Bird, LLP

16 **IT IS HEREBY SO STIPULATED:**

17 **AGREED TO:**

18 **AGREED TO:**

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

20 Date: June 27

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

22 By:   
23 DICK'S SPORTING GOODS, INC

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**AGREED TO:**

Date: 21<sup>st</sup> June 2018

By: Denis McCourt  
Operations & Finance Director  
STANDARD BRANDS (UK) LTD

