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5 Attorneys for Plaintiff
Clean Air OC, LLC
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF ORANGE**
10 **UNLIMITED JURISDICTION**

11 CLEAN AIR OC, LLC, in the public interest,

12 Plaintiff,

13 vs.

14 WOODBRIDGE VILLAGE ASSOCIATION,

15 Defendant.
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CASE NO: 30-2019-01054987-CU-MC-CJC
[Related to Case Nos. 30-2017-00912288 and
30-2018-00966059]

Assigned for all purposes to:
Hon. Martha K. Gooding
Dept. C32

[PROPOSED] CONSENT JUDGMENT

[Filed concurrently with Notice of Motion and
Motion for Court Approval of Prop 65
Settlement; Memorandum of Points & Authorities
in Support Thereof; Declaration of Kent J.
Schmidt; and [Proposed] Order]

RESERVATION NO.

Date: November 22, 2021
Time: 1:30 p.m.
Dept.: C32

Complaint Filed: March 1, 2019
Trial Date: Vacated

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[PROPOSED] CONSENT JUDGMENT

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1 **I. Introduction**

2 On December 6, 2018, Plaintiff Clean Air OC, LLC (“Plaintiff”) served Defendant Woodbridge
3 Village Association’s (“WVA”) and various public enforcement agencies with a document “Notice of
4 Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”) providing notice that
5 WVA had allegedly violated California Health & Safety Code § 25249.6 (“Proposition 65”) for failing
6 to warn consumers that its recreational wood burning fires pits at its North Beach and South Beach
7 recreational areas exposed consumers to chemicals. No public enforcer commenced or prosecuted the
8 allegations set forth in the Notice.

9 On March 1, 2019, Plaintiff filed a Complaint for Civil Penalties and Injunctive Relief and Civil
10 Penalties (“Complaint”) in Orange County Superior Court, Case No. 30-2019-01054987-CU-MC-CJC
11 against WVA alleging violations of Proposition 65.

12 Plaintiff’s Complaint alleges, among other things, that WVA exposed California consumers to
13 wood smoke from wood burning fire pits, and that the resulting exposure violated provisions of
14 Proposition 65, by knowingly and intentionally exposing persons to chemicals known to the State of
15 California to cause both cancer and reproductive toxicity without first providing a clear and reasonable
16 warning to such individuals.

17 For purposes of this Consent Judgment only, Plaintiff and WVA (collectively, the “Parties”)
18 stipulate that this Court has jurisdiction over the allegations of violations in the Complaint and personal
19 jurisdiction over WVA as to the acts alleged in the Complaint, that venue is proper in the County of
20 Orange, and that this Court has jurisdiction to enter this Consent Judgment as a resolution of the
21 allegations in the Complaint.

22 The Parties enter into this Consent Judgment pursuant to a full settlement of disputed claims
23 between the Parties for the purpose of avoiding prolonged litigation.

24 By executing this Consent Judgment, WVA does not admit and specifically denies a violation of
25 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by WVA of any
26 fact, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be
27 construed as an admission by WVA of any fact, issue of law, or violation of law. Nothing in this Consent
28 Judgment shall prejudice, waive, or impair any right, remedy or defense that WVA may have in any

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1 other future legal proceeding. However, this paragraph shall not diminish or otherwise affect the
2 obligations, responsibilities and duties of WVA under this Consent Judgment.

3 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that the
4 Consent Judgment is entered by the Court.

5 **II. Injunctive Relief**

6 Commencing fourteen (15) days after the Effective Date, and continuing thereafter, WVA will
7 suspend all wood burning fires at North Beach and, if any wood burning fires resume at South Beach,
8 will provide at that location a clear and reasonable warning as follows.



10 **WARNING:** Entering this area when there are wood burning fires can expose
11 you to chemicals known to the State of California to cause cancer, including
12 soot, from the wood burning fires. For more information go to
13 www.P65Warnings.ca.gov.

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15 Consistent with the requirements of 27 CCR § 25604, the warning shall be posted at all public
16 entrances to the affected area in no smaller than 72-point type provided in a conspicuous manner and
17 under such conditions as to make it likely to be seen, read, and understood by an ordinary individual in
18 the course of normal daily activity and in English and in any other language used on other signage in the
19 affected area.. Each warning shall be provided in a manner such that the consumer or user understands
20 that it relates to wood burning so as to minimize the risk of consumer confusion.

21 **III. Entry of Consent Judgment**

22 The Parties hereby request that the Court promptly enter this Consent Judgment. Upon entry of
23 this Consent Judgment, Plaintiff and WVA waive their respective rights to a hearing or trial on the
24 allegations of the Complaint and 60-Day Notice.

25 In the event that the Attorney General objects or otherwise comments on one or more provisions
26 of this Consent Judgment, Plaintiff and WVA agree engage in good faith negotiations to take reasonable
27 steps to satisfy such concerns or objections in order to effectuate the intent of the Consent Judgment.

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1 **IV. Matters Covered By this Consent Judgment**

2 **A. Plaintiff's Release of Proposition 65 Claims.**

3 This Consent Judgment is a final and binding resolution between Plaintiff, acting on its own
4 behalf, and its representatives, directors, officers, agents, and any persons or entities affiliated with
5 Plaintiff ("all persons or entities listed in this subparagraph as related to Plaintiff are hereinafter referred
6 to as "Plaintiff Releasers"), and WVA and its parents, direct or indirect equity holders, direct or indirect
7 controlling persons including past and former Board Members, any entities affiliated with any of the
8 foregoing, subsidiaries, affiliated entities under common ownership, directors, officers, agents,
9 representatives, employees, attorneys (all persons or entities listed in this subparagraph as related to
10 WVA are hereinafter referred to as "WVA Releasees") and shall have preclusive effect such that no
11 Plaintiff Releasers shall be permitted to pursue and/or take any action with respect to any alleged
12 violation of Proposition 65 that was alleged in the Notice or Complaint, or that could have been brought
13 pursuant to the Notice or Complaint, against WVA or the WVA Releasees.

14 As to alleged exposures from the wood burning fire pits, compliance with the terms of this
15 Consent Judgment by WVA is deemed sufficient to satisfy all obligations concerning compliance by
16 WVA and WVA Releasees with respect to the requirements of Proposition 65 and the wood burning fire
17 pits relating to soot and other carcinogens.

18 **B. Plaintiff's Private Release of Additional Claims.**

19 This Consent Judgment shall have preclusive effect on Plaintiff such that Plaintiff shall not be
20 permitted to pursue and/or take any action with respect to any other statutory or common law claim, to
21 the fullest extent that any such claim was or could have been asserted by it against any and all of WVA
22 or the WVA Releasees concerning any alleged failure to provide a clear and reasonable warning of
23 exposure to Plaintiff as well as any other claim based in whole or in part on the facts alleged in the
24 Complaint and the Notice.

25 **C. Waiver of Rights Under Section 1542 of the California Civil Code.**

26 Plaintiff acting on its own behalf waives all rights to institute any form of legal action, and
27 releases all claims against WVA for the Proposition 65 claims relating to the wood burning fire pits
28 (referred to collectively in this Section as "Claims").

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1 In furtherance of the foregoing, Plaintiff, acting on its own behalf waives any and all rights and
2 benefits which it now has, or in the future may have, conferred upon it with respect to the Claims by
3 virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

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10 **D. WVA's Release of Plaintiff.**

11 WVA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or
12 assignees, hereby waives any and all claims against Plaintiff, its attorneys, and other representatives for
13 any and all actions taken or statements made (or those that could have been taken or made) by Plaintiff
14 and its attorneys and other representatives, whether in the course of investigating claims or otherwise
15 seeking enforcement of Proposition 65 against WVA in this matter.

16 **E. Enforcement of Judgment**

17 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. The
18 Parties may, by noticed motion or order to show cause before the Superior Court of Orange County,
19 giving the notice required by law, enforce the terms and conditions contained herein. In any proceeding
20 brought by either party to enforce this Consent Judgment, such party may seek whatever fines, costs,
21 penalties or remedies as may be provided by law for any violation of Proposition 65 or this Consent
22 Judgment. Before bringing any such noticed motion or order to show cause, each party agrees to provide
23 the party against which the motion or order would be brought not less than ten (10) days written notice
24 and a reasonable period to cure the alleged breach of this Consent Judgment.

25 **F. Modification of Judgment**

26 This Consent Judgment may be modified only by written agreement of the Parties upon entry of
27 a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and
28 upon an entry of a modified Consent Judgment by the Court.

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1 **G. Settlement Payment**

2 In settlement of all the claims referred to in this Consent Judgment, and without any admission
3 of liability therefore, WVA shall make the following monetary payments:

4 **1. Initial Civil Penalty**

5 Within fifteen (15) business days of the Effective Date, WVA shall pay a total of Ninety
6 Thousand Dollars (\$90,000.00) in civil penalties in accordance with this Section. The Civil Penalty
7 payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(l) and
8 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
9 (“OEHHA”) and the remaining 25% of the civil penalty remitted to Plaintiff.

10 Within fifteen (15) business days of the Effective Date, WVA shall issue two separate checks for
11 the civil penalty payment to (a) “OEHHA” in the amount of \$79,166; and (b) Dorsey & Whitney LLP
12 Client Trust Account” in the amount of \$10,834.

13 Payment owed to Plaintiff pursuant to this Section shall be delivered to the following payment
14 address:

15 Dorsey & Whitney LLP
16 Attn: Kent J. Schmidt
17 600 Anton, Blvd., Suite 2000
18 Costa Mesa, CA 92691

19 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
20 to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following address(es):

21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 P.O. Box 4010
24 Sacramento, CA 95812-4010

25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 1001 I Street
28 Sacramento, CA 95814

 A copy of the check payable to OEHHA shall be mailed to Dorsey & Whitney LLP, LLP at the
address set forth above as proof of payment to OEHHA.

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1 **2. Attorney Fees and Costs**

2 In addition to the payment above, WVA shall pay Ten Thousand Dollars (\$10,000.00) to Dorsey
3 & Whitney LLP (“Dorsey & Whitney”) as complete reimbursement for Plaintiff’s attorneys’ fees and
4 costs, including any investigation and laboratory costs or expert fees, incurred in the course of bringing
5 the Complaint and in enforcing Proposition 65, including without limitation, preparation of the 60-Day
6 Notice letter and discussions with the office of the Attorney General. Payment shall be made within
7 fifteen (15) business days of the Effective Date and sent to the address for Dorsey & Whitney LLP set
8 forth in Section 7.1.1, above.

9 **H. Notices**

10 Any and all notices between the Parties provided for or permitted under this Agreement, or by
11 law, shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail)
12 return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the
13 following addresses:

14 For WVA:

15 Evan A. Berman, Esq.
16 Howard Smith, Esq.
17 Berman Berman Berman
18 Schnieder & Lowary LLP
19 11900 W. Olympic Blvd., Suite 600
20 Los Angeles, CA 90064

21 For Clean Air:

22 Dorsey & Whitney LLP
23 Attn: Kent J. Schmidt
24 600 Anton, Blvd., Suite 2000
25 Costa Mesa, CA 92691

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

28 **I. Authority to Stipulate**

 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party
he or she represents to enter into this Consent Judgment and to execute it on behalf of the party
represented and legally to bind that party.

J. Counterparts

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1 This Stipulation may be signed in counterparts and shall be binding upon the Parties hereto as if
2 all said Parties executed the original hereof.

3 **K. Retention of Jurisdiction**

4 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

5 **L. Service on the Attorney General**

6 Plaintiff shall serve a copy of this Consent Judgment, signed by both Parties, on the California
7 Attorney General on behalf of the Parties so that the Attorney general may review this Consent Judgment
8 prior to Court for Approval which submission will be made at least forty-five (45) days before the hearing
9 on the motion for Court approval.

10 **M. Entire Agreement**

11 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
12 with respect to the entire subject matter hereof, and any and all discussions, negotiations, commitment
13 and understandings related thereto. No representations, oral or otherwise, express or implied, other than
14 those contained herein have been made by any party hereto. Other than separate settlement agreements
15 between WVA, on the one hand, and John Sanderson and Shawn Sanderson, on the other hand, settling
16 and releasing the Sandersons' personal injury claims in the related cases (30-2017-00912288 and 30-
17 2018-00966059), no other agreements not specifically referred to herein, oral or otherwise, shall be
18 deemed to exist or to bind any of the Parties.

19 **N. Governing Law and Construction**

20 The validity, construction and performance of this Consent Judgment shall be governed by the
21 laws of the State of California, without reference to any conflicts of law provisions of California law,

22 **O. Court Approval**

23 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot
24 be used in any proceeding for any purpose.

25 IT IS SO STIPULATED:
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DATED: November 15, 2021

DORSEY & WHITNEY LLP

By: 
KEN J. SCHMIDT
Attorneys for Plaintiff Clean Air OC, LLC

DATED: November 15, 2021

BERMAN BERMAN BERMAN
SCHNIEDER & LOWARY LLP

By: 
EVAN BERMAN
HOWARD SMITH
Attorneys for Defendant Woodbridge Village
Association

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date: _____

SUPERIOR COURT JUDGE

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

3 I am employed in the City of Costa Mesa, County of Orange, State of California. I am over the
4 age of eighteen (18) years and not a party to the within entitled action. My business address is 600 Anton
5 Boulevard, Suite 2000, Costa Mesa, CA 92626. On November 16, 2021, I served a copy of the
6 document(s) named below on the parties in this action as follows:

6 DOCUMENT(S) SERVED: **[PROPOSED] CONSENT JUDGMENT**

7 SERVED UPON: Evan A. Berman, Esq.
8 Howard Smith, Esq.
9 BERMAN BERMAN BERMAN
10 SCHNIEDER & LOWARY LLP
11 11900 West Olympic Blvd., Suite 600
12 Los Angeles, California 90064
13 Telephone: (310) 447-9000 / Facsimile: (310) 447-9011
14 Email: eaberman@b3law.com; Email: hjsmith@b3law.com
Attorneys for Defendant Woodbridge Village Association

Proposition 65 Enforcement Reporting
Attention: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, California 94612-0550
Email: trish.gerken@doj.ca.gov; Susan.Fiering@doj.ca.gov;
Laura.Zuckerman@doj.ca.gov

15 **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above,
16 and placing each for collection and mailing on that date following ordinary business practices. I
17 am “readily familiar” with this business’ practice for collecting and processing correspondence
18 for mailing. On the same day that correspondence is placed for collection and mailing, it is
deposited in the ordinary course of business with the U.S. Postal Service in Costa Mesa,
California, in a sealed envelope with postage fully prepaid.

19 **BY OVERNIGHT DELIVERY:** I enclosed the document(s) in an envelope or package
20 provided by an overnight delivery carrier and addressed as above. I placed the envelope or
package for collection and overnight delivery at an office or a regularly utilized drop box of the
overnight delivery carrier.

21 **BY ELECTRONIC MAIL:** The above-referenced document was transmitted in “pdf” format
22 by electronic mail (“e-mail”) to each of the e-mail addresses listed above, and no errors were
reported.

23 **STATE:** I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed on November 16, 2021, at Irvine, California.

26 

27 Maria Santos