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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.

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: September 13, 2021
Time: 9:00 a.m.
Dept.: C32

Complaint Filed: March 1, 2019
Trial Date: Vacated

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1 **I. Introduction**

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

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

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

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

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

25 By executing this Consent Judgment, WVA does not admit and specifically denies any violation
26 of Proposition 65 and the other allegations set forth in the Notice or Complaint. Nothing in this Consent
27 Judgment shall be construed as an admission by WVA of any fact, issue of law or violation of law, nor
28 shall compliance with the Consent Judgment constitute or be construed as an admission by WVA of any



1 fact, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive, or impair
2 any right, remedy or defense that WVA may have in any other future legal proceeding. However, this
3 paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of WVA
4 under this Consent Judgment.

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

7 **II. Agreed Upon Provisions**

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

11 WARNING: Wood burning fires can expose you to chemicals including soot, which
12 is known to the State of California to cause cancer and birth defects or other
13 reproductive harm. For more information go to www.P65Warnings.ca.gov.

14 The warning shall be prominently placed with such conspicuousness as compared with other
15 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
16 individual under customary conditions before purchase or use. Each warning shall be provided in a
17 manner such that the consumer or user understands that it relates to wood burning so as to seek to
18 minimize the risk of consumer confusion.

19 **III. Entry of Consent Judgment**

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

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

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

27 **A. Plaintiff's Public Release of Proposition 65 Claims**

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

12 As to alleged exposures from the wood burning fire pits, compliance with the terms of this
13 Consent Judgment by WVA is deemed sufficient to satisfy the obligations concerning compliance by
14 WVA and WVA Releasees with respect to the requirements of Proposition 65 and the wood burning fire
15 pits.

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

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

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

26 Plaintiff acting on its own behalf, and its representatives, directors, officers, agents, and any
27 persons or entities affiliated with Plaintiff, and on behalf of the public waives all rights to institute any
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1 form of legal action and releases all claims against WVA for the Proposition 65 claims relating to the
2 wood burning fire pits (referred to collectively in this Section as “Claims”).

3 In furtherance of the foregoing, Plaintiff, acting on its own behalf, and its representatives,
4 directors, officers, agents, and any persons or entities affiliated with Plaintiff, and on behalf of the public
5 with respect to the Public Release and acting in its individual capacity with respect to the Individual
6 Release, waives any and all rights and benefits which it now has, or in the future may have, conferred
7 upon it with respect to the Claims by virtue of the provisions of Section 1542 of the California Civil
8 Code, which provides as follows:

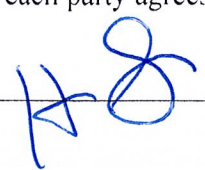
9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
11 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
12 AND THAT, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY
13 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
14 PARTY.

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16 **D. WVA’s Release of Plaintiff**

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

22 **E. Enforcement of Judgment**

23 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. The
24 Parties may, by noticed motion or order to show cause before the Superior Court of Orange County,
25 giving the notice required by law, enforce the terms and conditions contained herein. In any proceeding
26 brought by either party to enforce this Consent Judgment, such party may seek whatever fines, costs,
27 penalties or remedies as may be provided by law for any alleged violation of Proposition 65 or this
28 Consent Judgment. Before bringing any such noticed motion or order to show cause, each party agrees



1 to provide the party against which the motion or order would be brought not less than ten (10) days
2 written notice and a reasonable period to cure the alleged breach of this Consent Judgment.

3 **F. Modification of Judgment**

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

7 **G. Settlement Payment**

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

10 **1. Civil Penalties**

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

16 Within fifteen (15) business days of the Effective Date, WVA shall issue two separate checks for
17 the civil penalty payment to (a) “OEHHA” in the amount of \$67,500.00; and (b) “Dorsey & Whitney
18 LLP Client Trust Account” in the amount of \$22,500.00.

19 Payment owed to Plaintiff pursuant to this Section shall be delivered to the following payment
20 address:

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

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

27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010



1 Fiscal Operations Branch Chief
2 Office of Environmental Health Hazard Assessment
3 1001 I Street
4 Sacramento, CA 95814

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

7 **2. Attorney Fees and Costs**

8 In addition to the payment above, WVA shall pay Ten Thousand Dollars (\$10,000.00) to Dorsey
9 & Whitney LLP (“Dorsey & Whitney”) as complete reimbursement for Plaintiff’s attorneys’ fees and
10 costs, including any investigation and laboratory costs or expert fees, incurred in the course of bringing
11 the Complaint alleged under Proposition 65, including without limitation, preparation of the 60-Day
12 Notice letter and discussions with the office of the Attorney General. Payment shall be made within
13 fifteen (15) business days of the Effective Date and sent to the address for Dorsey & Whitney LLP set
14 forth in Section IV.G.1, above.

15 **H. Notices**

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

20 For WVA:

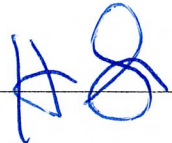
21 Woodbridge Village Association
22 Attn: Kevin K. Chudy
23 31 Creek Road
24 Irvine, CA 92604

25 For Clean Air:

26 Dorsey & Whitney LLP
27 Attn: Kent J. Schmidt
28 600 Anton, Blvd., Suite 2000
Costa Mesa, CA 92691

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.

I. Authority to Stipulate



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

4 **J. Counterparts**

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

7 **K. Retention of Jurisdiction**

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

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

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

14 **M. Entire Agreement**

15 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
16 with respect to the entire subject matter hereof, and any and all discussions, negotiations, commitment
17 and understandings related thereto. No representations, oral or otherwise, express or implied, other than
18 those contained herein have been made by any party hereto. Other than a separate settlement agreement
19 between WVA and certain individually named Defendants, on the one hand, and John Sanderson and
20 Shawn Sanderson, on the other hand, settling and releasing the Sandersons' personal injury claims in the
21 related cases (*John Sanderson v. Woodbridge Village Association, et al.* bearing Case No. 30-2017-
22 00912288-CU-OR-CJC and *Shawn Sanderson v. Woodbridge Village Association, et al.* bearing Case
23 No. 30-2018-00966059-CU-OR-CJC), no other agreements not specifically referred to herein, oral or
24 otherwise, shall be deemed to exist or to bind any of the Parties.

25 **N. Governing Law and Construction**

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

28 **O. Court Approval**

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

3 IT IS SO STIPULATED:
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5 DATED: June 29, 2021

DORSEY & WHITNEY LLP

6
7 By: 
8 KENT J. SCHMIDT
9 Attorneys for Plaintiff,
Clean Air OC, LLC

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11 DATED: June 29, 2021

BERMAN BERMAN BERMAN
SCHNIEDER & LOWARY LLP

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13
14 By: 
15 EVAN A. BERMAN
16 HOWARD J. SMITH
17 Attorneys for Defendant,
18 WOODBRIDGE VILLAGE ASSOCIATION

19 IT IS SO ORDERED, ADJUDGED AND DECREED:
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21
22 Date: _____

SUPERIOR COURT JUDGE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

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

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

SERVED UPON: Evan A. Berman, Esq.
Howard Smith, Esq.
Berman Berman Berman
Schnieder & Lowary LLP
11900 W. Olympic Blvd., Suite 600
Los Angeles, CA 90064
Telephone: (310) 447-9000 / Facsimile: (310) 447-9011
Attorneys for Defendant Woodbridge Village Association

BY MAIL: I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Costa Mesa, California. I am readily familiar with the practice of Dorsey & Whitney LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

BY FEDERAL EXPRESS: I am readily familiar with the practice of Dorsey & Whitney LLP for collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

BY PERSONAL SERVICE: I delivered to an authorized courier or driver authorized by Legal Solution to receive documents to be delivered on the same date. A proof of service signed by the courier will be filed with the court upon request.

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

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

FEDERAL: I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June _____, 2021, at Costa Mesa, California.

Maria Santos