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4 Attorneys for Plaintiff Evelyn Wimberley

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

10 EVELYN WIMBERLEY,

11 Plaintiff,

12 v.

13 COPPERFIELD CHIMNEY SUPPLY;
14 OLYMPIA CHIMNEY & VENTING, INC.;
15 SHOP CHIMNEY.COM, AND
DOES 1-25 INCLUSIVE,

16 Defendants.

Case No. 37-2021-00001618-CU-NP-NC

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANTS COPPERFIELD
CHIMNEY SUPPLY, AND OLYMPIA
CHIMNEY & VENTING, INC.**

Dept.: C-65
Judge: Earl H. Maas, III

Date:

Date Action Filed: January 13, 2021

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24 **1. INTRODUCTION**

25 **1.1 The Parties.** This Consent Judgment is entered into by and between Plaintiff
26 Evelyn Wimberley ("WIMBERLEY") acting on behalf of the public interest, and Defendants
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1 Copperfield Chimney Supply and Olympia Chimney & Venting, Inc. ("Defendants") with
2 WIMBERLEY, Copperfield Chimney Supply and Olympia Chimney & Venting, Inc. collectively
3 referred to as the "Parties" and each of them as a "Party." WIMBERLEY is a California resident
4 seeking to promote awareness of exposures to toxic chemicals and improve human health by
5 reducing or eliminating hazardous substances produced by consumer products. Copperfield
6 Chimney Supply is a person in the course of doing business for purposes of Proposition 65, Cal.
7 Health & Safety Code §§ 25249.6 *et seq.* Olympia Chimney & Venting, Inc. is a person in the
8 course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 *et*
9 *seq.*

10 1.2 **Allegations and Representations.** WIMBERLEY alleges that Defendants have
11 offered for sale in the State of California and has sold in California, the "Homesaver Gelled
12 Firestarter" that when used as intended produces byproducts carbon monoxide and soot, and that
13 such sales have not been accompanied by Proposition 65 warnings. Soot and carbon monoxide
14 are listed under Proposition 65 as chemicals known to the State of California to cause cancer and
15 reproductive harm respectively.

16 1.3 **Notices of Violation/Complaint.** On or about March 31, 2020, WIMBERLEY
17 served Copperfield Chimney Supply, ShopChimney.com and various public enforcement
18 agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety
19 Code §25249.7(d) (the "Notice"), alleging that Copperfield Chimney Supply and
20 ShopChimney.com were in violation of Proposition 65 for failing to warn consumers and
21 customers that the Homesaver Gelled Firestarter when used exposed users in California to carbon
22 monoxide and soot. On or about June 12, 2020, WIMBERLEY served Olympia Chimney &
23 Venting, Inc and various public enforcement agencies with a document entitled "Supplemental
24 60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"),
25 alleging that Olympia Chimney & Venting, Inc, Copperfield Chimney Supply and
26 ShopChimney.com were in violation of Proposition 65 for failing to warn consumers and
27 customers that the Homesaver Gelled Firestarter when used exposed users in California to carbon
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1 monoxide and soot. No public enforcer diligently prosecuted the claims threatened in the Notices
2 within sixty days plus service time relative to the provision of the Notice to them by
3 WIMBERLEY.

4 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
5 has jurisdiction over Defendants as to the allegations contained in the complaint filed in this
6 matter, that venue is proper in the County of San Diego, and that this Court has jurisdiction to
7 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
8 resolution of all claims which were or could have been raised in the Complaint based on the facts
9 alleged therein and/or in the Notices.

10 1.5 Defendants deny the material allegations contained in WIMBERLEY's Notice and
11 Complaint and maintain that they have not violated Proposition 65. Nothing in this Consent
12 Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law, or
13 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
14 an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law,
15 such being specifically denied by Defendants. However, this section shall not diminish or
16 otherwise effect the obligations, responsibilities, and duties of Defendants under this Consent
17 Judgment.

18 **2. DEFINITIONS**

19 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.

20 2.2 **Covered Product.** The term "Covered Product" means "Homesaver Gelled Firestarter
21 (UPC 633210541508) designed, manufactured, sold, distributed or otherwise made available by
22 or for Defendants.

23 2.3 **Effective Date.** The term "Effective Date" shall mean the date this Consent
24 Judgment is entered as a Judgment of the Court.

25 2.4 **Listed Chemicals:** The term "Listed Chemicals" shall mean Carbon Monoxide
26 and Soot..

27 2.5 **Notice.** The term "Notice" shall have the meaning given in Section 1.3.
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1 2.6 **Releasees.** The terms “Defendant Releasees” and “Downstream Defendant
2 Releasees” shall have the meanings given in Section 5.1.

3 2.7 **Execution Date.** The term “Execution Date” shall mean the date this Consent
4 Judgment is signed by the parties

5 **3. INJUNCTIVE RELIEF: WARNINGS**

6 3.1 Commencing on the Effective Date, Defendants shall not sell, offer for sale, or
7 ship for sale into California any Covered Product, unless the Covered Product is accompanied by
8 the following on-product warning or other warning authorized under Prop 65:



11 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

12 Or



16 **WARNING:** The use of this product can expose you to Carbon Monoxide and
17 Soot, which are chemicals known to the State of California to cause cancer and birth
18 defects or other reproductive harm. For more information go to
19 www.P65Warnings.ca.gov.

20 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
21 Covered Product’s packaging or labeling. The warning shall be prominently affixed to or printed
22 on the packaging or labeling, and displayed with such conspicuousness, as compared with other
23 words, statements, or designs as to render it likely to be read and understood by an ordinary
24 individual under customary conditions of purchase or use. A warning may be contained in the
25 same section of the packaging or labeling that states other safety warnings, if any, concerning the
26 use of the product and shall be at least the same size as those other safety warnings, but no less
27 than 6 point font.
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1 **4. MONETARY TERMS**

2 4.1 **Penalty.** Defendants shall pay a civil penalty of \$500.00 pursuant to Health and
3 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
4 Code § 25192, with 75% of these funds remitted to the State of California's Office of
5 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
6 WIMBERLEY, as provided by California Health & Safety Code § 25249.12(d). Such payment
7 shall be made to WIMBERLEY's Counsel within 20 days of the Effective Date.
8 WIMBERLEY's Counsel shall provide Defendants' counsel with a copy of the check it sends to
9 OEHHA within 10 days of receiving the penalty funds from Defendants.

10 4.2 **Attorney's Fees.** Defendants agrees to pay reasonable attorney fees, inclusive of
11 all expenses and costs incurred as a result of investigating, bringing this matter to Defendant's
12 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
13 interest, pursuant to Code of Civil Procedure section 1021.5, in an amount of \$8,500.00.
14 Defendants shall transmit via bank wire the total sum of \$9,000.00 representing the civil penalty
15 and attorney fees within 20 days of the Effective Date to WIMBERLEY's Counsel.

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 This consent judgment is a full, final, and binding resolution between
18 WIMBERLEY acting in the public interest, and Defendants, its owners, investors employees,
19 directors, officers, managers, attorneys, 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, and their successors and assigns ("Downstream Defendant Releasees").
25 Upon full execution and approval by the Court of this Consent Judgment, WIMBERLEY, on
26 behalf of herself, her agents, successors, heirs, and assigns, hereby fully and irrevocably releases
27 and discharges Defendants, the Defendant Releasees, and the Downstream Defendant Releasees
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1 from all claims for violations of Proposition 65 that were, or which could have been, asserted in
2 the Complaint based on exposure to and/or failure to warn about Listed Chemicals from Covered
3 Products as set forth in the Notice, with respect to any Covered Products manufactured,
4 distributed, or sold by Defendants, the Defendant Releasees, and/or the Downstream Defendant
5 Releasees in or into California prior to the Effective Date. Compliance with the terms of this
6 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered
7 Products.

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9 5.2 In addition to the foregoing, WIMBERLEY, on behalf of herself, her past and
10 current agents, representatives, attorneys, and successors and/or assignees, and not in her
11 representative capacity, hereby waives all rights to institute or participate in, directly or indirectly,
12 any form of legal action and releases Defendants, Defendant Releasees, and Downstream
13 Defendant Releasees from any and all manner of actions, causes of action, claims, demands,
14 rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges,
15 losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law
16 or equity, fixed or contingent, now or in the future, with respect to any alleged violations of
17 Proposition 65 related to or arising from Covered Products manufactured distributed or sold by
18 Defendants or Defendant Releasees in or into California prior to the effective date. With respect
19 to the foregoing waivers and releases in this paragraph, WIMBERLEY hereby specifically waives
20 any and all rights and benefits which she now has, or in the future may have, conferred by virtue
21 of the provisions of Section 1542 of the California Civil Code, which provides as follows:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST
24 IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND
25 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED
26 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

27 5.3 Defendants waive any and all claims against WIMBERLEY, her attorneys and
28 other representatives, for any and all actions taken or statements made (or those that could have

1 been taken or made) by WIMBERLEY and her attorneys and other representatives, whether in the
2 course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in
3 this matter, and/or with respect to Covered Products.

4 **6. INTEGRATION**

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

9 **7. GOVERNING LAW**

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

16 **8. ENFORCEMENT**

17 8.1 WIMBERLEY may, by motion or application for an order to show cause before
18 the Superior Court of San Diego County, enforce the terms and conditions contained in this
19 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
20 this Consent Judgment, WIMBERLEY shall provide Defendants with a proposed Notice of
21 Violation, and a copy of any documentary evidence which purportedly supports WIMBERLEY's
22 Notice of Violation. The Parties shall then meet and confer in good faith for a period of at least
23 sixty (60) days regarding the basis for WIMBERLEY's anticipated motion or application in an
24 attempt to resolve it informally. Should such attempts at informal resolution fail, WIMBERLEY
25 may file her enforcement motion or application. This Consent Judgment may only be enforced
26 by the Parties.

1 **9. NOTICES**

2 9.1 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:
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7 For Defendants:

8 David J. Parsells, Esq.
9 Stevens & Lee
10 620 Freedom Business Center, Suite 200
11 King of Prussia, PA 19406

12 And

13 For WIMBERLEY:

14 Stephen Ure, Esq.
15 11622 El Camino Real, Suite 100
16 San Diego, CA 92130

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

19 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

20 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and
22 the same document.

23 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
24 **APPROVAL**

25 11.1 WIMBERLEY agrees to comply with the requirements set forth in California
26 Health & Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent
27 Judgment and Defendants agrees it shall support approval of such Motion.

28 11.2 This Consent Judgment shall not be effective until it is approved and entered by
the Court and shall be null and void if, for any reason, it is not approved and entered by the Court

1 within eighteen months after it has been fully executed by the Parties. In such a scenario, the
2 Parties agree to meet and confer on how to proceed and if such agreement is not reached within
3 30-days, any monies that may have been paid pursuant to Section 4 shall be refunded and the case
4 shall proceed on its normal course.

5 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
7 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
8 that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the
9 trial court, and the case shall proceed on its normal course on the trial court's calendar.

10 **12. MODIFICATION**

11 12.1 This Consent Judgment may be modified only by express written agreement of the
12 Parties and the approval of the Court or upon the granting of a motion brought to the Court by
13 either Party.

14 12.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
15 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

16 **13. ATTORNEY'S FEES**

17 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent
18 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
19 unless the unsuccessful party has acted with substantial justification. For purposes of this
20 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
21 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

22 13.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
23 own attorneys' fees and costs.

24 13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.
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1 **14. RETENTION OF JURISDICTION**

2 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **15. AUTHORIZATION**

5 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of
6 their respective Parties and have read, understood and agree to all of the terms and conditions of
7 this document and certifies that he or she is fully authorized by the Party he or she represents to
8 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
9 Except as explicitly provided herein each Party is to bear its own fees and costs.
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12 **APPROVED AS TO FORM:**

<p>13 AGREED TO:</p> <p>14 Date: <u>February 18</u>, 2022</p> <p>15</p> <p>16 By: </p> <p>17</p> <p>18 On Behalf of WIMBERLEY Stephen Ure, Esq Law Offices Of Stephen Ure, PC</p> <p>19</p> <p>20</p>	<p>AGREED TO:</p> <p>Date: <u>February 18</u>, 2022</p> <p>By: </p> <p>On Behalf of Defendants Julie Y. Park, Esq. Morrison & Foerster, LLP</p>
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22 **IT IS HEREBY SO STIPULATED:**
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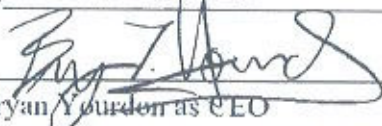
AGREED TO:

Date: 2-18-22

By: 
Evelyn Winberley

AGREED TO:

Date: Feb. 12, 2022

By: 
Bryan Yourdon as CEO
COPPERFIELD CHIMNEY SUPPLY,
AND OLYMPIA CHIMNEY &
VENTING, INC.