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ENDORSED
FILED
San Francisco County Superior Court
FEB 24 2017
CLERK OF THE COURT
BY: _____ Deputy Clerk

Counsel for Plaintiffs ECOLOGICAL RIGHTS FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ECOLOGICAL RIGHTS FOUNDATION,

Plaintiff,

v.

GOOD DIRECTIONS, INC., et al.,

Defendants.

Case No. CGC-16-554009

~~PROPOSED~~ CONSENT JUDGMENT
AS TO GOOD DIRECTIONS, INC.

1. INTRODUCTION

1.1 On September 1, 2016, the Ecological Rights Foundation (“ERF”) acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco Superior Court, Case No. CGC-16-554009, against defendant Good Directions, Inc., (also referred to herein as “Good Directions” or “Defendant”). The Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (Proposition 65) by failing to give clear and reasonable warnings to those residents of California who use wood-burning outdoor heating products, (such as fire pits, fire bowls, and chimineas),

1 that use of those products causes exposures to carbon monoxide. Carbon monoxide is a chemical
2 known to the State of California to cause reproductive toxicity. The Complaint was based upon
3 a 60-Day Notice letter dated June 9, 2016, sent by ERF to Good Directions, the California
4 Attorney General, all District Attorneys, and all City Attorneys with populations exceeding
5 750,000.

6 1.2 ERF and Good Directions are hereinafter referred to collectively as the "Parties."

7 1.3 ERF alleges that wood-burning outdoor heating products that are manufactured,
8 distributed or sold by Defendant for use in California ("Covered Products") require a warning
9 under Proposition 65, pursuant to Health and Safety Code Section 25249.6. Defendant is a
10 business that employs more than ten persons, and manufactures, distributes, and sells its own
11 brand(s) of Covered Products. Pursuant to Health and Safety Code Section 25249.8, carbon
12 monoxide is a chemical known to the State of California to cause reproductive toxicity. ERF
13 alleges that the combustion of wood creates significant amounts of carbon monoxide to be
14 released into the air, causing inhalation exposures to those using or standing near the Covered
15 Products when they are in use. For purposes of this Consent Judgment, the parties stipulate that
16 this Court has jurisdiction over the allegations of violations contained in the Complaint and
17 personal jurisdiction over Good Directions, Inc., that venue is proper in the County of San
18 Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
19 and resolution of the allegations contained in the Complaint.

20 1.4 The Parties have entered into this Consent Judgment in order to settle,
21 compromise, and resolve claims that are denied and disputed and thus avoid prolonged and
22 costly litigation. The Parties enter into this Consent Judgment pursuant to a full and final
23 settlement of any and all claims between the parties for the purpose of avoiding prolonged
24 litigation. This Consent Judgment shall not constitute an admission against interest with respect
25 to any material allegation of the Complaint, each and every allegation of which Good Directions
26 denies, nor may this Consent Judgment, or compliance with it, be used as evidence of any
27 wrongdoing, misconduct, culpability or liability on the part of Good Directions.

1 1.5 Except as expressly set forth herein, nothing in this Consent Judgment shall
2 prejudice, waive, or impair any right, remedy, argument or defense the Parties may have in any
3 current or future legal proceeding unrelated to these proceedings.

4 1.6 The term "Effective Date" means the date this Consent Judgment is entered by the
5 Court. The term "Execution Date" means the date this Consent Judgment has been executed by
6 all the parties.

7 **2. INJUNCTIVE RELIEF**

8 2.1 Warnings

9 No later than 60 days after the Execution Date, Covered Products offered for sale in
10 California shall include one of the following warning statements:

11 **WARNING:** Combustion byproducts produced when using this product include carbon
12 monoxide, a chemical known to the State of California to cause birth defects or other
13 reproductive harm.

14 Or,

15 **WARNING:** Combustion byproducts produced when using this product include carbon
16 monoxide and other chemicals known to the State of California to cause cancer, birth
17 defects or other reproductive harm.

18 Or,

19 **WARNING:** This product can expose you to carbon monoxide, which is a combustion
20 byproduct known to the State of California to cause birth defects or other reproductive
21 harm. For more information go to www.P65Warnings.ca.gov.

22
23 The word "**WARNING**" shall be in all capital letters and bold print. Trademark may
24 utilize a symbol consisting of a black exclamation point in a yellow equilateral triangle
25 with a bold black outline.

26 The required warning statements shall be affixed to or printed on the Covered Product itself and
27 the Covered Product's instruction manual. The warning shall be prominently affixed to or
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1 printed on the Covered Product and its instruction manual, and displayed with such
2 conspicuousness, as compared with other words, statements, designs, or devices on the Covered
3 Product and its instruction manual, as to render it likely to be read and understood by an ordinary
4 individual under customary conditions of purchase or use. A warning may be contained in the
5 same section of the instruction manual that contains other safety warnings concerning the use of
6 the Covered Product. The type size of the warning must be legible, and no smaller than any
7 other warning provided with the Covered Product. The word "WARNING:" shall be in upper
8 case letters and bold text.

9 **2.2 Reporting**

10 No later than 75 days after the Execution Date, Defendant shall provide a certification
11 signed by an officer or director of Defendant to ERF confirming its compliance with the warning
12 requirements of paragraph 2.1, and the payment to OEHHA pursuant to paragraphs 3.1 and 3.3.

13 **3. SETTLEMENT PAYMENTS**

14 **3.1 Civil Penalties**

15 Pursuant to Health and Safety Code section 25249.7(b)(2), Good Directions shall pay
16 \$10,500 in civil penalties. The penalty payment will be allocated in accordance with California
17 Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted
18 to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the
19 remaining 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will
20 provide these payments in two checks for the following amounts made payable to: 1) "OEHHA"
21 in the amount of \$7,875, and 2) "Ecological Rights Foundation" in the amount of \$2,625.

22 **3.2 Attorneys' Fees and Litigation Costs**

23 In settlement of all of the claims that are alleged, or could have been alleged, in
24 the Complaint concerning Covered Products, Good Directions shall pay \$17,500 to the Ecology
25 Law Center to cover Plaintiff's attorneys' fees and costs.

1
2 **3.3 Payments**

3 All Payments shall be sent no later than 10 days after the Effective Date via USPS certified mail,
4 return receipt requested, to the following addresses: All payments to Ecological Rights
5 Foundation and Ecology Law Center shall be delivered to:

6 Fredric Evenson
7 Ecology Law Center
8 P.O. Box 1000
9 Santa Cruz, CA 95061

10 The payment to OEHHA shall be delivered to:

11 Mike Gyurics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 P.O. Box 4010
15 Sacramento, CA 95812-4010

16 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

17 4.1 This Consent Judgment is a final and binding resolution between ERF, acting on
18 behalf of itself and (as to those matters raised in the 60-Day Notice Letter) in the public interest,
19 and Good Directions of: (i) any violation of Proposition 65 (including but not limited to the
20 claims made in the Complaint); and (ii) any other statutory or common law claim to the fullest
21 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any
22 person or entity against Good Directions or its parents, subsidiaries or affiliates, and all of their
23 suppliers, customers, distributors, wholesalers, retailers, all other upstream or downstream
24 entities in the chain of distribution, or any other person in the course of doing business, and the
25 successors and assigns of any of them, who may use, maintain, distribute or sell Covered
26 Products (“Released Entities”), based on its or their exposures of persons to carbon monoxide
27 from Covered Products and their failure to provide a clear and reasonable warning of exposure to
28 such individuals. As to alleged exposures to carbon monoxide from Covered Products,
compliance with the terms of this Consent Judgment resolves any issue, now and in the future,

1 concerning compliance by Good Directions and the Released Entities, with the requirements of
2 Proposition 65 with respect to Covered Products, and any alleged resulting exposure.

3 4.2 It is possible that other claims not known to the Parties, arising out of the facts
4 alleged in the Notice or the Complaint and relating to the Covered Product, will develop or
5 be discovered. ERF on behalf of itself only, and Good Directions on behalf of itself only,
6 acknowledge that this Consent Judgment is expressly intended to cover and include all such
7 claims up through and including the Effective Date, including all rights of action therefor.
8 ERF and Good Directions acknowledge that the claims released above may include
9 unknown claims, and nevertheless waive California Civil Code Section 1542 as to any such
10 unknown claims. California Civil Code Section 1542 reads as follows:

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

16 ERF on behalf of itself only, and Good Directions on behalf of itself only, acknowledge and
17 understand the significance and consequences of this specific waiver of California Civil Code
18 Section 1542.

19 **5. ENTRY OF CONSENT JUDGMENT**

20 5.1 The parties hereby request that the Court promptly enter this Consent Judgment. Upon
21 entry of the Consent Judgment, Good Directions and ERF waive their respective rights to a
22 hearing or trial on the allegations of the Complaint.

23 **6. ENFORCEMENT OF JUDGMENT**

24 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
25 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
26 San Francisco County, giving the notice required by law, enforce the terms and conditions
27 contained herein.
28

1 6.2 In any proceeding brought by either party to enforce this Consent Judgment, such
2 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
3 violation of Proposition 65 or this Consent Judgment.

4 **7. MODIFICATION OF JUDGMENT**

5 7.1 This Consent Judgment may be modified only upon written agreement of the
6 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
7 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

8 **8. TERMINATION AND RETENTION OF JURISDICTION**

9 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
10 terms this Consent Judgment.

11 **9. AUTHORITY TO STIPULATE**

12 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
13 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
14 of the party represented and legally to bind that party.

15 **10. SERVICE ON THE ATTORNEY GENERAL**

16 10.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the
17 California Attorney General on behalf of the parties so that the Attorney General may review this
18 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
19 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
20 and in the absence of any written objection by the Attorney General to the terms of this Consent
21 Judgment, the parties may then submit it to the Court for approval.

22 **11. ENTIRE AGREEMENT**

23 11.1 This Consent Judgment contains the sole and entire agreement and understanding
24 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
25 negotiations, commitments and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any party
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1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
2 deemed to exist or to bind any of the parties.

3 **12. GOVERNING LAW**

4 12.1 The validity, construction and performance of this Consent Judgment shall be
5 governed by the laws of the State of California, without reference to any conflicts of law
6 provisions of California law.

7 **13. EXECUTION AND COUNTERPARTS**

8 13.1 This Consent Judgment may be executed in counterparts which taken together
9 shall be deemed to constitute one document.

10 **14. COURT APPROVAL**

11 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
12 effect, and cannot be used in any proceeding for any purpose.

13 **15. NOTICES**

14 15.1 Any notices or payments due under this Consent Judgment shall be sent by
15 personal delivery or Certified Mail.

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If to Ecological Rights Foundation: Fredric Evenson
Ecology Law Center
P.O. Box 1000
Santa Cruz, CA 95061

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If to Good Directions, Inc.: Good Directions, Inc.
Attn: Mike Lodato, President
20 Commerce Drive
Danbury, CT 06810

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IT IS SO STIPULATED:

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1 DATED: OCTOBER 13, 2016

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

2
3 BY:

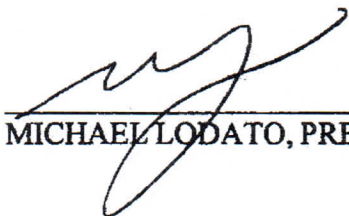
by James Lampion, its EXEC. DIR.

JAMES LAMPSON, EXECUTIVE DIRECTOR

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8 DATED: 10/12/16

GOOD DIRECTIONS, INC.

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11 BY:


MICHAEL LODATO, PRESIDENT

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14
15 IT IS SO ORDERED, ADJUDGED AND DECREED:

16
17 DATED: 2-24-17

Nick B. Kelly

18
19
20 JUDGE OF THE SUPERIOR COURT

