



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

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TEXT JUDGMENT

ECOLOGICAL RIGHTS FOUNDATION VS. GOOD DIRECTIONS, INC. ET AL

001C05846697

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MAY 02 2017

CLERK OF THE COURT

BY: Julia Sheen  
Deputy Clerk

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4 Santa Cruz, California 95061  
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14 Counsel for Plaintiffs,  
15 ECOLOGICAL RIGHTS FOUNDATION

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SAN FRANCISCO

18 ECOLOGICAL RIGHTS FOUNDATION,

Case No. CGC-16-554009

19 Plaintiff,

20 v.

21 ~~PROPOSED~~ <sup>W</sup> CONSENT JUDGMENT  
22 AS TO FURNITURE OF AMERICA  
23 CALIFORNIA, INC.

24 GOOD DIRECTIONS, INC., et al.,

25 Defendants.

26 **1. INTRODUCTION**

27 1.1 On September 1, 2016, the Ecological Rights Foundation (“ERF”) acting on behalf  
28 of itself and the general public, filed a Complaint for civil penalties and injunctive relief  
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  
Furniture of America California, Inc., (also referred to herein as “Furniture of America” 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) and charcoal

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

6 1.2 Defendant is a business that employs more than ten persons, and manufactures,  
7 distributes, and sells Covered Products, including but not limited to wood and/or charcoal fueled  
8 fire pits, grills and hibachis. The combustion of wood and charcoal creates significant amounts of  
9 carbon monoxide to be released into the air, causing inhalation exposures to those using or standing  
10 near the Covered Products when they are in use. Pursuant to Health and Safety Code Section  
11 25249.8, carbon monoxide is a chemical known to the State of California to cause reproductive  
12 toxicity. ERF alleges that Covered Products that are manufactured, distributed or sold by  
13 Defendant for use in California require a warning under Proposition 65, pursuant to Health and  
14 Safety Code Section 25249.6. For purposes of this Consent Judgment, the parties stipulate that  
15 this Court has jurisdiction over the allegations of violations contained in the Complaint and  
16 personal jurisdiction over Furniture of America California, Inc., that venue is proper in the County  
17 of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full  
18 settlement and resolution of the allegations contained in the Complaint.

19 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties  
20 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
21 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall  
22 not constitute an admission with respect to any material allegation of the Complaint, each and  
23 every allegation of which Furniture of America denies, nor may this Consent Judgment, or  
24 compliance with it, be used as evidence of any wrongdoing, misconduct, culpability or liability on  
25 the part of Furniture of America.

26 1.4 The term “Effective Date” means the date this Consent Judgment is entered by the  
27 Court.  
28

1     **2.     INJUNCTIVE RELIEF**

2             2.1     Warnings

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

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

8             Or,

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

12            The warning statements shall be affixed to or printed on the Covered Product itself and the Covered  
13            Product’s instruction booklet. The warning shall be prominently affixed to or printed on the  
14            Covered Product and its instruction booklet, and displayed with such conspicuousness, as  
15            compared with other words, statements, designs, or devices on the Covered Product and its  
16            instruction booklet, as to render it likely to be read and understood by an ordinary individual under  
17            customary conditions of purchase or use. A warning may be contained in the same section of the  
18            instruction booklet that contains other safety warnings concerning the use of the Covered Product.  
19            The type size of the warning must be legible, and no smaller than any other warning provided with  
20            the Covered Product. The word “**WARNING:**” shall be in upper case letters and bold text.

21            2.2     Reporting

22            No later than 75 days after the Execution Date, Defendant shall provide a report to ERF  
23            documenting its compliance with paragraph 2.1. The report shall include photographs of the  
24            warning posting and documentation that the warnings are being included with Covered Products  
25            that are offered for sale in California.

1     **3.     SETTLEMENT PAYMENTS**

2             3.1     Civil Penalties and Payments In Lieu of Penalties

3             Pursuant to Health and Safety Code section 25249.7(b)(2), Furniture of America shall  
4 pay \$5,000 in civil penalties. The penalty payment will be allocated in accordance with  
5 California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount  
6 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and  
7 the remaining 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will  
8 provide these payments in two checks for the following amounts made payable to: 1) “OEHHA”  
9 in the amount of \$3,750, and 2) “Ecological Rights Foundation” in the amount of \$1,250.

10            3.2     Attorneys’ Fees and Litigation Costs

11            In settlement of all of the claims that are alleged, or could have been alleged, in the  
12 Complaint concerning Covered Products, Furniture of America shall pay \$17,500 to the Ecology  
13 Law Center to cover Plaintiff’s attorneys’ fees and costs.

14            3.3     Payments

15            All payments referred to in paragraph 3.1 and 3.2 above shall be made by check made  
16 payable to the Ecology Law Center Attorney Client Trust Account. Payments shall be sent no later  
17 than 10 days after the Effective Date via certified mail, return receipt requested, to the following  
18 address:

19                    Fredric Evenson  
20                    Ecology Law Center  
                      P.O. Box 1000  
                      Santa Cruz, CA 95061

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

22            4.1     This Consent Judgment is a final and binding resolution between ERF, acting on  
23 behalf of itself and (as to those matters raised in the 60-Day Notice Letter) the general public, and  
24 Furniture of America of: (i) any violation of Proposition 65 (including but not limited to the claims  
25 made in the Complaint); and (ii) any other statutory or common law claim to the fullest extent that  
26 any of the foregoing described in (i) or (ii) were or could have been asserted by any person or  
27 entity against Furniture of America or its parents, subsidiaries or affiliates, and all of their  
28

1 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of doing  
2 business, and the successors and assigns of any of them, who may use, maintain, distribute or sell  
3 Covered Products (“Released Entities”), based on its or their exposures of persons to carbon  
4 monoxide from Covered Products or their failure to provide a clear and reasonable warning of  
5 exposure to such individuals. As to alleged exposures to carbon monoxide from Covered Products,  
6 compliance with the terms of this Consent Judgment resolves any issue, now and in the future,  
7 concerning compliance by Furniture of America and the Released Entities, with the requirements  
8 of Proposition 65 with respect to Covered Products, and any alleged resulting exposure.

9 **5. ENTRY OF CONSENT JUDGMENT**

10 5.1 The parties hereby request that the Court promptly enter this Consent Judgment.  
11 Upon entry of the Consent Judgment, Furniture of America and ERF waive their respective rights  
12 to a hearing or trial on the allegations of the Complaint.

13 **6. ENFORCEMENT OF JUDGMENT**

14 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
15 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
16 San Francisco County, giving the notice required by law, enforce the terms and conditions  
17 contained herein.

18 6.2 In any proceeding brought by either party to enforce this Consent Judgment, such  
19 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
20 violation of Proposition 65 or this Consent Judgment.

21 **7. MODIFICATION OF JUDGMENT**

22 7.1 This Consent Judgment may be modified only upon written agreement of the parties  
23 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party  
24 as provided by law and upon entry of a modified Consent Judgment by the Court.

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

26 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms  
27 this Consent Judgment.

1     **9. AUTHORITY TO STIPULATE**

2             9.1     Each signatory to this Consent Judgment certifies that he or she is fully authorized  
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
4 the party represented and legally to bind that party.

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

6             10.1     ERF shall serve a copy of this Consent Judgment, signed by both parties, on the  
7 California Attorney General on behalf of the parties so that the Attorney General may review this  
8 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)  
9 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
10 and in the absence of any written objection by the Attorney General to the terms of this Consent  
11 Judgment, the parties may then submit it to the Court for approval.

12     **11. ENTIRE AGREEMENT**

13             11.1     This Consent Judgment contains the sole and entire agreement and understanding  
14 of the parties with respect to the entire subject matter hereof and any and all prior discussions,  
15 negotiations, commitments and understandings related hereto. No representations, oral or  
16 otherwise, express or implied, other than those contained herein have been made by any party  
17 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
18 to exist or to bind any of the parties.

19     **12. GOVERNING LAW**

20             12.1     The validity, construction and performance of this Consent Judgment shall be  
21 governed by the laws of the State of California, without reference to any conflicts of law provisions  
22 of California law.

23     **13. EXECUTION AND COUNTERPARTS**

24             13.1     This Consent Judgment may be executed in counterparts which taken together shall  
25 be deemed to constitute one document.

1 **14. COURT APPROVAL**

2 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or  
3 effect, and cannot be used in any proceeding for any purpose.

4 **15. NOTICES**

5 15.1 Any notices or payments due under this Consent Judgment shall be sent by personal  
6 delivery or Certified Mail.

7  
8 If to Ecological Rights Foundation: Fredric Evenson  
9 Ecology Law Center  
10 P.O. Box 1000  
11 Santa Cruz, CA 95061

12 If to Furniture of America California, Inc.: Furniture of America California, Inc.  
13 c/o Lei Yang  
14 Agent for Service of Process  
15 19223 E Colima Road #833  
16 Rowland HTS, CA 91748

17 IT IS SO STIPULATED:

18 DATED: MARCH 8, 2017

19 ECOLOGICAL RIGHTS FOUNDATION  
20 Ecological Rights Foundation  
21 BY: James Lampton, EXEC. DIR.  
22 JAMES LAMPORT, EXECUTIVE DIRECTOR

23 DATED:

24 FURNITURE OF AMERICA CALIFORNIA,  
25 INC.  
26 BY: \_\_\_\_\_  
27 ITS: \_\_\_\_\_

28 IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT



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9 Ecology Law Center  
10 P.O. Box 1000  
11 Santa Cruz, CA 95061

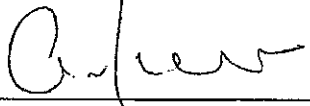
12 If to Furniture of America California, Inc.: Furniture of America California, Inc.  
13 c/o Lei Yang  
14 Agent for Service of Process  
15 19223 E Colima Road #833  
16 Rowland HTS, CA 91748

17 IT IS SO STIPULATED:

18 DATED: ECOLOGICAL RIGHTS FOUNDATION

19 BY: \_\_\_\_\_  
20 JAMES LAMPORT, EXECUTIVE DIRECTOR

21 DATED: FURNITURE OF AMERICA CALIFORNIA, INC.

22 BY:   
23 ITS: President

24 IT IS SO ORDERED, ADJUDGED AND DECREED:

25 DATED: 5/2/17

26 

27 JUDGE OF THE SUPERIOR COURT  
28 HAROLD KAHN