



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

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TEXT JUDGMENT

ECOLOGICAL RIGHTS FOUNDATION VS. HAYNEEDLE, INC. ET AL

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MAY 02 2017

CLERK OF THE COURT

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9 Counsel for Plaintiffs ECOLOGICAL RIGHTS FOUNDATION

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 ECOLOGICAL RIGHTS FOUNDATION,

13 Plaintiff,

14 v.

15 HAYNEEDLE, INC., et al.,

16 Defendants.

Case No. CGC-16-554010

^{MC}
[PROPOSED] CONSENT JUDGMENT
AS TO WELL TRAVELED IMPORTS,
INC.

17
18 **1. INTRODUCTION**

19 1.1 On September 1, 2016, the Ecological Rights Foundation (“ERF”) acting on behalf
20 of itself and the general public, filed a Complaint for civil penalties and injunctive relief
21 (“Complaint”) in San Francisco Superior Court, Case No. CGC-16-554010, against defendant
22 Well Traveled Imports, Inc., (also referred to herein as “Well Traveled Imports” or “Defendant”).
23 The Complaint alleges, among other things, that Defendant violated provisions of the Safe
24 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5,
25 *et seq.* (Proposition 65) by failing to give clear and reasonable warnings to those residents of
26 California who use wood-burning outdoor heating products, (such as fire pits, fire bowls, and
27

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

6 1.2 ERF and Well Traveled Imports are hereinafter referred to collectively as the
7 “Parties.”

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

21 1.4 The Parties have entered into this Consent Judgment in order to settle, compromise,
22 and resolve claims that are denied and disputed and thus avoid prolonged and costly litigation.
23 The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
24 claims between the parties for the purpose of avoiding prolonged litigation. This Consent
25 Judgment shall not constitute an admission against interest with respect to any material allegation
26 of the Complaint, each and every allegation of which Well Traveled Imports denies, nor may this
27
28

1 Consent Judgment, or compliance with it, be used as evidence of any wrongdoing, misconduct,
2 culpability or liability on the part of Well Traveled Imports.

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

6 1.6 The term "Effective Date" means the date this Consent Judgment is entered by the
7 Court.

8 **2. INJUNCTIVE RELIEF**

9 2.1 Warnings

10 No later than 90 days after the Effective Date, Covered Products offered for sale in
11 California, and their instruction manuals, shall include the following warning statement:

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

15 The word "WARNING" shall be in all capital letters and bold print. Well Traveled Imports may
16 utilize a symbol consisting of a black exclamation point in a yellow or white equilateral triangle
17 with a bold black outline. Well Traveled Imports may also use "safe harbor" warning statements
18 for consumer product exposures as specifically provided in Proposition 65 and its implementing
19 regulations, as amended from time to time. The required warning statements shall be affixed to or
20 printed on the Covered Product itself and the Covered Product's instruction manual. The warning
21 shall be prominently affixed to or printed on the Covered Product and its instruction manual, and
22 displayed with such conspicuousness, as compared with other words, statements, designs, or
23 devices on the Covered Product and its instruction manual, as to render it likely to be read and
24 understood by an ordinary individual under customary conditions of purchase or use. A warning
25 may be contained in the same section of the instruction manual that contains other safety warnings
26 concerning the use of the Covered Product. The type size of the warning must be legible, and no
27 smaller than any other warning provided with the Covered Product.

1 2.2 Reporting

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

5 3. **SETTLEMENT PAYMENTS**

6 3.1 **Civil Penalties**

7 Pursuant to Health and Safety Code section 25249.7(b)(2), Well Traveled Imports shall
8 pay \$10,000 in civil penalties. The penalty payment will be allocated in accordance with California
9 Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to
10 the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
11 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will provide these
12 payments in two checks for the following amounts made payable to: 1) "OEHHA" in the amount
13 of \$7,500, and 2) "Ecological Rights Foundation" in the amount of \$2,500.

14 3.2 **Attorneys' Fees and Litigation Costs**

15 In settlement of all of the claims that are alleged, or could have been alleged, in the
16 Complaint concerning Covered Products, Well Traveled Imports shall pay \$17,500 to the Ecology
17 Law Center to cover Plaintiff's attorneys' fees and costs.

18 3.3 **Payments**

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

22 Fredric Evenson
23 Ecology Law Center
24 P.O. Box 1000
25 Santa Cruz, CA 95061

26 The payment to OEHHA shall be delivered to:

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

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

2 4.1 This Consent Judgment is a final and binding resolution between ERF, acting on
3 behalf of itself and (as to those matters raised in the 60-Day Notice Letter) in the public interest,
4 and Well Traveled Imports of: (i) any violation of Proposition 65 (including but not limited to the
5 claims made in the Complaint); and (ii) any other statutory or common law claim to the fullest
6 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any
7 person or entity against Well Traveled Imports or its parents, subsidiaries or affiliates, and all of
8 their suppliers, customers, distributors, wholesalers, retailers, all other upstream or downstream
9 entities in the chain of distribution, or any other person in the course of doing business, and the
10 successors and assigns of any of them, who may use, maintain, distribute or sell Covered Products
11 ("Released Entities"), based on its or their exposures of persons to carbon monoxide from Covered
12 Products and their failure to provide a clear and reasonable warning of exposure to such
13 individuals. As to alleged exposures to carbon monoxide from Covered Products, compliance with
14 the terms of this Consent Judgment resolves any issue, now and in the future, concerning
15 compliance by Well Traveled Imports and the Released Entities, with the requirements of
16 Proposition 65 with respect to Covered Products, and any alleged resulting exposure.

17 4.2 It is possible that other claims not known to the Parties, arising out of the facts
18 alleged in the Notice or the Complaint and relating to the Covered Product, will develop or be
19 discovered. ERF on behalf of itself only, and Well Traveled Imports on behalf of itself only,
20 acknowledge that this Consent Judgment is expressly intended to cover and include all such
21 claims up through and including the Effective Date, including all rights of action therefor. ERF
22 and Well Traveled Imports acknowledge that the claims released above may include unknown
23 claims, and nevertheless waive California Civil Code Section 1542 as to any such unknown
24 claims. California Civil Code Section 1542 reads as follows:

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

1 ERF on behalf of itself only, and Well Traveled Imports on behalf of itself only, acknowledge
2 and understand the significance and consequences of this specific waiver of California Civil
3 Code Section 1542.

4 **5. ENTRY OF CONSENT JUDGMENT**

5 5.1 The parties hereby request that the Court promptly enter this Consent Judgment.
6 Upon entry of the Consent Judgment, Well Traveled Imports and ERF waive their respective rights
7 to a hearing or trial on the allegations of the Complaint.

8 **6. ENFORCEMENT OF JUDGMENT**

9 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
10 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
11 San Francisco County, giving the notice required by law, enforce the terms and conditions
12 contained herein.

13 6.2 In any proceeding brought by either party to enforce this Consent Judgment, such
14 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
15 violation of Proposition 65 or this Consent Judgment.

16 **7. MODIFICATION OF JUDGMENT**

17 7.1 This Consent Judgment may be modified only upon written agreement of the parties
18 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party
19 as provided by law and upon entry of a modified Consent Judgment by the Court.

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

21 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
22 this Consent Judgment.

23 **9. AUTHORITY TO STIPULATE**

24 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
26 the party represented and legally to bind that party.

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

2 10.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the
3 California Attorney General on behalf of the parties so that the Attorney General may review this
4 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
5 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
6 and in the absence of any written objection by the Attorney General to the terms of this Consent
7 Judgment, the parties may then submit it to the Court for approval.

8 **11. ENTIRE AGREEMENT**

9 11.1 This Consent Judgment contains the sole and entire agreement and understanding
10 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
11 negotiations, commitments and understandings related hereto. No representations, oral or
12 otherwise, express or implied, other than those contained herein have been made by any party
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
14 to exist or to bind any of the parties.

15 **12. GOVERNING LAW**

16 12.1 The validity, construction and performance of this Consent Judgment shall be
17 governed by the laws of the State of California, without reference to any conflicts of law provisions
18 of California law.

19 **13. EXECUTION AND COUNTERPARTS**

20 13.1 This Consent Judgment may be executed in counterparts which taken together shall
21 be deemed to constitute one document.

22 **14. COURT APPROVAL**

23 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
24 effect, and cannot be used in any proceeding for any purpose.

25 **15. NOTICES**

26 15.1 Any notices or payments due under this Consent Judgment shall be sent by personal
27 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

If to Well Traveled Imports Inc.:

Well Traveled Imports Inc.
Sophia Belloli
Downey Brand LLP
455 Market Street
Suite 1500
San Francisco, CA 94105

IT IS SO STIPULATED:

DATED: MARCH 8, 2017

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

BY:

James Lampion, EXEC. DIR.
JAMES LAMPION, EXECUTIVE DIRECTOR

DATED:

WELL TRAVELED IMPORTS INC.

BY:

Ed Hall
ED HALL, CEO

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: 5/2/17

[Signature]

JUDGE OF THE SUPERIOR COURT

HAROLD KAHN