



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

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TEXT JUDGMENT

ECOLOGICAL RIGHTS FOUNDATION VS. SIRIO NORTH AMERICA, INC. ET AL

001C06177847

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Superior Court of California
County of San Francisco

JAN 16 2018

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

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14 Counsel for Plaintiff, ECOLOGICAL RIGHTS FOUNDATION

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

17 ECOLOGICAL RIGHTS FOUNDATION,

18 Plaintiff,

19 v.

20 SIRIO NORTH AMERICA, INC.; NATURAL
21 CONCRETE PRODUCTS, LLC;
22 ROCHESTER CONCRETE PRODUCTS,
23 LLC; TITAN MANUFACTURING AND
24 DISTRIBUTING, INC.; and PAVESTONE,
25 LLC.

26 Defendants.

Case No. CGC-16-554269

Ac
[PROPOSED] CONSENT JUDGMENT
AS TO PAVESTONE, LLC

27 **1. INTRODUCTION**

28 1.1 On September 15, 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-16-554269, against defendant Pavestone, LLC, (also referred to herein as “Pavestone” or “Defendant”). The Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and Toxic

1 Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (Proposition 65) by
2 failing to give clear and reasonable warnings to those residents of California who use wood-
3 burning outdoor heating products, such as fire pits (“Covered Products”), that use of those products
4 causes exposures to carbon monoxide. Carbon monoxide is a chemical known to the State of
5 California to cause reproductive toxicity. The Complaint was based upon a 60-Day Notice letter,
6 sent by ERF on June 27, 2016 to Pavestone, the California Attorney General, all District Attorneys,
7 and all City Attorneys with populations exceeding 750,000.

8 1.2 Defendant is a business that employs more than ten persons, and manufactures,
9 distributes, and sells Covered Products. ERF alleges that the combustion of wood creates
10 significant amounts of carbon monoxide to be released into the air, causing inhalation exposures
11 to those using or standing near the Covered Products when they are in use. Pursuant to Health
12 and Safety Code Section 25249.8, carbon monoxide is a chemical known to the State of California
13 to cause reproductive toxicity. ERF alleges that Covered Products that are manufactured,
14 distributed or sold by Defendant for use in California require a warning under Proposition 65,
15 pursuant to Health and Safety Code Section 25249.6. For purposes of this Consent Judgment, the
16 parties stipulate that this Court has jurisdiction over the allegations of violations contained in the
17 Complaint and personal jurisdiction over Pavestone, 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 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
21 enter into this Consent Judgment pursuant to a full, final and binding settlement of any and all
22 claims between the parties for the purpose of avoiding prolonged litigation. This Consent
23 Judgment shall not constitute an admission with respect to any material allegation of the
24 Complaint, each and every allegation of which Pavestone denies, nor may this Consent Judgment,
25 or compliance with it, be used as evidence of any wrongdoing, misconduct, culpability or liability
26 on the part of Pavestone.

1 1.4 The term "Effective Date" means the date this Consent Judgment is entered by the
2 Court.

3 **2. INJUNCTIVE RELIEF**

4 **2.1 Warnings**

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

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

10 Or,

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

14 Pavestone also may, at its sole option, utilize the warning text options set forth in Title 27,
15 California Code of Regulations, Section 25603(a)(2)(b), as long as such warning identifies the
16 reproductive toxicity endpoint. The warning statements shall be affixed to or printed on the
17 Covered Product itself or its Packaging and the Covered Product's instruction booklet (if any).
18 The warning shall be prominently affixed to or printed on the Covered Product or its Packaging
19 and its instruction booklet (if any), and displayed with such conspicuousness, as compared with
20 other words, statements, designs, or devices on the Covered Product and its instruction booklet (if
21 any), as to render it likely to be read and understood by an ordinary individual under customary
22 conditions of purchase or use. A warning may be contained in the same section of the instruction
23 booklet (if any) that contains other safety warnings concerning the use of the Covered Product.
24 The type size of the warning must be legible, and no smaller than any other warning provided with
25 the Covered Product. The word "**WARNING**" shall be in all capital letters and bold print.
26 Defendant may utilize a symbol consisting of a black exclamation point in a yellow equilateral
27 triangle with a bold black outline.

1 2.2 **Reporting**

2 No later than 75 days after the Execution Date, Defendant shall provide a report to ERF
3 confirming its compliance with the warning requirements of paragraph 2.1, and the payment to
4 OEHHA pursuant to paragraph 3.1.

5 **3. SETTLEMENT PAYMENTS**

6 3.1 **Civil Penalties**

7 Pursuant to Health and Safety Code section 25249.7(b)(2), Pavestone shall pay \$10,000 in
8 civil penalties. The penalty payment will be allocated in accordance with California Health and
9 Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the
10 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, Pavestone shall pay \$22,500 to the Ecology Law Center
17 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: 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
27
28

1 The payment to OEHHA shall be delivered to:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

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

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

22 4.2 ERF hereby fully releases and discharges the Released Entities from any and all
23 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and
24 expenses asserted, or that could have been asserted from the handling or use of the Covered
25 Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from
26 the failure to provide Proposition 65 warnings on the Covered Products regarding carbon
27 monoxide.

28 4.3 It is possible that other claims not known to the Parties arising out of the facts
alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
discovered. ERF, on behalf of itself only, acknowledges that this Consent Judgment is expressly

1 intended to cover and include all such unknown claims up through the Effective Date, including
2 all rights of action therefor. ERF acknowledges that the claims released in Sections 4.1 and 4.2
3 above may include unknown claims, and nevertheless waive California Civil Code section 1542
4 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

10 ERF acknowledges and understands the significance and consequences of this specific waiver of
11 California Civil Code section 1542.

12 **5. ENTRY OF CONSENT JUDGMENT**

13 5.1 The parties hereby request that the Court promptly enter this Consent Judgment.
14 Upon entry of the Consent Judgment, Pavestone and ERF waive their respective rights to a hearing
15 or trial on the allegations of the Complaint.

16 **6. ENFORCEMENT OF JUDGMENT**

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

21 6.2 In any proceeding brought by either party to enforce this Consent Judgment, such
22 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
23 violation of Proposition 65 or this Consent Judgment.

24 **7. MODIFICATION OF JUDGMENT**

25 7.1 This Consent Judgment may be modified only upon written agreement of the parties
26 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party
27 as provided by law and upon entry of a modified Consent Judgment by the Court.
28

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

2 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
3 this Consent Judgment.

4 **9. AUTHORITY TO STIPULATE**

5 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
6 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
7 the party represented and legally to bind that party.

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

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

15 **11. ENTIRE AGREEMENT**

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

22 **12. GOVERNING LAW**

23 12.1 The validity, construction and performance of this Consent Judgment shall be
24 governed by the laws of the State of California, without reference to any conflicts of law provisions
25 of California law.
26
27
28

1 **13. EXECUTION AND COUNTERPARTS**

2 13.1 This Consent Judgment may be executed in counterparts which taken together shall
3 be deemed to constitute one document.

4 **14. COURT APPROVAL**

5 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
6 effect, and cannot be used in any proceeding for any purpose.

7 **15. NOTICES**

8 15.1 Any notices or payments due under this Consent Judgment shall be sent by personal
9 delivery or Certified Mail.

10 If to Ecological Rights Foundation:

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

14 If to Pavestone LLC:

Andrew M. Thompson
Smith, Gambrell & Russell, LLP
Promenade, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309-3592

1
2 IT IS SO STIPULATED:

3 DATED: MAY 31, 2017

4 ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

5
6 By: *James Lampert* EXEC. DIR.
JAMES LAMPORT, EXECUTIVE DIRECTOR

7 DATED: 2-14-17

8 PAVESTONE, LLC

9 By: *[Signature]*

10 Its: *[Signature]* SVP

11
12
13 IT IS SO ORDERED, ADJUDGED AND DECREED:

14 DATED: 1/11/18

15
16 *Andrew J.S. Cheng*

JUDGE OF THE SUPERIOR COURT

17
18 ANDREW Y.S. CHENG