



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

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TEXT JUDGMENT

ECOLOGICAL RIGHTS FOUNDATION VS. BODUM USA, INC. ET AL

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San Francisco County Superior Court

APR 11 2019

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15 ECOLOGICAL RIGHTS FOUNDATION

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

18 ECOLOGICAL RIGHTS FOUNDATION,

19 Plaintiff,

20 v.

21 BODUM USA, INC., et al.,

22 Defendants.

Case No. CGC-18-564388

~~PROPOSED~~ CONSENT JUDGMENT
AS TO GIBSON OVERSEAS, INC.

23 **1. INTRODUCTION**

24 1.1 On February 16, 2018, the Ecological Rights Foundation (“ERF”) acting on
25 behalf of itself and the general public, filed a complaint for civil penalties and injunctive relief
26 (“Complaint”) in San Francisco Superior Court, Case No. CGC-18-564388, against, among
27 others named, defendant Gibson Overseas, Inc., (also referred to herein as “Gibson” or
28 “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

1 25249.5, *et seq.* (Proposition 65) by failing to give clear and reasonable warnings to those
2 residents of California who use charcoal grills and hibachis (“Covered Products”), that use of
3 those products causes exposures to carbon monoxide. Carbon monoxide is a chemical known to
4 the State of California to cause reproductive toxicity. The Complaint was based upon a 60-Day
5 Notice letter, sent by ERF on June 27, 2016 to Gibson, the California Attorney General, all
6 District Attorneys, and all City Attorneys with populations exceeding 750,000.

7 1.2 Defendant is a business that employs more than ten persons, and manufactures,
8 distributes, and sells Covered Products. Covered Products distributed, marketed or sold by
9 Defendant are intended for use with charcoal fuel. The combustion of charcoal creates carbon
10 monoxide to be released into the air, causing inhalation exposures to those using or standing near
11 the Covered Products when they are in use. Pursuant to Health and Safety Code Section
12 25249.8, carbon monoxide is a chemical known to the State of California to cause reproductive
13 toxicity. ERF alleges that Covered Products that are manufactured, distributed or sold by
14 Defendant for use in California require a warning under Proposition 65, pursuant to Health and
15 Safety Code Section 25249.6. 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 Gibson, that venue is proper in the County of San Francisco, and that
18 this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of
19 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 and final settlement of any and all claims
22 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
23 shall not constitute an admission with respect to any material allegation of the Complaint, each
24 and every allegation of which Gibson denies, nor may this Consent Judgment, or compliance
25 with it, be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
26 Gibson.

1 1.4 The term "Effective Date" means the date that Defendant receives Notice that this
2 Consent Judgment was entered by the Court.

3 **2. INJUNCTIVE RELIEF**

4 **2.1 Warnings on Covered Products**

5 No later than 120 days after the Effective Date, Covered Products offered for sale in
6 California shall include one of the following warning statements:

7 **WARNING:** Chemicals known to the state of California to cause birth defects or other
8 reproductive harm, including carbon monoxide, are produced by combustion of propane,
9 charcoal or wood when used with this product.

10 Or,

11 **WARNING:** This product can expose you to carbon monoxide, which is a combustion
12 byproduct 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 Or,



16 **Warning:** This product can expose you to carbon monoxide and soot, which are
17 known to the State of California to cause cancer and birth defects or other reproductive
18 harm. For more information go to www.P65Warnings.ca.gov.

19
20 The warning statement shall be affixed to or printed on packaging for Covered Products, as well
21 as printed in the Covered Products' instruction booklets (if any) to the extent such instruction
22 booklets are printed or reprinted after the Effective Date. The warnings shall be displayed with
23 such conspicuousness, as compared with other words, statements, designs, or devices as to
24 render them likely to be read and understood by an ordinary individual under customary
25 conditions of purchase or use. Warnings may be contained in the same section of the instruction
26 booklets that contains other safety warnings concerning the use of the Covered Products. The
27 type size of the warning must be legible, and no smaller than any other warning provided with
28

1 the Covered Products concerning equivalent health-related risks. The word "WARNING:" shall
2 be in upper case letters and bold text as shown above. In the event the last warning statement
3 shown above is instead employed, Defendant may utilize a black exclamation point in a white
4 triangle with black border if no yellow is used in the Covered Product's consumer-facing
5 packaging.

6 2.2 Reporting

7 No later than 150 days after the Effective Date, Defendant shall provide a certification
8 signed by an officer or director of Defendant to ERF confirming its compliance with the warning
9 requirements of paragraph 2.1, and the payment to OEHHA pursuant to paragraphs 3.1.

10 3. SETTLEMENT PAYMENTS

11 3.1 Civil Penalties and Payments In Lieu of Penalties

12 Pursuant to Health and Safety Code section 25249.7(b)(2), Gibson shall pay \$4,000 in
13 civil penalties. The penalty payment will be allocated in accordance with California Health and
14 Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the
15 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
16 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will provide these
17 payments in two checks for the following amounts made payable to: 1) "OEHHA" in the amount
18 of \$3,000, and 2) "Ecological Rights Foundation" in the amount of \$1,000.

19 3.2 Attorneys' Fees and Litigation Costs

20 In settlement of all of the claims that are alleged, or could have been alleged, in
21 the Complaint concerning Covered Products, Gibson shall pay \$18,500 to the Ecology Law
22 Center to cover Plaintiff's attorneys' fees and costs.

23 3.3 Payments

24 All Payments shall be sent no later than 10 days after the Effective Date via USPS
25 certified mail, return receipt requested or by UPS or FedEx Two-Day or Overnight Delivery, to
26 the following addresses: All payments to Ecological Rights Foundation and Ecology Law
27 Center shall be delivered to:
28

1 Fredric Evenson
2 Ecology Law Center
3 P.O. Box 1000
4 Santa Cruz, CA 95061

5 The payment to OEHHA shall be delivered to:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010
10 Sacramento, CA 95812-4010

11 or

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

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

19 4.1 As to Covered Products, this Consent Judgment is a final and binding resolution
20 between ERF, acting on behalf of itself and (as to those matters raised in the 60-Day Notice
21 Letter) acting in the public interest; and Gibson of: (i) any violation of Proposition 65 (including
22 but not limited to the claims made in the Complaint); and (ii) any other statutory or common law
23 claim to the fullest extent that any of the foregoing described in (i) or (ii) were or could have
24 been asserted by any person or entity against Gibson or its parents, subsidiaries or affiliates, and
25 all of their suppliers, customers, distributors (including D & H Distributing Co.), wholesalers,
26 retailers (including, but not limited to Wayfair LLC), and their respective parents, affiliates and
27 subsidiaries or any other person in the course of doing business, and the successors and assigns
28 of any of them, who may use, maintain, distribute or sell Covered Products ("Released Entities"),
based on its or their failure to provide clear and reasonable warnings of exposures to carbon
monoxide from Covered Products. 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

1 future, concerning compliance by Gibson 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 be
5 discovered. ERF on behalf of itself only, and Gibson on behalf of itself only, acknowledge that
6 this Consent Judgment is expressly intended to cover and include all such claims up through
7 and including the Effective Date, including all rights of action therefor. ERF and Gibson
8 acknowledge that the claims released above may include unknown claims, and nevertheless
9 waive California Civil Code Section 1542 as to any such unknown claims. California Civil
10 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 Gibson on behalf of itself only, acknowledge and understand
17 the significance and consequences of this specific waiver of California Civil Code Section 1542.

18 **5. ENTRY OF CONSENT JUDGMENT**

19 5.1 The parties hereby request that the Court promptly enter this Consent Judgment.
20 Upon entry of the Consent Judgment, Gibson and ERF waive their respective rights to a hearing
21 or trial on the allegations of the Complaint.

22 **6. ENFORCEMENT OF JUDGMENT**

23 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
24 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
25 San Francisco County, giving the notice required by law, enforce the terms and conditions
26 contained herein.

27 6.2 In any proceeding brought by either party to enforce this Consent Judgment, such
28 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
violation of Proposition 65 or this Consent Judgment.

1 **7. MODIFICATION OF JUDGMENT**

2 7.1 This Consent Judgment may be modified only upon written agreement of the
3 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
4 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

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

6 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
7 terms this Consent Judgment.

8 **9. AUTHORITY TO STIPULATE**

9 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
10 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
11 of the party represented and legally to bind that party.

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

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

19 **11. ENTIRE AGREEMENT**

20 11.1 This Consent Judgment contains the sole and entire agreement and understanding
21 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
22 negotiations, commitments and understandings related hereto. No representations, oral or
23 otherwise, express or implied, other than those contained herein have been made by any party
24 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
25 deemed to exist or to bind any of the parties.
26
27
28

1 **12. GOVERNING LAW**

2 12.1 The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.

5 **13. EXECUTION AND COUNTERPARTS**

6 13.1 This Consent Judgment may be executed in counterparts which taken together
7 shall be deemed to constitute one document.

8 **14. COURT APPROVAL**

9 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
10 effect, and cannot be used in any proceeding for any purpose.

11 **15. NOTICES**

12 15.1 Any notices or payments due under this Consent Judgment shall be sent by USPS
13 certified mail, return receipt requested.

14
15 If to Ecological Rights Foundation: Fredric Evenson
16 Ecology Law Center
17 P.O. Box 1000
Santa Cruz, CA 95061

18 If to Gibson Overseas, Inc.: Solomon Gabbay - CFO
19 Gibson Overseas, Inc.
20 2410 Yates Ave
Commerce, CA 90040

21 with a copy to:

22 Robert Falk
23 Morrison & Foerster LLP
24 425 Market Street, 32nd Floor
25 San Francisco, CA 94105
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IT IS SO STIPULATED:

DATED: 8/6/18

ECOLOGICAL RIGHTS FOUNDATION

BY: James Lampion
JAMES LAMPION, EXECUTIVE DIRECTOR

DATED: 7-9-2018

GIBSON OVERSEAS, INC.
BY: Solomon Gabbay
SOLOMON GABBAY
ITS: CHIEF FINANCIAL OFFICER

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: April 11, 2019

Ethan P. Schulman
JUDGE OF THE SUPERIOR COURT
ETHAN P. SCHULMAN