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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 ERIKA MCCARTNEY, in the public interest,)
13 Plaintiff,)
14 v.)
15 TRAEGER PELLET GRILLS, LLC, a Delaware)
16 limited liability company; and DOES 1 through)
17 500, inclusive,)
18 Defendants.)

CIVIL ACTION NO. CGC-15-549538
[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER
[Cal. Health and Safety Code
Sec. 25249.6, *et seq.*]

1 **1. INTRODUCTION**

2 **1.1** This Action arises out of the alleged violations of California’s Safe Drinking Water
3 and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.
4 (also known as and hereinafter referred to as “Proposition 65”) regarding the following products:
5 Defendant’s Traeger brand “All Natural Hardwood Wood Pellets -- Oak,” “Hickory BBQ Pellets,”
6 “Mesquite BBQ Pellets,” “Alder BBQ Pellets,” “Maple BBQ Pellets,” “Cherry BBQ Pellets,”
7 “Apple BBQ Pellets,” “Pecan BBQ Pellets,” and “Gourmet Blend BBQ Pellets” (the “Products”).
8 (hereinafter, collectively the “Covered Products”).
9

10 **1.2** Plaintiff ERIKA MCCARTNEY (“McCartney”) is a California resident acting as a
11 private enforcer of Proposition 65. McCartney alleges that she brings this Action in the public
12 interest pursuant to California Health and Safety Code Section 25249.5, *et seq.* asserts that she is
13 dedicated to, among other causes, helping safeguard the public from health hazards by reducing the
14 use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and
15 employees, and encouraging corporate responsibility.
16

17 **1.3** Defendant Traeger Pellet Grills, LLC, is a Delaware limited liability company,
18 herein after referred to as “Defendant” or “Traeger.”
19

20 **1.4** McCartney and Traeger are hereinafter sometimes referred to individually as a
21 “Party” or collectively as the “Parties.”
22

23 **1.5** Traeger distributes and sells the Covered Products.

24 **1.6** On or about October 6, 2014, and not later than October 20, 2015, pursuant to
25 California Health and Safety Code Section 25249.7(d)(1), McCartney served 60-Day Notices of
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1 Violations of Proposition 65 (“Notices of Violations”) on the California Attorney General, other
2 public enforcers, and Traeger.

3 1.7 After more than sixty (60) days passed since service of the Notices of Violations,
4 and no designated governmental agency having filed a complaint against Traeger with regard to the
5 Covered Products or the alleged violations, McCartney filed a complaint (the “Complaint”) for
6 injunctive relief and civil penalties. The Complaint is based on the allegations in the Notice of
7 Violations.
8

9 1.8 The Complaint and the Notices of Violations each allege that Traeger manufactured,
10 distributed, and/or sold in California the Covered Products, which allegedly contain wood dust, a
11 substance listed under Proposition 65 as being known by the State of California to cause cancer,
12 requiring a Proposition 65 warning. Further, the Complaint and Notices of Violations allege that
13 use of the Covered Products exposes persons in California to wood dust without first providing
14 clear and reasonable warnings, in violation of California Health and Safety Code Section 25249.6.
15 Traeger generally denies all material and factual allegations of the Notices of Violations and the
16 Complaint, and specifically denies that the Plaintiff or California consumers have been harmed or
17 damaged by its conduct. Traeger and McCartney each reserve all rights to allege additional facts,
18 claims, and affirmative defenses if the Court does not approve this Consent Judgment.
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20 1.9 The Parties enter into this Consent Judgment in order to settle, compromise and
21 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
22 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any of
23 the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent
24 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
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1 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
2 wrongdoing, or liability, including without limitation, any admission concerning any alleged
3 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent Judgment
4 shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
5 any other or future legal proceeding. Provided, however, nothing in this Section shall affect the
6 enforceability of this Consent Judgment.
7

8 **1.10** The “Effective Date” of this Consent Judgment shall be the date this Consent
9 Judgment is entered as a Judgment.

10 **2. JURISDICTION AND VENUE**

11 The Parties stipulate that this Court has jurisdiction over the subject matter of this Action
12 and personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court has
13 jurisdiction to enter this Consent Judgment pursuant to the terms set forth herein.
14

15 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

16 **3.1** Beginning on the Effective Date, Traeger shall be permanently enjoined from
17 offering for sale to a consumer in California, directly selling to a consumer in California, or
18 “Distributing into California” any of the Covered Products unless the label of the Covered Products
19 contains a Proposition 65 compliant warning, consistent with Section 3.4, below. “Distributing into
20 California” means to ship any of the Covered Products to California for sale or to sell any of the
21 Covered Products to a distributor that Traeger knows or has reason to know will sell the Covered
22 Products in California. Provided, however, that Traeger may manufacture or package and sell
23 Covered Products without providing a Proposition 65 compliant warning so long as such products
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1 are only for sale to consumers located outside of California and Traeger does not distribute them
2 into California.

3 **3.2** All Covered Products that have been or will have been produced, distributed,
4 shipped, or sold, or otherwise placed in the stream of commerce through and including the
5 Effective Date of this Consent Judgment are exempt from the provisions of Sections 3.1 and 3.3
6 and are included within the release in Sections 8.1 through 8.4.

8 **3.3 Clear and Reasonable Warnings**

9 For the Covered Products that are subject to the warning requirement of Section 3.1,
10 Traeger shall provide the following warning ("Warning"):

11 **WARNING:** Inhalation of wood dust is known to the State of California to cause cancer.
12 Carbon monoxide, which is a by-product of combustion of this product, is known to the State of
13 California to cause birth defects or other reproductive harm.

14 The Warning shall be permanently affixed to or printed on (at the point of manufacture,
15 prior to shipment to California, or prior to distribution within California) the outside packaging or
16 container of each unit of the Covered Products. The Warning shall be displayed with such
17 conspicuousness, as compared with other words, statements designs or devices on the outside
18 packaging or labeling, as to render it likely to be read and understood by an ordinary individual
19 prior to use. If the Warning is displayed on the product packaging or labeling, the Warning shall be
20 at least the same size as the largest of any other health or safety warnings on the product packaging
21 or labeling, and the word "WARNING" shall be in all capital letters. If printed on the labeling
22 itself, the Warning shall be contained in the same section of the labeling that states other safety
23 warnings concerning the use of the Covered Products, if any.

24 Without limitation as to other forms of warnings, displaying the Warnings that are in
25 Exhibit A hereto, on the outside packaging or container of each unit of the Covered Products is
26 deemed to be a clear and reasonable warning under, and to fully comply with, Health & Safety
Section 25249.6 and the implementing regulations at Title 27 California Code of Regulations

1 Sections 25601 through 25605.2.
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3 **4. SETTLEMENT PAYMENT**

4 **4.1** Traeger shall make a total payment of \$70,000 within ten days of the Effective Date,
5 which shall be in full and final satisfaction of any and all civil penalties, payment in lieu of civil
6 penalties, and attorneys' fees and costs.

7 **4.2** The payment will be in the form of separate checks sent to counsel for Plaintiff,
8 Robert B. Hancock, Pacific Justice Center, 50 California Street, San Francisco, California 94111.

9 The checks shall be payable to the following parties and the payment shall be apportioned as
10 follows:
11

12 **4.3** \$20,000 (twenty thousand dollars) as civil penalties pursuant to California Health
13 and Safety Code Section 25249.7(b)(1). Of this amount, \$15,000 (fifteen thousand dollars) shall be
14 payable to the Office of Environmental Health Hazard Assessment ("OEHHA"), and \$5,000 (five
15 thousand dollars) shall be payable to McCartney. (Cal. Health & Safety Code § 25249.12(c)(1) &
16 (d)). McCartney's counsel will forward the civil penalty to OEHHA.
17

18 **4.4** \$50,000 (fifty thousand dollars) payable to Pacific Justice Center as reimbursement
19 of McCartney's attorneys' fees, costs, investigation and litigation expenses ("Attorney's Fees and
20 Costs").

21 **4.5** Any failure by Traeger to remit payment on or before its due date shall be deemed a
22 material breach of this Agreement, entitling Plaintiff to rescind. In such event, the Parties agree to
23 cooperate in taking any and all steps necessary to vacate and/or set aside any Judgment or dismissal
24 entered.
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1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 **5.1** This Consent Judgment may be modified only by: (i) Written agreement and
3 stipulation of the Parties and upon having such stipulation entered as a modified Consent Judgment
4 by the Court; or (ii) Upon entry of a modified Judgment by the Court pursuant to a motion by one
5 of the Parties after exhausting the meet and confer process set forth as follows. If either Party
6 requests or initiates a modification, then it shall meet and confer with the other Party in good faith
7 before filing a motion with the Court seeking to modify it. McCartney is entitled to reimbursement
8 of all reasonable attorneys' fees and costs regarding the Parties' meet and confer efforts for any
9 modification requested or initiated by Traeger. Similarly, Traeger is entitled to reimbursement of
10 all reasonable attorney's fees and costs regarding the Parties' meet and confer efforts for any
11 modification requested or initiated by McCartney. If, despite their meet and confer efforts, the
12 Parties are unable to reach agreement on any proposed modification the party seeking the
13 modification may file the appropriate motion and the prevailing party on such motion shall be
14 entitled recover its reasonable fees and costs associated with such motion. One basis, but not the
15 exclusive basis, for Traeger to seek a modification of this Consent Judgment is if Proposition 65 is
16 changed, narrowed, limited, or otherwise rendered inapplicable in whole or in part to the Covered
17 Products or wood dust due to legislative change, a change in the implementing regulations, court
18 decisions, or other legal basis.
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23 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

24 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
25 Consent Judgment.
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1 **6.2** Subject to Section 6.3, any Party may, by motion or application for an order to show
2 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.
3 The prevailing party in any such motion or application may request that the Court award its
4 reasonable attorneys' fees and costs associated with such motion or application.
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6 **6.3** Before filing a motion or application for an order to show cause, McCartney shall
7 provide Traeger with 30 (thirty) days written notice of any alleged violations of the terms and
8 conditions contained in this Consent Judgment. As long as Traeger cures any such alleged
9 violations within the 30-day period (or if any such violation cannot practicably be cured within 30
10 days, it expeditiously initiates a cure within 30 days and completes it as soon as practicable) and
11 Traeger provides proof to McCartney that the alleged violation(s) was the result of good faith
12 mistake or accident, then Traeger shall not be in violation of the Consent Judgment. Traeger shall
13 have the ability to avail itself of the benefits of this Section two (2) times following the Effective
14 Date.
15

16 **7. APPLICATION OF CONSENT JUDGMENT**

17 This Consent Judgment shall apply to and be binding upon the Parties and their respective
18 officers, directors, successors and assigns, and it shall benefit the Parties and their respective
19 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
20 affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors,
21 successors, and assigns.
22

23 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

24 **8.1** This Consent Judgment is a full, final, and binding resolution between McCartney,
25 on behalf of herself and in the public interest, and Traeger, of any and all direct or derivative
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1 violations (or claimed violations) of Proposition 65 or its implementing regulations for failure to
2 provide Proposition 65 warnings of exposure to wood dust from the handling, use, or consumption
3 of the Covered Products and fully resolves all claims that have been or could have been asserted in
4 this Action up to and including the Effective Date for failure to provide Proposition 65 warnings
5 for the Covered Products regarding wood dust. McCartney, on behalf of herself and in the public
6 interest, hereby forever releases and discharges, Traeger and its past and present officers, directors,
7 owners, shareholders, employees, agents, attorneys, parent companies, subsidiaries, divisions,
8 affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all
9 other upstream and downstream entities and persons in the distribution chain of any Covered
10 Product, and the predecessors, successors and assigns of any of them (collectively, "Released
11 Parties"), from any and all claims and causes of action and obligations to pay damages, restitution,
12 fines, civil penalties, payment in lieu of civil penalties and expenses (including but not limited to
13 expert analysis fees, expert fees, attorney's fees and costs) (collectively, "Claims") arising under,
14 based on, or derivative of Proposition 65 or its implementing regulations up through the Effective
15 Date relating to actual or potential exposure to wood dust from the Covered Products and/or failure
16 to warn about wood dust, as set forth in the Notice of Violations and the Complaint.
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19 **8.2** Compliance with the terms of this Consent Judgment shall be deemed to constitute
20 compliance by any Released Party with Proposition 65 regarding alleged exposures to wood dust
21 from the Covered Products as set forth in the Notice of Violations and the Complaint.
22

23 **8.3** It is possible that other Claims not known to McCartney arising out of the facts
24 alleged in the Notice of Violations or the Complaint and relating to wood dust in the Covered
25 Products that were manufactured, sold or Distributed into California before the Effective Date will
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1 develop or be discovered. McCartney, on behalf of herself only, acknowledges that the Claims
2 released herein include all known and unknown Claims and waives California Civil Code Section
3 1542 as to any such unknown Claims. California Civil Code Section 1542 reads as follows:

4
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 McCartney, on behalf of herself only, acknowledges and understands the significance and
11 consequences of this specific waiver of California Civil Code section 1542.

12 **8.4** McCartney, on one hand, and Traeger, on the other hand, each release and waive all
13 Claims they may have against each other for any statements or actions made or undertaken by them
14 in connection with the Notice of Violations or the Complaint. However, this shall not affect or
15 limit any Party’s right to seek to enforce the terms of this Consent Judgment.

16 **9. CONSTRUCTION AND SEVERABILITY**

17 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the
18 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully
19 discuss the terms and conditions with its counsel. In any subsequent interpretation or construction
20 of this Consent Judgment, the terms and conditions shall not be construed against any Party.

21 **9.2** In the event that any of the provisions of this Consent Judgment is held by a court to
22 be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
23 affected.

24 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
25 construed in accordance with the laws of the State of California.
26

1 **10. PROVISION OF NOTICE**

2 All notices required to be given to either Party to this Consent Judgment by the other shall
3 be in writing and sent to the following agents listed below by: (a) first-class, registered, (b) certified
4 mail, (b) overnight courier, or (c) personal delivery to the following:

5 **For McCartney:**

6 Melvin B. Pearlston
7 Robert B. Hancock
8 PACIFIC JUSTICE CENTER
9 50 California Street, Suite 1500
10 San Francisco, California 94111

11 **For Traeger:**

12 Renée Rothauge
13 Kristin Malone
14 MARKOWITZ HERBOLD PC
15 1211 SW Fifth Avenue
16 Portland, OR 97204-3730

17 **11. COURT APPROVAL**

18 **11.1** Upon execution of this Consent Judgment by the Parties, McCartney shall notice a
19 Motion for Court Approval. The Parties shall use their best efforts to support entry of this Consent
20 Judgment.

21 **11.2** If the California Attorney General objects to any term in this Consent Judgment, the
22 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
23 the hearing on the motion.

24 **11.3** If, despite the Parties' best efforts, the Court does not approve this Stipulated
25 Consent Judgment, it shall be null and void and have no force or effect.
26

1 **12. EXECUTION AND COUNTERPARTS**

2 This Stipulated Consent Judgment may be executed in counterparts, which taken together
3 shall be deemed one document. A facsimile or .pdf signature shall be construed as valid and as the
4 original signature.
5

6 **13. ENTIRE AGREEMENT, AUTHORIZATION**

7 **13.1** This Consent Judgment contains the sole and entire agreement and understanding of
8 the Parties with respect to the entire subject matter herein, and any and all prior discussions,
9 negotiations, commitments and understandings related hereto. No representations, oral or
10 otherwise, express or implied, other than those contained herein have been made by any Party. No
11 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
12 or to bind any Party.
13

14 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
15 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
16 provided herein, each Party shall bear its own fees and costs.
17

18 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

19 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.
20 The parties request the Court to fully review this Consent Judgment and, being fully informed
21 regarding the matters which are the subject of this action, to:
22

23 (a) Find that the terms and provisions of this Consent Judgment represent a good
24 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been
25 diligently prosecuted, and that the public interest is served by such settlement; and
26

1 (b) Make the findings pursuant to California Health and Safety Code Section
2 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

3 **IT IS SO STIPULATED.**

4
5 Dated: 2/17/16


Erika McCartney

6
7
8 Dated: 2/19/2016

TRAEGER PELLETT GRILLS, LLC

9
10 Name: 

11 Title: MARK WATKINS, CFO

12 APPROVED AS TO FORM

13
14 Dated: 2/18/16

PACIFIC JUSTICE CENTER

15
16
17 By: 

18 Robert B. Hancock
Attorneys for Plaintiff
ERIKA MCCARTNEY

19
20 Dated: 2/12/16

MARKOWITZ HERBOLD PC

21
22
23 By: 

24 Renée Rothauge
Attorneys for Defendant
TRAEGER PELLETT GRILLS, LLC

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ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2016.

Judge of the Superior Court

EXHIBIT A TO CONSENT JUDGMENT

WWW.TRAEGERGRILLS.COM

— Taste The Difference® —

PELLET GUIDE



GOOD FOR ANYTHING. GREAT FOR

WOOD	SMOKER	GRILL	ROAST	SEAR	SMOKE
ALDER	✓	✓	✓	✓	✓
APPLE	✓	✓	✓	✓	✓
CHERRY	✓	✓	✓	✓	✓
HICKORY	✓	✓	✓	✓	✓
MAPLE	✓	✓	✓	✓	✓
MESQUITE	✓	✓	✓	✓	✓
OAK	✓	✓	✓	✓	✓
PECAN	✓	✓	✓	✓	✓

OUR HARDWOOD PELLETS COME IN 8 GREAT FLAVORS!

FROM PROPANE AND CHARCOAL TO THE TASTE OF *WOOD* in favor of a

**Healthier,
SAFER,
&
Tastier**
ALTERNATIVE:
100% EDGE-GRADE ALL-NATURAL HARDWOOD

WHY CHOOSE TRAEGER PELLETS OVER OTHER BRANDS?

When you choose Traeger, you're getting the highest quality hardwood on the market. Traeger has spent over 20 years developing a premium blend of hardwoods with the compact pellet mill technology needed for a balanced, dependable burn. We maintain our moisture to smoke ratio from 10% — the sweet spot — without fillers, no binding agents and no binders, just clean, robust flavor. Our four US mills process 100% virgin hardwood, ensuring the quality and purity of our product from sawmill to grill.

Traeger mills are dedicated to processing wood for high-quality pellets, and nothing else. In contrast with other wood pellet suppliers who down their wood pellet production facilities, Traeger's quality guarantee that nothing harmful is soaking up fuel.

EXPERTS AGREE, TO MASTER THE CRAFT OF OUTDOOR COOKING, HARDWOOD IS THE SECRET INGREDIENT.

That's why you'll see Traeger pellets in the same place that you'll find all the other hardwoods: in the hands of professional chefs and home cooks alike. The secret to the Traeger pellet's superior taste comes from the fact that we use only the best quality wood to make our pellets.

For more information on the benefits of Traeger pellets, visit www.traeger.com.

PROPER PELLET STORAGE

To ensure the best quality pellets, Traeger pellets should be stored in a cool, dry place. Traeger pellets are not waterproof. If you have a large quantity of pellets, it's best to store them in a sealed container. Traeger pellets are not waterproof. If you have a large quantity of pellets, it's best to store them in a sealed container.

- Do not store pellets in a sealed container for long periods of time.
- Do not store pellets in a sealed container for long periods of time.
- Do not store pellets in a sealed container for long periods of time.

For Recipes, Deals & Info
FIND US ONLINE



Dust may irritate eyes, nose, or throat. Avoid getting wood dust in eyes or inhaling.
WARNING: Inhalation of wood dust and carbon monoxide, a by-product of combustion of this product, is known by the State of California to cause cancer, birth defects, or reproductive harm.

PROPER PELLET STORAGE IS KEY TO ACHIEVING OPTIMAL GRILL PERFORMANCE. TO PRESERVE PELLET QUALITY KEEP TRAEGER PELLETS STORED INDOORS AND IN A SEALED CONTAINER.

101 TRAEGER DRIVE
2014 TRAEGER CO.
COPPER HILL, CA 95924



100% Virgin Hardwood
Traeger, Inc.
Phone: 531.227.1111

