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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,

19 Plaintiff,

20 v.

21 GOOD DIRECTIONS, INC., et al.,

22 Defendants.

Case No. CGC-16-554009

[PROPOSED] CONSENT JUDGMENT
AS TO FURNITURE OF AMERICA
CALIFORNIA, INC.

23 **1. INTRODUCTION**

24 1.1 On September 1, 2016, the Ecological Rights Foundation (“ERF”) acting on behalf
25 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-16-554009, against defendant
27 Furniture of America California, Inc., (also referred to herein as “Furniture of America” 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
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.

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.
26
27
28

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

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

16 IT IS SO STIPULATED:

17 DATED: *MARCH 8, 2017*

18 ECOLOGICAL RIGHTS FOUNDATION
Ecological Rights Foundation

19 BY: *[Signature]*
20 JAMES LAMPORT, EXECUTIVE DIRECTOR

21 DATED:

22 FURNITURE OF AMERICA CALIFORNIA,
23 INC.

24 BY: _____

25 ITS: _____

26 IT IS SO ORDERED, ADJUDGED AND DECREED:

27 DATED: _____

28 _____

JUDGE OF THE SUPERIOR COURT

1 **14. COURT APPROVAL**

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12 c/o Lei Yang
13 Agent for Service of Process
14 19223 E Colima Road #833
15 Rowland HTS, CA 91748

16 IT IS SO STIPULATED:

17 DATED: ECOLOGICAL RIGHTS FOUNDATION

18 BY: _____
19 JAMES LAMPORT, EXECUTIVE DIRECTOR

20 DATED: FURNITURE OF AMERICA CALIFORNIA,
21 INC.

22 BY: 

23 ITS: President

24 IT IS SO ORDERED, ADJUDGED AND DECREED:

25 DATED: _____

26 _____
27 JUDGE OF THE SUPERIOR COURT
28