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14 Counsel for Plaintiff,  
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 JECO, INC., COBRACO MANUFACTURING,  
22 INC., WOODSTREAM CORPORATION; and  
23 SKY BILLIARDS, INC.,

24 Defendants.

Case No. CGC-16-554011

[PROPOSED] CONSENT JUDGMENT  
(SKY BILLIARDS, INC.)

25 **1. INTRODUCTION**

26 1.1 On September 1, 2016, the Ecological Rights Foundation (“ERF”) acting on  
27 behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief  
28 (“Complaint”) in San Francisco Superior Court, Case No. CGC-16-554011, against defendant  
Sky Billiards, Inc., (also referred to herein as “Sky Billiards” or “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 (“Covered Products”), that use of those

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

5       1.2 Defendant is a business that employs more than ten persons, and manufactures,  
6 distributes, and sells Covered Products. The combustion of wood creates significant amounts of  
7 carbon monoxide to be released into the air, causing inhalation exposures to those using or  
8 standing near the Covered Products when they are in use. Pursuant to Health and Safety Code  
9 Section 25249.8, carbon monoxide is a chemical known to the State of California to cause  
10 reproductive toxicity. ERF alleges that Covered Products that are manufactured, distributed or  
11 sold by Defendant for use in California require a warning under Proposition 65, pursuant to  
12 Health and Safety Code Section 25249.6. For purposes of this Consent Judgment, the parties  
13 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
14 Complaint and personal jurisdiction over Sky Billiards, that venue is proper in the County of San  
15 Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement  
16 and resolution of the allegations contained in the Complaint.

17       1.3 This Consent Judgment resolves claims that are denied and disputed. The parties  
18 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
19 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment  
20 shall not constitute an admission with respect to any material allegation of the Complaint, each  
21 and every allegation of which Sky Billiards denies, nor may this Consent Judgment, or  
22 compliance with it, be used as evidence of any wrongdoing, misconduct, culpability or liability  
23 on the part of Sky Billiards.

24       1.4 The term “Effective Date” means the date this Consent Judgment is entered by the  
25 Court.  
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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  
13 Covered Product’s instruction booklet. The warning shall be prominently affixed to or printed  
14 on the 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  
17 under customary conditions of purchase or use. A warning may be contained in the same section  
18 of the instruction booklet that contains other safety warnings concerning the use of the Covered  
19 Product. The type size of the warning must be legible, and no smaller than any other warning  
20 provided with the Covered Product. The word “**WARNING:**” shall be in upper case letters and  
21 bold text.

22 **2.2 Reporting**

23 No later than 75 days after the Effective Date, Defendant shall provide a report to ERF  
24 documenting its compliance with paragraph 2.1. The report shall include photographs of the  
25 warning posting and documentation that the warnings are being included with Covered Products  
26 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), Sky Billiards shall pay  
4 \$10,000 in civil penalties. The penalty payment will be allocated in accordance with California  
5 Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted  
6 to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the  
7 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 \$7,500, and 2) “Ecological Rights Foundation” in the amount of \$2,500.

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  
12 the Complaint concerning Covered Products, Sky Billiards shall pay \$25,000 to the Ecology Law  
13 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) in the public interest,  
24 and Sky Billiards 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  
26 that any of the foregoing described in (i) or (ii) were or could have been asserted by any person  
27 or entity against Sky Billiards or its parents, subsidiaries or affiliates, and all of their suppliers,  
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1 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 failure to provide clear and  
4 reasonable warnings of exposures to carbon monoxide from Covered Products. As to alleged  
5 exposures to carbon monoxide from Covered Products, compliance with the terms of this  
6 Consent Judgment resolves any issue, now and in the future, concerning compliance by Sky  
7 Billiards and the Released Entities, with the requirements of Proposition 65 with respect to  
8 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, Sky Billiards and ERF waive their respective rights to a  
12 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  
23 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
24 any party 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  
27 terms 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  
4 of 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  
18 deemed 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  
22 provisions of California law.

23 **13. EXECUTION AND COUNTERPARTS**

24 13.1 This Consent Judgment may be executed in counterparts which taken together  
25 shall be deemed to constitute one document.  
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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  
6 personal 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

12 If to Sky Billiards, Inc.:

13 IT IS SO STIPULATED:

14 DATED: APRIL 12, 2017

15 ECOLOGICAL RIGHTS FOUNDATION  
16 *Ecological Rights Foundation*  
17 BY: *James Lampton* EXEC. DIR.  
18 JAMES LAMPORT, EXECUTIVE DIRECTOR

19 DATED: 4/7/17

20 SKY BILLIARDS, INC.  
21 BY: \_\_\_\_\_  
22 ITS: *President*

23 IT IS SO ORDERED, ADJUDGED AND DECREED:

24 DATED: \_\_\_\_\_

25 \_\_\_\_\_  
26 JUDGE OF THE SUPERIOR COURT  
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