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9 ECOLOGICAL RIGHTS FOUNDATION

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**

13 ECOLOGICAL RIGHTS FOUNDATION,

14 Plaintiff,

15 v.

16 JECO, INC., COBRACO MANUFACTURING,
17 INC., WOODSTREAM CORPORATION; and
SKY BILLIARDS, INC.,

18 Defendant.

CASE NO. CGC-16-554011

[PROPOSED] CONSENT JUDGMENT
(WOODSTREAM CORPORATION)

20 **1. INTRODUCTION**

21 1.1 On September 1, 2016, the Ecological Rights Foundation (“ERF”), acting on
22 behalf of itself and the general public, initiated this action by filing its Complaint for civil
23 penalties and injunctive relief (“Complaint”) against (among others) defendant Woodstream
24 Corporation (“Woodstream” or “Defendant”). On November 17, 2016, ERF voluntarily
25 dismissed defendant CobraCo Manufacturing, Inc. from the Complaint. The Complaint alleges,
26 among other things, that Woodstream violated provisions of the Safe Drinking Water and Toxic
27 Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”),
28 by failing to give clear and reasonable warnings to residents of California that use of wood-

1 burning outdoor heating products, such as the fire pits manufactured, sold and/or distributed by or
2 on behalf of Woodstream (the “Covered Products”), causes exposure to carbon monoxide, a
3 chemical known to the State of California to cause reproductive toxicity. Woodstream filed its
4 Answer to the Complaint on December 9, 2016, in which it denied all material allegations of the
5 Complaint and asserted numerous affirmative defenses. ERF and Woodstream shall sometimes
6 be referred to individually as a “Party” or together as the “Parties.”

7 1.2 The Complaint was based upon a 60-Day Notice letter, sent by ERF on June 9,
8 2016 to Woodstream, the California Attorney General, all District Attorneys, and all City
9 Attorneys with populations exceeding 750,000 (the “Notice Letter”). A true and correct copy of
10 the Notice Letter is attached hereto as Exhibit A. No public enforcer has filed suit against
11 Woodstream with regard to the Covered Products or the alleged violations.

12 1.3 Woodstream is a business that employs more than ten persons, and arranged the
13 manufacture, distribution, and sale of Covered Products until it sold this line of business to MAT
14 Holdings, Inc. in September 2016. ERF contends that the combustion of wood creates significant
15 amounts of carbon monoxide to be released into the air, causing inhalation exposures to those
16 using or standing near the Covered Products when they are in use. Thus, ERF alleges that the
17 Covered Products require a warning under Proposition 65, pursuant to Health and Safety Code
18 Section 25249.6. Woodstream denies that use of its Covered Products creates an exposure
19 requiring a warning under Proposition 65, and denies that it has violated Proposition 65.

20 1.4 For purposes of this Consent Judgment, the parties stipulate that this Court has
21 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
22 over Woodstream as to the acts alleged in the Complaint, that venue is proper in the County of
23 San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full and
24 final resolution of all claims which were or could have been asserted in this action based on the
25 facts alleged in the Notice Letter or in the Complaint.

26 1.5 The Parties have entered into this Consent Judgment in order to settle, compromise
27 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
28 Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by

1 any of their respective officers, directors, shareholders, employees, agents, parent companies,
2 subsidiaries, divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers,
3 retailers, or successors in interest, of any fact, conclusion of law, issue of law, violation of law,
4 fault, wrongdoing, or liability, including without limitation, any admission concerning any
5 alleged violation of Proposition 65 or any other statutory, regulatory, common law, or equitable
6 doctrine, or the meaning of the terms "knowingly and intentionally expose" or "clear and
7 reasonable warning" as used in Cal. Health & Safety Code § 25249.6. This Consent Judgment
8 shall not be offered or admitted as evidence in any administrative or judicial proceeding or
9 litigation in any court, agency, or forum, except in an action seeking to enforce the terms of this
10 Consent Judgment. Nor may this Consent Judgment, or compliance with it, be used as evidence
11 of any wrongdoing, misconduct, culpability or liability on the part of Woodstream.

12 1.6 The term "Effective Date" means the date this Consent Judgment is entered by the
13 Court. The term "Compliance Deadline" means the date sixty (60) days after the Effective Date.

14 2. INJUNCTIVE RELIEF

15 2.1 Warnings

16 A Covered Product that is (1) manufactured by or on behalf of Woodstream or MAT
17 Holdings on or after the Compliance Deadline; and (2) distributed or offered for sale in California
18 by or on behalf of Woodstream or MAT Holdings on or after the Compliance Deadline, shall
19 include one of the following warning statements:

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

23 Or,

24 **WARNING:** Combustion byproducts produced when using this product include carbon
25 monoxide and other chemicals known to the State of California to cause cancer and birth
26 defects or other reproductive harm.

27 The warning statements shall be affixed to or printed on exterior of the unit package of the
28 Covered Product and the Covered Product's instruction booklet. The warning shall be

1 prominently affixed to or printed on the Covered Product’s unit package and instruction booklet
2 and displayed with such conspicuousness, as compared with other words, statements or designs,
3 as to render it likely to be read and understood by an ordinary individual under customary
4 conditions of purchase or use. The warning may be contained in the same section of the
5 instruction booklet that contains other safety warnings concerning use of the Covered Product.
6 The type size of the warning must be legible, and no smaller than any other warning provided
7 with the Covered Product. The word “**WARNING:**” shall be in upper case letters and bold text.

8 2.2 The warning requirements set forth in Section 2.1 above are imposed pursuant to
9 the terms of this Consent Judgment. The Parties recognize that these are not the exclusive
10 methods of providing a warning under Proposition 65 and its implementing regulations and that
11 they may or may not be appropriate in other circumstances.

12 2.3 If Proposition 65 warnings for carbon monoxide should no longer be required,
13 either by statutory or regulatory amendments or court order, and Woodstream or MAT Holdings
14 desires to modify or cease implementing the warnings required under this Consent Judgment,
15 they may, by stipulation with ERF or noticed motion, seek modification of this Consent Judgment
16 by the Court.

17 2.4 **Reporting**

18 No later than 30 days after the Compliance Deadline, MAT Holdings shall provide a
19 report to ERF documenting compliance with Section 2.1. The report shall include photographs of
20 the warning affixed to the unit package and included in the instruction booklet, and confirmation
21 that the warnings are being included with Covered Products that are offered for sale in California.

22 **3. SETTLEMENT PAYMENTS**

23 3.1 **Civil Penalty**

24 Pursuant to Health and Safety Code section 25249.7(b), Woodstream shall pay a civil
25 penalty of Fifteen Thousand Dollars (\$15,000). The penalty payment will be allocated in
26 accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of
27 the penalty amount paid to the California Office of Environmental Health Hazard Assessment
28 (“OEHHA”), and the remaining 25% of the penalty amount paid to Ecological Rights Foundation.

1 Woodstream will provide these payments to ERF’s counsel in two checks, as follows: 1) one
2 made payable to “OEHHA” in the amount of Eleven Thousand Two Hundred Fifty Dollars
3 (\$11,250), and 2) the second made payable to “Ecological Rights Foundation” in the amount of
4 Three Thousand Seven Hundred Fifty Dollars (\$3,750). ERF shall be responsible for forwarding
5 OEHHA’s payment to OEHHA.

6 **3.2 Attorneys’ Fees and Litigation Costs**

7 Woodstream shall pay and will not oppose an application made by ERF’s counsel for an
8 award of attorney fees, inclusive of all expenses and costs incurred as a result of investigating,
9 bringing this matter to Woodstream’s attention, litigating, negotiating and obtaining judicial
10 approval of a settlement in the public interest, pursuant to Code of Civil Procedure section
11 1021.5, in an amount of Twenty Thousand Dollars (\$20,000). Woodstream shall provide this
12 payment to ERF’s counsel by check made payable to “Ecology Law Center.” Other than the
13 payment required hereunder, each side is to bear its own attorney’s fees and costs (including but
14 not limited to expert and consultant fees, if any).

15 **3.3 Payments**

16 All payments required by Sections 3.1 and 3.2 above shall be sent no later than 10 days
17 after the Effective Date via certified mail, return receipt requested, to the following address:

18 Fredric Evenson
19 Ecology Law Center
20 P.O. Box 1000
21 Santa Cruz, CA 95061

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

23 4.1 This Consent Judgment is a full, final, and binding resolution between ERF acting
24 in the public interest, and Woodstream, MAT Holdings, Inc.(which has purchased the product
25 line including the Covered Products from Woodstream), and each of their respective parent
26 companies, officers, directors, shareholders, divisions, subdivisions, subsidiaries, partners, sister
27 companies, affiliates, employees, agents, and their respective successors and assigns (hereinafter,
28 collectively, “Defendant Releasees”), and all persons and entities from whom they obtain and/or
to whom they directly or indirectly distribute or sell Covered Products, including but not limited

1 to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers,
2 franchisees, cooperative members, and all other entities in the distribution chain down to the
3 consumers of any Covered Products, and their respective successors and assigns (collectively,
4 “Downstream Defendant Releasees”), of all claims for alleged violation of Proposition 65 as
5 described in the Notice Letter that have been or could have been asserted in this action regarding
6 any alleged exposure to carbon monoxide in or from use of any Covered Products manufactured,
7 distributed or sold by or on behalf of Woodstream or MAT Holdings prior to the Compliance
8 Deadline (hereinafter, the “Released Claims”). ERF, acting in the public interest, releases,
9 waives and forever discharges Defendant Releasees and Downstream Defendant Releasees from
10 the Released Claims. Compliance with the terms of this Consent Judgment constitutes
11 compliance with Proposition 65 with regard to any alleged exposure to carbon monoxide in or
12 from use of the Covered Products.

13 4.2 ERF and Woodstream recognize that other claims not known to the Parties may
14 exist concerning the Covered Products. Accordingly, the Parties, on behalf of themselves and
15 each of their respective past and current agents, representatives, attorneys, successors, and/or
16 assignees, provide each other and Defendant Releasees and Downstream Defendant Releasees
17 with a mutual general release, which shall be effective as a full and final accord and satisfaction,
18 and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages,
19 losses, claims, liabilities and demands of any nature, character or kind, known or unknown, fixed
20 or contingent, suspected or unsuspected, now or in the future, arising out of any alleged failure to
21 warn about carbon monoxide exposures from the use of Covered Products manufactured,
22 distributed or sold by or on behalf of Woodstream or MAT Holdings prior to the Compliance
23 Deadline. The Parties acknowledge that they are familiar with Section 1542 of the California
24 Civil Code, which provides as follows:

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

1 The Parties hereby expressly waive and relinquish any and all rights and benefits which they
2 may have under, or which may be conferred on them by, the provisions of Section 1542 of the
3 California Civil Code, as well as under any other state or federal statute or common law principle
4 of similar effect, to the fullest extent that they may lawfully waive such rights or benefits
5 pertaining to the matters released in Sections 4.1 and 4.2. In furtherance of such intention, the
6 release hereby given shall be and remain in effect as a full and complete release notwithstanding
7 the discovery or existence of any additional or different claims or facts arising out of the released
8 matters.

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 this Consent Judgment, Woodstream 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 of this
17 Consent Judgment.

18 6.2 In any proceeding brought by either Party to enforce this Consent Judgment, such
19 Party may seek to recover from the other Party whatever penalties, fees, costs or injunctive
20 remedies as may be provided by law for any violation of Proposition 65 or this Consent
21 Judgment.

22 **7. MODIFICATION AND CONSTRUCTION OF JUDGMENT**

23 7.1 This Consent Judgment may be modified only upon written agreement of the
24 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
25 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

26 7.2 The terms and conditions of this Consent Judgment have been reviewed by the
27 Parties' respective counsel, and each Party has had the opportunity to fully discuss the terms and
28 conditions with its counsel. In any subsequent interpretation or construction of this Consent

1 Judgment, the terms and conditions shall not be construed against any Party based on any role it
2 or its counsel may have played in drafting this Consent Judgment.

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

4 8.1 This Court shall retain jurisdiction of this matter to implement, modify and enforce
5 the terms and conditions of this Consent Judgment.

6 **9. AUTHORITY TO STIPULATE**

7 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the Party he or she represents to enter into this Consent Judgment, to execute it on behalf of
9 the Party represented, and legally to bind that Party to the terms and conditions of this Consent
10 Judgment.

11 **10. SERVICE ON THE ATTORNEY GENERAL; MOTION FOR APPROVAL AND**
12 **ENTRY**

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 and entry. No sooner than forty
16 five (45) days after the Attorney General has received the aforementioned copy of this Consent
17 Judgment, and in the absence of any written objection by the Attorney General to the terms of this
18 Consent Judgment, the Parties shall seek court approval of the settlement and entry of this
19 Consent Judgment under California Health and Safety Code section 25249.7(f)(4) . If the
20 Attorney General objects to the Consent Judgment, the Parties shall meet and confer in good faith
21 to modify the terms and conditions of this Consent Judgment to address the Attorney General's
22 objections. If the Parties are not able to reach agreement on the necessary modifications, this
23 Consent Judgment shall be null and void.

24 10.2 If this Consent Judgment is not approved and entered by the Court, it shall be of no
25 force or effect, and cannot be used in any proceeding for any purpose.

26 **11. ENTIRE AGREEMENT**

27 11.1 This Consent Judgment contains the sole and entire agreement and understanding
28 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,

1 negotiations, commitments and understandings related hereto. No representations, oral or
2 otherwise, express or implied, other than those contained herein have been made by any Party
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
4 deemed to exist or to bind any of the Parties.

5 **12. GOVERNING LAW**

6 12.1 The validity, construction and performance of this Consent Judgment shall be
7 governed by the laws of the State of California, without reference to any conflicts of law
8 provisions of California law.

9 **13. EXECUTION AND COUNTERPARTS**

10 13.1 This Consent Judgment may be executed in counterparts and by portable document
11 format (.pdf) signature, which taken together shall constitute one document.



12 **14. NOTICES**

13 14.1 Any notices or payments due under this Consent Judgment shall be sent by
14 personal delivery, overnight courier, or certified mail, return receipt requested, to the following:

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

19 If to Woodstream Corporation: Andrew Church
20 EVP & Chief Financial Officer
21 Woodstream Corporation
22 69 N. Locust Street
23 Lititz, PA 17543

24 **APPROVED AS TO FORM:**

25 26 27 28	Date : <u>4/20</u> , 2017 By:  On Behalf of Ecological Rights Foundation Fredric Evenson ECOLOGY LAW CENTER	Date: <u>April 19</u> , 2017 By:  On Behalf of Woodstream Corporation Thomas M. Donnelly JONES DAY
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IT IS SO STIPULATED:

DATED: APRIL 19, 2017

ECOLOGICAL RIGHTS FOUNDATION
Ecological Rights Foundation
BY: James Lampion, EXEC. DIR.
JAMES LAMPION, EXECUTIVE DIRECTOR

DATED: 4/19/17

WOODSTREAM CORPORATION
BY: [Signature]
ITS: EVP & CFO

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____ JUDGE OF THE SUPERIOR COURT