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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., et al.,

22 Defendants.

Case No. CGC-16-554011

[PROPOSED] CONSENT JUDGMENT
AS TO JECO, INC.

1 **1. INTRODUCTION**

2 1.1 On September 1, 2016, the Ecological Rights Foundation (“ERF”) acting on
3 behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief
4 (“Complaint”) in San Francisco Superior Court, Case No. CGC-16-554011, against defendant
5 Jeco, Inc., (also referred to herein as “Jeco” or “Defendant”). The Complaint alleges, among
6 other things, that Defendant violated provisions of the Safe Drinking Water and Toxic
7 Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (Proposition 65) by
8 failing to give clear and reasonable warnings to those residents of California who use wood-
9 burning outdoor heating products, such as firepits and chimineas (“Covered Products”), that use
10 of those products causes exposures to carbon monoxide. Carbon monoxide is a chemical known
11 to the State of California to cause reproductive toxicity. The Complaint was based upon a 60-
12 Day Notice letter dated June 9, 2016, sent by ERF to Jeco, the California Attorney General, all
13 District Attorneys, and all City Attorneys with populations exceeding 750,000.

14 1.2 Defendant is a business that employs more than ten persons, and manufactures,
15 distributes, and sells Covered Products, including but not limited to wood fire pits. ERF alleges
16 the combustion of wood creates significant amounts of carbon monoxide to be released into the
17 air, causing inhalation exposures to those using or standing near the Covered Products when they
18 are in use. Pursuant to Health and Safety Code Section 25249.8, carbon monoxide is a chemical
19 known to the State of California to cause reproductive toxicity. ERF alleges that Covered
20 Products that are manufactured, distributed or sold by Defendant for use in California require a
21 warning under Proposition 65, pursuant to Health and Safety Code Section 25249.6. For
22 purposes of this Consent Judgment, the parties stipulate that this Court has jurisdiction over the
23 allegations of violations contained in the Complaint and personal jurisdiction over Jeco, Inc., that
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
25 Consent Judgment as a full settlement and resolution of the allegations contained in the
26 Complaint.

1 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
2 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
3 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
4 shall not constitute an admission with respect to any material allegation of the Complaint, each
5 and every allegation of which Jeco denies, nor may this Consent Judgment, or compliance with
6 it, be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
7 Jeco.

8 1.4 The term “Effective Date” means the date this Consent Judgment is entered by the
9 Court.

10 **2. INJUNCTIVE RELIEF**

11 2.1 Warnings

12 No later than 60 days after the Effective Date, Covered Products manufactured and
13 offered for sale in California shall include one of the following warning statements:

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

17 Or,

18 **WARNING:** This product can expose you to carbon monoxide, which is a combustion
19 byproduct known to the State of California to cause birth defects or other reproductive
20 harm. For more information go to www.P65Warnings.ca.gov.

21 The word “**WARNING**” shall be in all capital letters and bold print. Trademark may utilize a
22 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
23 outline. The required warning statements shall be affixed to or printed on the Covered Product
24 itself and the Covered Product’s instruction manual. The warning shall be prominently affixed
25 to or printed on the Covered Product and its instruction manual, and displayed with such
26 conspicuousness, as compared with other words, statements, designs, or devices on the Covered
27 Product and its instruction manual, as to render it likely to be read and understood by an ordinary
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1 individual under customary conditions of purchase or use. A warning may be contained in the
2 same section of the instruction manual that contains other safety warnings concerning the use of
3 the Covered Product. The type size of the warning must be legible, and no smaller than any
4 other warning provided with the Covered Product.

5 2.2 Reporting

6 No later than 75 days after the Execution Date, Defendant shall provide a report to ERF
7 documenting its compliance with paragraph 2.1. The report shall include photographs of the
8 warning posting and documentation that the warnings are being included with Covered Products
9 that are offered for sale in California.

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), Jeco shall pay \$4,000 in civil
13 penalties. The penalty payment will be allocated in accordance with California Health and Safety
14 Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California
15 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
16 penalty amount paid to Ecological Rights Foundation. Defendant will provide these payments in
17 two checks for the following amounts made payable to: 1) “OEHHA” in the amount of \$3,000,
18 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, Jeco shall pay \$18,000 to the Ecology Law Center
22 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, to the following addresses: All payments to Ecological
26 Rights Foundation and Ecology Law Center shall be delivered to:
27
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 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

12 4.1 This Consent Judgment is a final and binding resolution between ERF, acting on
13 behalf of itself and (as to those matters raised in the 60-Day Notice Letter) the general public,
14 and Jeco of: (i) any violation of Proposition 65 (including but not limited to the claims made in
15 the Complaint); and (ii) any other statutory or common law claim to the fullest extent that any of
16 the foregoing described in (i) or (ii) were or could have been asserted by any person or entity
17 against Jeco or its parents, subsidiaries or affiliates, and all of their suppliers, customers,
18 distributors, wholesalers, retailers, or any other person in the course of doing business, and the
19 successors and assigns of any of them, who may use, maintain, distribute or sell Covered
20 Products (“Released Entities”), based on its or their exposures of persons to carbon monoxide
21 from Covered Products and their failure to provide a clear and reasonable warning of exposure to
22 such individuals. As to alleged exposures to carbon monoxide from Covered Products,
23 compliance with the terms of this Consent Judgment resolves any issue in the past, now and in
24 the future, concerning compliance by Jeco and the Released Entities, with the requirements of
25 Proposition 65 with respect to Covered Products, and any alleged resulting exposure.

26 4.2 It is possible that other claims not known to the Parties, arising out of the facts
27 alleged in the Notice or the Complaint and relating to the Covered Products, will develop or be
28 discovered. ERF on behalf of itself only, acknowledges that this Consent Judgment is expressly
intended to cover and include and release all such claims up through and including the Effective

1 Date, including all rights of action therefor. ERF acknowledges that the claims released above
2 may include unknown claims, and nevertheless waive California Civil Code Section 1542 as to
3 any such unknown claims. California Civil Code Section 1542 reads as follows:

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

9 ERF on behalf of itself only, acknowledges and understands the significance and consequences
10 of this specific waiver of California Civil Code Section 1542.

11 **5. ENTRY OF CONSENT JUDGMENT**

12 5.1 The parties hereby request that the Court promptly enter this Consent Judgment.
13 Upon entry of the Consent Judgment, Jeco and ERF waive their respective rights to a hearing or
14 trial on the allegations of the Complaint.

15 **6. ENFORCEMENT OF JUDGMENT**

16 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
17 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
18 San Francisco County, giving the notice required by law, enforce the terms and conditions
19 contained herein.

20 6.2 In any proceeding brought by either party to enforce this Consent Judgment, such
21 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
22 violation of Proposition 65 or this Consent Judgment.

23 **7. MODIFICATION OF JUDGMENT**

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

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

28 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
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 Jeco California, Inc.: Tim Yu Juang
13 Jeco, Inc.
14 623 S Doubleday Avenue
15 Ontario, California, 91761, USA

16 IT IS SO STIPULATED:

17 DATED: June 15, 2017

18 ECOLOGICAL RIGHTS FOUNDATION
19 *Ecological Rights Foundation*

20 BY: *James Lampton*, EXEC. DIR.
21 JAMES LAMPORT, EXECUTIVE DIRECTOR

22 DATED: _____

23 JECO, INC.
24 BY: _____
25 ITS: _____

26 IT IS SO ORDERED, ADJUDGED AND DECREED:

27 DATED: _____
28 _____

JUDGE OF THE SUPERIOR COURT