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Case No. CGC-16-554270

Plaintiff,
v.

AOSOM, LLC., et al.,

Defendants.

[PROPOSED] CONSENT JUDGMENT
AS TO AOSOM, LLC

1. **INTRODUCTION**

1.1 On September 15, 2016, the Ecological Rights Foundation (“ERF”) acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco, Superior Court, Case No. CGC-16-554270, against defendant

1 AOSOM, LLC (also referred to herein as “AOSOM” or “Defendant”). The Complaint alleges,
2 among other things, that Defendant violated provisions of the Safe Drinking Water and Toxic
3 Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (Proposition 65) by
4 failing to give clear and reasonable warnings to those residents of California who use wood-
5 burning outdoor heating products (such as fire pits, fire bowls, and chimineas) that use of those
6 products causes exposures to carbon monoxide. Carbon monoxide is a chemical known to the
7 State of California to cause reproductive toxicity. The Complaint was based upon a 60-Day
8 Notice letter dated June 9, 2016, sent by ERF to AOSOM, the California Attorney General, all
9 District Attorneys, and all City Attorneys with populations exceeding 750,000.

10 1.2 ERF alleges that wood-burning outdoor heating products that are manufactured,
11 distributed or sold by Defendant for use in California (“Covered Products”) require a warning
12 under Proposition 65, pursuant to Health and Safety Code Section 25249.6. Defendant is a
13 business that employs more than ten persons, and manufactures, distributes, and sells its own
14 brand(s) of Covered Products. Pursuant to Health and Safety Code Section 25249.8, carbon
15 monoxide is a chemical known to the State of California to cause reproductive toxicity. The
16 combustion of wood creates significant amounts of carbon monoxide to be released into the air,
17 causing inhalation exposures to those using or standing near the Covered Products when they are
18 in use. For purposes of this Consent Judgment, the parties stipulate that this Court has jurisdiction
19 over the allegations of violations contained in the Complaint and personal jurisdiction over
20 AOSOM, that venue is proper in the County of San Francisco, and that this Court has jurisdiction
21 to enter this Consent Judgment as a full settlement and resolution of the allegations contained in
22 the Complaint.

23 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
24 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
25 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
26 not constitute an admission with respect to any material allegation of the Complaint, each and

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28 //

1 every allegation of which AOSOM denies, nor may this Consent Judgment, or compliance with
2 it, be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
3 AOSOM.

4 1.4 The term "Effective Date" means the date this Consent Judgment is entered by the
5 Court. The term "Execution Date" means the date this Consent Judgment has been executed by
6 all the parties.

7 **2. INJUNCTIVE RELIEF**

8 2.1 Warnings

9 No later than 60 days after the Execution Date, Covered Products offered for sale in
10 California shall include one of the following warning statements:

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

14 Or,

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

18 The word "**WARNING**" shall be in all capital letters and bold print. AOSOM may utilize a
19 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
20 outline.

21 The required warning statements shall be affixed to or printed on the Covered Product
22 itself and the Covered Product's instruction manual. The warning shall be prominently affixed to
23 or printed on the Covered Product and its instruction manual, and displayed with such
24 conspicuousness, as compared with other words, statements, designs, or devices on the Covered
25 Product and its instruction manual, as to render it likely to be read and understood by an ordinary
26 individual under customary conditions of purchase or use. A warning may be contained in the
27 same section of the instruction manual that contains other safety warnings concerning the use of
28 the Covered Product. The type size of the warning must be legible, and no smaller than any other

1 warning provided with the Covered Product. The word “**WARNING:**” shall be in upper case
2 letters and bold text.

3 2.2 Reporting

4 No later than 75 days after the Execution Date, Defendant shall provide a report to ERF
5 documenting its compliance with the warning requirements of paragraph 2.1 and the civil penalty
6 payments required in paragraph 3.1. The report shall include photographs of the warning posting
7 and documentation that the warnings are being included with Covered Products that are offered
8 for sale in California.

9 3. **SETTLEMENT PAYMENTS**

10 3.1 Civil Penalties and Payments In Lieu of Penalties

11 Pursuant to Health and Safety Code section 25249.7(b)(2), AOSOM shall pay \$5,000 in
12 civil penalties. The penalty payment will be allocated in accordance with California Health and
13 Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the
14 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
15 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will provide these
16 payments in two checks for the following amounts made payable to: 1) “OEHHA” in the amount
17 of \$3,750, and 2) “Ecological Rights Foundation” in the amount of \$1,250.

18 3.2 Attorneys’ Fees and Litigation Costs

19 In settlement of all of the claims that are alleged, or could have been alleged, in the
20 Complaint concerning Covered Products, AOSOM shall pay \$17,500 to the Ecology Law Center
21 to cover Plaintiff’s attorneys’ fees and costs.

22 3.3 Payments

23 Payments shall be sent no later than 10 days after the Effective Date via USPS certified
24 mail, return receipt requested, to the following addresses:

25 All payments to Ecological Rights Foundation and Ecology Law Center shall be made by check
26 payable to the Ecology Law Center Attorney Client Trust Account and 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) in the public interest,
14 and AOSOM of: (i) any violation of Proposition 65 (including but not limited to the claims made
15 in the Complaint); and (ii) any other statutory or common law claim to the fullest extent that any
16 of the foregoing described in (i) or (ii) were or could have been asserted by any person or entity
17 against AOSOM 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 or 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, now and in the future,
24 concerning compliance by AOSOM 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 all such claims up through and including the Effective Date,

1 including all rights of action therefor. ERF acknowledges that the claims released above may
2 include unknown claims, and nevertheless waive California Civil Code Section 1542 as to any
3 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 OR
8 HER SETTLEMENT WITH THE DEBTOR.

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

11 4.3 Covered Products include, but are not limited to, the following products:

12 Model #	Title
13 01-0329	Outsunny Backyard Charcoal BBQ Grill/Offset Smoker Combo with Wheels
14 01-0427	Outsunny Outdoor Craftsman Style Square Backyard Patio Fire Pit, 29-Inch
15 01-0428	Outsunny Outdoor Mission Style Square Backyard Patio Fire Pit, 33-Inch
16 01-0682	Outsunny Round Backyard Patio Grill Firepit, 30-Inch
17 01-0683	Outsunny Deluxe Lantern-style Backyard Patio Fire Pit
18 01-0734	Outsunny Deluxe Chiminea Backyard Patio Fire Pit
19 01-0735	Outsunny Square Backyard Patio Grill Firepit, 36-Inch
20 01-0839	Outsunny Square Outdoor Patio Gas Firepit with Rounded Pebbles, 38-Inch
21 5972-2113	Outsunny Square 32" Outdoor Backyard Patio Metal Firepit
22 5972-2114	Outsunny Square Outdoor Backyard Patio Firepit Table, 36-Inch
23 5972-2121	Outsunny Square Outdoor Backyard Patio Firepit Table, 32-Inch
24 842-012	Outsunny Square 32" Outdoor Backyard Patio Metal Firepit
25 842-013	Outsunny Square Outdoor Backyard Patio Firepit Table, 36-Inch
26 842-016	Outsunny 42" Square Cast Aluminum LPG Fire Pit Table – Black
27 842-017	Outsunny 48" Round Cast Aluminum LPG Fire Pit Table – Black
28 842-020	Outsunny 32" Outdoor Fire Pit Cooking Grill Combo – Black

1	842-021	Outsunny 27" Round Iron Wood-Burning Fire Pit
2	842-022	Outsunny 32" Square Iron Wood-Burning Outdoor Fire Pit – Black
3	846-010	Outsunny 22" Round Outdoor Charcoal Barbeque BBQ Grill
4	846-011	Outsunny Wood Burning/Charcoal Outdoor Fire Pit BBQ Grill Combo
5	846-012	Outsunny 24" Round Barbecue Grill Fire Pit
6	84B-034	Outsunny 5-Piece Outdoor Patio Fire Pit Seating Set - Deep Brown and Beige

7

8 **5. ENTRY OF CONSENT JUDGMENT**

9 5.1 The parties hereby request that the Court promptly enter this Consent Judgment.
10 Upon entry of the Consent Judgment, AOSOM and ERF waive their respective rights to a hearing
11 or trial on the allegations of the Complaint.

12 **6. ENFORCEMENT OF JUDGMENT**

13 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
14 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
15 San Francisco County, giving the notice required by law, enforce the terms and conditions
16 contained herein.

17 6.2 In any proceeding brought by either party to enforce this Consent Judgment, such
18 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
19 violation of Proposition 65 or this Consent Judgment.

20 **7. MODIFICATION OF JUDGMENT**

21 7.1 This Consent Judgment may be modified only upon written agreement of the
22 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
23 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

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

25 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
26 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 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
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.

26 **14. COURT APPROVAL**

27 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
28 effect, and cannot be used in any proceeding for any purpose.

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15. NOTICES

15.1 Any notices or payments due under this Consent Judgment shall be sent by personal delivery or Certified Mail.

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

If to AOSOM, LLC: Wayne Li Aosom, LLC
27150 SW Kinsman Road
Wilsonville, OR 97070

IT IS SO STIPULATED:

DATED: ECOLOGICAL RIGHTS FOUNDATION

BY: _____
JAMES LAMPORT, EXECUTIVE DIRECTOR

DATED: AOSOM, LLC

BY: Wei Li 1.27.2017
ITS: GM

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT

1 **15. NOTICES**

2 15.1 Any notices or payments due under this Consent Judgment shall be sent by
3 personal delivery or Certified Mail.

4
5 If to Ecological Rights Foundation: Fredric Evenson
6 Ecology Law Center
7 P.O. Box 1000
8 Santa Cruz, CA 95061

9
10 If to AOSOM, LLC: Wayne Li Aosom, LLC
11 27150 SW Kinsman Road
12 Wilsonville, OR 97070

13
14
15 IT IS SO STIPULATED:

16 DATED: FEB. 7, 2017

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

21 DATED: AOSOM, LLC

22 BY: _____
23 ITS: _____

24
25 IT IS SO ORDERED, ADJUDGED AND DECREED:

26 DATED:

27 _____
28 JUDGE OF THE SUPERIOR COURT