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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 JENSEN METAL PRODUCTS, INC.; ASIA
22 DIRECT, INC.; LOUGHMILLER MACHINE
23 TOOL AND DESIGN, INC.; SAFAVIEH
24 INTERNATIONAL, LLC; and KRUEGER
25 CUSTOM STEEL & MACHINING, LTD,

26 Defendants.

Case No. CGC-16-554276

[PROPOSED] CONSENT JUDGMENT
AS TO JENSEN METAL PRODUCTS,
INC.

27 **1. INTRODUCTION**

28 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-16-554276, against defendant Jensen Metal Products, Inc., (also referred to herein as “Jensen” 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

1 65) by failing to give clear and reasonable warnings to those residents of California who use wood-
2 burning outdoor heating products, such as fire pits (“Covered Products”), that use of those products
3 causes exposures to carbon monoxide. Carbon monoxide is a chemical known to the State of
4 California to cause reproductive toxicity. The Complaint was based upon a 60-Day Notice letter,
5 sent by ERF on June 27, 2016 to Jensen, the California Attorney General, all District Attorneys,
6 and all City Attorneys with populations exceeding 750,000.

7 1.2 Defendant is a business that employs more than ten persons, and manufactures,
8 distributes, and/or sells Covered Products. ERF alleges that the combustion of wood creates
9 significant amounts of carbon monoxide to be released into the air, causing inhalation exposures
10 to those using or standing near the Covered Products when they are in use. Pursuant to Health
11 and Safety Code Section 25249.8, carbon monoxide is a chemical known to the State of California
12 to cause reproductive toxicity. ERF alleges that Covered Products that are manufactured,
13 distributed and/or sold by Defendant for use in California require a warning under Proposition 65,
14 pursuant to Health and Safety Code Section 25249.6. For purposes of this Consent Judgment, the
15 parties stipulate that this Court has jurisdiction over the allegations of violations contained in the
16 Complaint and personal jurisdiction over Jensen, that venue is proper in the County of San
17 Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
18 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 Jensen denies, nor may this Consent Judgment, or compliance with it,
24 be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Jensen.

25 1.4 The term “Effective Date” means the date that ERF serves notice on Jensen that the
26 Consent Judgment has been entered by this 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:** This product can expose you to carbon monoxide, which is a combustion
10 byproduct known to the State of California to cause birth defects or other reproductive
11 harm. For more information go to www.P65Warnings.ca.gov.

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 all capital letters and
21 bold print. Defendant may utilize a symbol consisting of a black exclamation point in a yellow
22 equilateral triangle with a bold black outline.

23 **2.2 Reporting**

24 No later than 75 days after the Effective Date, Defendant shall provide a certification
25 signed by an officer or director of Defendant to ERF confirming its compliance with the warning
26 requirements of paragraph 2.1, and the payment to OEHHA pursuant to paragraphs 3.1 and 3.3.
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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), Jensen shall pay \$12,500 in
4 civil penalties. The penalty payment will be allocated in accordance with California Health and
5 Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the
6 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
7 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will provide these
8 payments in two checks for the following amounts made payable to: 1) “OEHHA” in the amount
9 of \$9,375, and 2) “Ecological Rights Foundation” in the amount of \$3,125.

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, Jensen shall pay \$20,000 to the Ecology Law Center to
13 cover Plaintiff’s attorneys’ fees and costs.

14 3.3 **Payments**

15 All Payments shall be sent no later than 10 days after the Effective Date via USPS certified mail,
16 return receipt requested, or overnight mail to the following addresses: All payments to Ecological
17 Rights Foundation and Ecology Law Center shall be delivered to:

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

20 The payment to OEHHA shall be delivered to:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
23 P.O. Box 4010
Sacramento, CA 95812-4010

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

25 4.1 This Consent Judgment is a full, final, and binding resolution between ERF, acting
26 on behalf of itself and (as to those matters raised in the 60-Day Notice Letter) in the public interest,
27 and Jensen of: (i) any violation of Proposition 65 (including but not limited to the claims made in
28

1 the Complaint); and (ii) any other statutory or common law claim to the fullest extent that any of
2 the foregoing described in (i) or (ii) were or could have been asserted by any person or entity
3 against Jensen or its parents, subsidiaries or affiliates, and all of their suppliers, customers,
4 distributors, wholesalers, retailers, any other downstream entities in the distribution chain, or any
5 other person in the course of doing business, and the successors and assigns of any of them, who
6 may use, maintain, distribute or sell Covered Products (“Released Entities”), based on its or their
7 failure to provide clear and reasonable warnings of exposures to carbon monoxide from Covered
8 Products. As to alleged exposures to carbon monoxide from Covered Products, compliance with
9 the terms of this Consent Judgment resolves any issue, now and in the future, concerning
10 compliance by Jensen and the Released Entities, with the requirements of Proposition 65 with
11 respect to Covered Products, and any alleged resulting exposure.

12 **5. ENTRY OF CONSENT JUDGMENT**

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

16 **6. ENFORCEMENT OF JUDGMENT**

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

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

24 **7. MODIFICATION OF JUDGMENT**

25 7.1 This Consent Judgment may be modified only upon written agreement of the parties
26 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party
27 as provided by law and upon entry of a modified Consent Judgment by the Court.
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1 **8. TERMINATION AND RETENTION OF JURISDICTION**

2 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
3 this Consent Judgment.

4 **9. AUTHORITY TO STIPULATE**

5 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
6 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
7 the party represented and legally to bind that party.

8 **10. SERVICE ON THE ATTORNEY GENERAL**

9 10.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the
10 California Attorney General on behalf of the parties so that the Attorney General may review this
11 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
12 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
13 and in the absence of any written objection by the Attorney General to the terms of this Consent
14 Judgment, the parties may then submit it to the Court for approval.

15 **11. ENTIRE AGREEMENT**

16 11.1 This Consent Judgment contains the sole and entire agreement and understanding
17 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
18 negotiations, commitments and understandings related hereto. No representations, oral or
19 otherwise, express or implied, other than those contained herein have been made by any party
20 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
21 to exist or to bind any of the parties.

22 **12. GOVERNING LAW**

23 12.1 The validity, construction and performance of this Consent Judgment shall be
24 governed by the laws of the State of California, without reference to any conflicts of law provisions
25 of California law.

1 **13. EXECUTION AND COUNTERPARTS**

2 13.1 This Consent Judgment may be executed in counterparts which taken together shall
3 be deemed to constitute one document.

4 **14. COURT APPROVAL**

5 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
6 effect, and cannot be used in any proceeding for any purpose.

7 **15. NOTICES**

8 15.1 Any notices or payments due under this Consent Judgment shall be sent by personal
9 delivery, Certified Mail, or overnight mail.

10
11 If to Ecological Rights Foundation: Fredric Evenson
12 Ecology Law Center
13 P.O. Box 1000
Santa Cruz, CA 95061

14 If to Jensen Metal Products, Inc.: Melissa A. Jones
15 Stoel Rives, LLP
16 500 Capitol Mall, Ste. 1600
17 Sacramento, CA 95814
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IT IS SO STIPULATED:

DATED:

ECOLOGICAL RIGHTS FOUNDATION

BY: _____
JAMES LAMPORT, EXECUTIVE DIRECTOR

DATED:

JENSEN METAL PRODUCTS, INC.

BY: _____

ITS: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

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IT IS SO STIPULATED:

DATED: *MAY 24, 2017*

ECOLOGICAL RIGHTS FOUNDATION
Ecological Rights Foundation

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

DATED:

JENSEN METAL PRODUCTS, INC.

BY: _____

ITS: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

1 IT IS SO STIPULATED:

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3 DATED:

ECOLOGICAL RIGHTS FOUNDATION

4
5 BY: _____
6 JAMES LAMPORT, EXECUTIVE DIRECTOR

7 DATED:

JENSEN METAL PRODUCTS, INC.

8 *June 1, 2017*

9 BY: *Greta S. Jensen*
10 ITS: *President*

11
12 IT IS SO ORDERED, ADJUDGED AND DECREED:

13
14 DATED: _____

15 _____
16 JUDGE OF THE SUPERIOR COURT