

1 Fredric Evenson (State Bar No. 198059)  
2 ECOLOGY LAW CENTER  
3 P.O. Box 1000  
4 Santa Cruz, California 95061  
5 Telephone: (831) 454-8216  
6 Email: evenson@ecologylaw.com

7 Christopher Sproul (Bar No. 126398)  
8 ENVIRONMENTAL ADVOCATES  
9 5135 Anza Street  
10 San Francisco, California 94121  
11 Telephone: (415) 533-3376, (510) 847-3467  
12 Facsimile: (415) 358-5695  
13 Email: csproul@enviroadvocates.com

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  
23 MACHINE TOOL AND DESIGN, INC.;  
24 SAFAVIEH INTERNATIONAL, LLC; and  
25 KRUEGER CUSTOM STEEL &  
26 MACHINING, LTD,

27 Defendants.

Case No. CGC-16-554276

[PROPOSED] CONSENT JUDGMENT  
AS TO SAFAVIEH  
INTERNATIONAL, LLC

28 **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-16-554276, against defendant Safavieh International, LLC, (also referred to herein as “Safavieh” or “Defendant”). The Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking

1 Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.*  
2 (Proposition 65) by failing to give clear and reasonable warnings to those residents of California  
3 who use wood- burning outdoor heating products, such as fire pits (“Covered Products”), that use  
4 of those products causes exposures to carbon monoxide. Carbon monoxide is a chemical known  
5 to the State of California to cause reproductive toxicity. The Complaint was based upon a 60-Day  
6 Notice letter, sent by ERF on June 27, 2016 to Safavieh, the California Attorney General, all  
7 District Attorneys, and all City Attorneys with populations exceeding 750,000.

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

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

26 1.4 The term “Effective Date” means the date this Consent Judgment is entered by the  
27 Court.  
28

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](http://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 Execution 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.  
27  
28

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), Safavieh shall pay \$5,000 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 \$3,750, and 2) “Ecological Rights Foundation” in the amount of \$1,250.

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, Safavieh shall pay \$25,000 to the Ecology Law Center  
13 to 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, to the following addresses: All payments to Ecological Rights Foundation  
17 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 final and binding resolution between ERF, acting on  
26 behalf of itself and (as to those matters raised in the 60-Day Notice Letter) in the public interest,  
27 and Safavieh of: (i) any violation of Proposition 65 (including but not limited to the claims made  
28

1 in the Complaint); and (ii) any other statutory or common law claim to the fullest extent that any  
2 of the foregoing described in (i) or (ii) were or could have been asserted by any person or entity  
3 against Safavieh or its parents, subsidiaries or affiliates, and all of their suppliers, customers,  
4 distributors, wholesalers, retailers, or any other person in the course of doing business, and the  
5 successors and assigns of any of them, who may use, maintain, distribute or sell Covered Products  
6 (“Released Entities”), based on its or their failure to provide clear and reasonable warnings of  
7 exposures to carbon monoxide from Covered Products. As to alleged exposures to carbon  
8 monoxide from Covered Products, compliance with the terms of this Consent Judgment resolves  
9 any issue, now and in the future, concerning compliance by Safavieh and the Released Entities,  
10 with the requirements of Proposition 65 with respect to Covered Products, and any alleged  
11 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, Safavieh and ERF waive their respective rights to a hearing  
15 or 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.  
28

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 or Certified 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 Safavieh International, LLC: Barbara R. Adams  
15 Adams Nye Becht LLP  
16 222 Kearny Street, 7<sup>th</sup> Floor  
San Francisco, CA 94108

17 IT IS SO STIPULATED:

18 DATED: FEBRUARY 13, 2018

18 ECOLOGICAL RIGHTS FOUNDATION

*Ecological Rights Foundation*

19 BY: *James Lampert, EXEC. DIR.*  
20 JAMES LAMPORT, EXECUTIVE DIRECTOR

21 DATED: Jan 17, 2018

21 SAFAVIEH INTERNATIONAL, LLC

22 BY: *Ashli Yarnough*

23 ITS: *Member*

24 IT IS SO ORDERED, ADJUDGED AND DECREED:

25 DATED: \_\_\_\_\_

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