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15 ECOLOGICAL RIGHTS FOUNDATION

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SAN FRANCISCO

18 ECOLOGICAL RIGHTS FOUNDATION,

Case No. CGC-16-555067

19 Plaintiff,

20 v.

[PROPOSED] CONSENT JUDGMENT

21 LODGE MANUFACTURING COMPANY

22 Defendant.

23 **1. INTRODUCTION**

24 1.1 On October 27, 2016, the Ecological Rights Foundation (“ERF”) acting on behalf  
25 of itself and the general public, filed a Complaint for civil penalties and injunctive relief  
26 (“Complaint”) in San Francisco Superior Court, Case No. 555067 against defendant Lodge  
27 Manufacturing Company, (also referred to herein as “Lodge” or “Defendant”). The Complaint  
28 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  
65) by failing to give clear and reasonable warnings to those residents of California who use

1 charcoal grills and hibachis (“Covered Products”), that use of those products causes exposures to  
2 carbon monoxide. Carbon monoxide is a chemical known to the State of California to cause  
3 reproductive toxicity. The Complaint was based upon a 60-Day Notice letter, sent by ERF on June  
4 27, 2016 to Lodge, the California Attorney General, all District Attorneys, and all City Attorneys  
5 with populations exceeding 750,000.

6           1.2 Defendant is a business that employs more than ten persons, and manufactures,  
7 distributes, and sells Covered Products. Some Covered Products that Defendant distributes,  
8 markets and sells may use charcoal and the combustion of charcoal creates carbon monoxide to be  
9 released into the air, causing inhalation exposures to those using or standing near the Covered  
10 Products when they are in use. Pursuant to Health and Safety Code Section 25249.8, carbon  
11 monoxide is a chemical known to the State of California to cause reproductive toxicity. ERF  
12 alleges that Covered Products that are manufactured, distributed or sold by Defendant for use in  
13 California require a warning under Proposition 65, pursuant to Health and Safety Code Section  
14 25249.6. For purposes of this Consent Judgment, the parties stipulate that this Court has  
15 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
16 over Lodge Manufacturing Company, that venue is proper in the County of San Francisco, and  
17 that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution  
18 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 Lodge 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 Lodge.

25           1.4 The term “Effective Date” means the date that Defendant receives Notice that this  
26 Consent Judgment was entered by the Court.  
27  
28

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Warnings on Covered Products**

3 No later than 120 days after the Effective Date, Covered Products offered for sale in  
4 California shall include one of the following warning statements:

5 **WARNING:** Chemicals known to the state of California to cause birth defects or other  
6 reproductive harm, including carbon monoxide, are produced by combustion of propane,  
7 charcoal or wood when used with this product.

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 packaging for Covered Products, as well  
13 as printed in the Covered Products' instruction booklets (if any). The warnings shall be displayed  
14 with such conspicuousness, as compared with other words, statements, designs, or devices as to  
15 render them likely to be read and understood by an ordinary individual under customary conditions  
16 of purchase or use. Warnings may be contained in the same section of the instruction booklets that  
17 contains other safety warnings concerning the use of the Covered Products. The type size of the  
18 warning must be legible, and no smaller than any other warning provided with the Covered  
19 Products. The word "**WARNING:**" shall be in upper case letters and bold text. Defendant may  
20 utilize a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold  
21 black outline or a black exclamation point in a white triangle with black border if no yellow is used  
22 in the section of the packaging, print or online material regarding the Covered Products that  
23 contains other warning language regarding use of the Covered Products.

24 **2.2 Reporting**

25 No later than 150 days after the Effective Date, Defendant shall provide a certification  
26 signed by an officer or director of Defendant to ERF confirming its compliance with the warning  
27 requirements of paragraph 2.1, and the payment to OEHHA pursuant to paragraphs 3.1.  
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), Lodge shall pay \$17,500 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 \$13,125, and 2) “Ecological Rights Foundation” in the amount of \$4,375.

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, Lodge shall pay \$17,500 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  
16 mail, return receipt requested, to the following addresses: All payments to Ecological Rights  
17 Foundation and Ecology Law Center shall be delivered to:

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

21 The payment to OEHHA shall be delivered to:

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

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

26 4.1 As to Covered Products, this Consent Judgment is a final and binding resolution  
27 between ERF, acting on behalf of itself and (as to those matters raised in the 60-Day Notice Letter)  
28

1 acting in the public interest, and Lodge of: (i) any violation of Proposition 65 (including but not  
2 limited to the claims made in the Complaint); and (ii) any other statutory or common law claim to  
3 the fullest extent that any of the foregoing described in (i) or (ii) were or could have been asserted  
4 by any person or entity against Lodge or its parents, subsidiaries or affiliates, and all of their  
5 suppliers, customers, distributors, wholesalers, retailers, and their respective parents, affiliates and  
6 subsidiaries or any other person in the course of doing business, and the successors and assigns of  
7 any of them, who may use, maintain, distribute or sell Covered Products (“Released Entities”),  
8 based on its or their failure to provide clear and reasonable warnings of exposures to carbon  
9 monoxide from Covered Products. As to alleged exposures to carbon monoxide from Covered  
10 Products, compliance with the terms of this Consent Judgment resolves any issue, now and in the  
11 future, concerning compliance by Lodge and the Released Entities, with the requirements of  
12 Proposition 65 with respect to Covered Products, and any alleged resulting exposure.

13           4.2     It is possible that other claims not known to the Parties, arising out of the facts  
14 alleged in the Notice or the Complaint and relating to the Covered Product, will develop or be  
15 discovered. ERF on behalf of itself only, and Lodge on behalf of itself only, acknowledge that  
16 this Consent Judgment is expressly intended to cover and include all such claims up through and  
17 including the Effective Date, including all rights of action therefor. ERF and Lodge acknowledge  
18 that the claims released above may include unknown claims, and nevertheless waive California  
19 Civil Code Section 1542 as to any such unknown claims. California Civil Code Section 1542  
20 reads as follows:

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

24 ERF on behalf of itself only, and Lodge on behalf of itself only, acknowledge and understand the  
25 significance and consequences of this specific waiver of California Civil Code Section 1542.  
26  
27  
28

1 **5. ENTRY OF CONSENT JUDGMENT**

2 5.1 The parties hereby request that the Court promptly enter this Consent Judgment.  
3 Upon entry of the Consent Judgment, Lodge and ERF waive their respective rights to a hearing or  
4 trial on the allegations of the Complaint.

5 **6. ENFORCEMENT OF JUDGMENT**

6 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
7 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
8 San Francisco County, giving the notice required by law, enforce the terms and conditions  
9 contained herein.

10 6.2 In any proceeding brought by either party to enforce this Consent Judgment, such  
11 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
12 violation of Proposition 65 or this Consent Judgment.

13 **7. MODIFICATION OF JUDGMENT**

14 7.1 This Consent Judgment may be modified only upon written agreement of the parties  
15 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party  
16 as provided by law and upon entry of a modified Consent Judgment by the Court.

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

18 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms  
19 this Consent Judgment.

20 **9. AUTHORITY TO STIPULATE**

21 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
22 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
23 the party represented and legally to bind that party.

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

25 10.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the  
26 California Attorney General on behalf of the parties so that the Attorney General may review this  
27 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)  
28

1 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
2 and in the absence of any written objection by the Attorney General to the terms of this Consent  
3 Judgment, the parties may then submit it to the Court for approval.

4 **11. ENTIRE AGREEMENT**

5 11.1 This Consent Judgment contains the sole and entire agreement and understanding  
6 of the parties with respect to the entire subject matter hereof and any and all prior discussions,  
7 negotiations, commitments and understandings related hereto. No representations, oral or  
8 otherwise, express or implied, other than those contained herein have been made by any party  
9 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
10 to exist or to bind any of the parties.

11 **12. GOVERNING LAW**

12 12.1 The validity, construction and performance of this Consent Judgment shall be  
13 governed by the laws of the State of California, without reference to any conflicts of law provisions  
14 of California law.

15 **13. EXECUTION AND COUNTERPARTS**

16 13.1 This Consent Judgment may be executed in counterparts which taken together shall  
17 be deemed to constitute one document.

18 **14. COURT APPROVAL**

19 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or  
20 effect, and cannot be used in any proceeding for any purpose.

21 **15. NOTICES**

22 15.1 Any notices or payments due under this Consent Judgment shall be sent by USPS  
23 certified mail, return receipt requested.

24  
25 If to Ecological Rights Foundation: Fredric Evenson  
26 Ecology Law Center  
27 P.O. Box 1000  
28 Santa Cruz, CA 95061

If to Lodge Manufacturing Company:

IT IS SO STIPULATED:

DATED: FEBRUARY 22, 2017

ECOLOGICAL RIGHTS FOUNDATION

*Ecological Rights Foundation*

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

DATED: *March 3, 2017*

LODGE MANUFACTURING COMPANY

*LODGE MANUFACTURING COMPANY*

BY: *Michael Otterman*  
MICHAEL OTTERMAN  
ITS: SVP of Sales and MARKETING

IT IS SO ORDERED, ADJUDGED AND DECREED:

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

\_\_\_\_\_

JUDGE OF THE SUPERIOR COURT