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

17 ECOLOGICAL RIGHTS FOUNDATION,

18 Plaintiff,

19 v.

20 ALFRESCO HOME, LLC,

21 Defendant.

22 Case No. CGC-16-555068

23 [PROPOSED] CONSENT JUDGMENT

24 **1. INTRODUCTION**

25 1.1 On October 27, 2016, the Ecological Rights Foundation (“ERF”) acting on behalf
26 of itself and the general public, filed a Complaint for civil penalties and injunctive relief
27 (“Complaint”) in San Francisco Superior Court, Case No. CGC-16-555068, against defendant
28 Alfresco Home, LLC, (also referred to herein as “Alfresco” 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
65) by failing to give clear and reasonable warnings to those residents of California who use wood
smoking chips, and wood-fired ovens and smokers (“Covered Products”), and that use of those
products causes exposures to carbon monoxide. For purposes of this Consent Judgment, the term

1 Covered Products includes the following items: Fornetto Quebracho Hardwood Lump Charcoal;
2 Fornetto Smoking Wood Chips (various scents); Fornetto Wood Fired Oven and Smoker; Fornetto
3 Alto Wood Fired Oven & Smoker w/ Warming Drawer; Fornetto Pizza Oven Built-in Tray w/ Side
4 Shelf Cover; IC300-R-Fervor 300R-Red 3 Burner Grill w/ Grill Smart, Window, Drawer, Timer;
5 IC350-R-Fervor 350S-Stainless 3 Burner Grill w/ Grill Smart, Window, SideBurner; IC450-S-
6 Fervor 455S-Stainless 4 Burner Grill w/ Grill Smart, Window, Side+RearBrn; IC655-S-Fervor
7 655S-Stainless 6 Burner Grill w/ Grill Smart, Window, Side+RearBrn. Carbon monoxide is a
8 chemical known to the State of California to cause reproductive toxicity. The Complaint was
9 based upon a 60-Day Notice letter, sent by ERF on June 27, 2016 to Alfresco, the California
10 Attorney General, all District Attorneys, and all City Attorneys with populations exceeding
11 750,000.

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

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

3 1.4 The term “Effective Date” means the date this Consent Judgment is entered by the
4 Court.

5 **2. INJUNCTIVE RELIEF**

6 **2.1 Warnings on Covered Products**

7 No later than 90 days after the Effective Date, Covered Products offered for sale in
8 California shall include one of the following warning statements:

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

12 Or,

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

16 The warning statements shall be affixed to or printed on all Covered Products themselves, and in
17 the Covered Product’s instruction booklets (if any). The warnings shall be prominently affixed to
18 or printed on the Covered Products and in their instruction booklets, and displayed with such
19 conspicuousness, as compared with other words, statements, designs, or devices on the Covered
20 Products and their instruction booklets, as to render them likely to be read and understood by an
21 ordinary individual under customary conditions of purchase or use. Warnings may be contained
22 in the same section of the instruction booklets that contains other safety warnings concerning the
23 use of the Covered Products. The type size of the warning must be legible, and no smaller than
24 any other warning provided with the Covered Products. The word “**WARNING:**” shall be in
25 upper case letters and bold text. Defendant may utilize a symbol consisting of a black exclamation
26 point in a yellow equilateral triangle with a bold black outline. Commencing on August 30, 2018,
27 notwithstanding anything to the contrary provided in this section, any warning provided with
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1 respect to Covered Products which complies with Title 27, section 25602(b) of the California Code
2 of Regulations shall be deemed compliant with this Consent Judgment.

3 **2.2 Reporting**

4 No later than 120 days after the Effective Date, Defendant shall provide a certification
5 signed by an officer or director of Defendant to ERF confirming its compliance with the warning
6 requirements of paragraph 2.1, and the payment to OEHHA pursuant to paragraph 3.1. In
7 addition, ERF and its attorneys shall comply with the reporting requirements referenced in
8 California Health & Safety Code section 25249.7(f).

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), Alfresco shall pay \$6,000 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 \$4,500, and 2) “Ecological Rights Foundation” in the amount of \$1,500.

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, Alfresco shall pay \$17,500 to the Ecology Law Center
21 to cover Plaintiff’s attorneys’ fees and costs.

22 **3.3 Payments**

23 All 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: All payments to Ecological Rights
25 Foundation and Ecology Law Center shall be delivered to:

26 Fredric Evenson
27 Ecology Law Center
28 P.O. Box 1000
 Santa Cruz, CA 95061

1 The payment to OEHHA shall be delivered to:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

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

8 4.1 As to Covered Products, this Consent Judgment is a final and binding resolution
9 and release of claims by ERF, acting on behalf of itself and (as to those matters raised in the 60-
10 Day Notice Letter) acting in the public interest, against Alfresco and the Released Entities (defined
11 below) of: (i) any violation of Proposition 65 (including but not limited to the claims made in the
12 Complaint); and (ii) any other statutory or common law claim to the fullest extent that any of the
13 foregoing conduct described above were or could have been asserted by any person or entity
14 against Alfresco or its parents, subsidiaries or affiliates, and all of their suppliers, customers,
15 distributors, wholesalers, retailers, or any other person in the course of doing business, and the
16 successors and assigns of any of them, who may use, maintain, distribute or sell Covered Products
17 (“Released Entities”), based on its or their failure to provide clear and reasonable warnings of
18 exposures to carbon monoxide from Covered Products. As to alleged exposures to carbon
19 monoxide from Covered Products, compliance with the terms of this Consent Judgment resolves
20 any issue, now and in the future, concerning compliance by Alfresco and the Released Entities,
21 with the requirements of Proposition 65 with respect to Covered Products, and any alleged
22 resulting exposure.

23 4.2 It is possible that other claims not known to the Parties, arising out of the facts
24 alleged in the Notice or the Complaint and relating to the Covered Products, will develop or be
25 discovered. ERF on behalf of itself only, acknowledges that this Consent Judgment is expressly
26 intended to cover and include all such claims up through and including the Effective Date,
27 including all rights of action therefor. ERF acknowledges that the claims released above may
28 include unknown claims, and nevertheless waive California Civil Code Section 1542 as to any
such unknown claims. California Civil Code Section 1542 reads as follows:

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

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

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, Alfresco 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 parties
22 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party
23 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 terms
26 this Consent Judgment.
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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 of
4 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 provisions
22 of California law.

23 **13. EXECUTION AND COUNTERPARTS**

24 13.1 This Consent Judgment may be executed in counterparts which taken together shall
25 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 14.2 The Parties acknowledge that, pursuant to California Health & Safety Code §
5 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
6 ERF and its attorneys shall draft and file. If any third-party objection to the noticed motion is filed,
7 or if any hearing is necessary with respect to such noticed motion, ERF and its attorneys shall file
8 any reply and appear at any hearing before the Court.

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10 **15. NOTICES**

11 15.1 Any notices or payments due under this Consent Judgment shall be sent by personal
12 delivery or Certified Mail.

13
14 If to Ecological Rights Foundation: Fredric Evenson
15 Ecology Law Center
16 P.O. Box 1000
Santa Cruz, CA 95061

17 If to Alfresco Home, LLC: Joseph Cilio
18 Alfresco Home, LLC
19 1000 Armand Hammer Blvd.
Pottstown, PA 19464

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21 IT IS SO STIPULATED:
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23 DATED:

ECOLOGICAL RIGHTS FOUNDATION

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26 BY: _____
JAMES LAMPORT, EXECUTIVE DIRECTOR

1 DATED:

ALFRESCO HOME, LLC

2 BY: _____

3 JOSEPH CILIO, PRESIDENT

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5 IT IS SO ORDERED, ADJUDGED AND DECREED:

6 DATED: _____

7 _____

8 JUDGE OF THE SUPERIOR COURT

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