

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 Plaintiffs
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 ORGILL, INC., PICNIC TIME, INC., M.S.R.S.,
22 INC., (dba VM INTERNATIONAL),
23 NORTHERN TOOL & EQUIPMENT
24 COMPANY, INC., P&M PRODUCTS, INC.,
25 OLD SMOKEY PRODUCTS CO., SIYA, INC.,

26 Defendants.

Case No. CGC-16-555429

[PROPOSED] CONSENT JUDGMENT
AS TO PICNIC TIME, INC.

1 **1. INTRODUCTION**

2 **1.1** On November 17, 2016, the Ecological Rights Foundation (“ERF”) acting on behalf of
3 itself and the general public, filed a Complaint for civil penalties and injunctive relief (“Complaint”) in
4 San Francisco Superior Court, Case No. CGC-16-555429, against defendant Picnic Time, Inc., (also
5 referred to herein as “Picnic Time” or “Defendant”). The Complaint alleges, among other things, that
6 Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
7 and Safety Code Sections 25249.5, *et seq.* (Proposition 65) by failing to give clear and reasonable
8 warnings to those residents of California who use charcoal grills and hibachis (“Covered Products”), that
9 use of those products causes exposures to carbon monoxide. Carbon monoxide is a chemical known to
10 the State of California to cause reproductive toxicity. The Complaint was based upon a 60-Day Notice
11 letter, sent by ERF on September 12, 2016 to Picnic Time, the California Attorney General, all District
12 Attorneys, and all City Attorneys with populations exceeding 750,000.

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

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

1 Picnic Time denies, nor may this Consent Judgment, or compliance with it, be used as evidence of any
2 wrongdoing, misconduct, culpability or liability on the part of Picnic Time. Nothing in this Consent
3 Judgment shall be construed as an admission against interest by the Parties of any fact, issue of law, or
4 violation of law, nor shall compliance with this Consent Judgment be construed as an admission against
5 interest by the Parties of any fact, issue of law, or violation of law, at any time, for any purpose.

6 **1.4** The term “Effective Date” means the date this Consent Judgment is entered by the Court.

7 **2. INJUNCTIVE RELIEF**

8 **2.1 Warnings on Covered Products**

9 No later than 120 days after the Effective Date, Covered Products offered for sale in California
10 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 warning statements shall be affixed to or printed on all Covered Products themselves, and in the
19 Covered Product’s instruction booklets. The warnings shall be prominently affixed to or printed on the
20 Covered Products and in their instruction booklets, and displayed with such conspicuousness, as
21 compared with other words, statements, designs, or devices on the Covered Products and their
22 instruction booklets, as to render them likely to be read and understood by an
23 ordinary individual under customary conditions of purchase or use. Warnings may be contained in the
24 same section of the instruction booklets that contains other safety warnings concerning the use of the
25 Covered Products. The type size of the warning must be legible, and no smaller than any other warning
26 provided with the Covered Products. The word “**WARNING:**” shall be in upper case letters and bold
27 text. Defendant may utilize a symbol consisting of a black exclamation point in a yellow equilateral
28 triangle with a bold black outline.

1 **2.2 Reporting**

2 No later than 120 days after the Effective Date, Defendant shall provide a certification signed by
3 an officer or director of Defendant to ERF confirming its compliance with the warning requirements of
4 paragraph 2.1, and the payment to OEHHA pursuant to paragraphs 3.1.

5 **3. SETTLEMENT PAYMENTS**

6 **3.1 Civil Penalties**

7 Pursuant to Health and Safety Code section 25249.7(b)(2), Picnic Time shall pay \$10,000 in civil
8 penalties. The penalty payment will be allocated in accordance with California Health and Safety Code
9 section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of
10 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount
11 paid to Ecological Rights Foundation. Defendant will provide these payments in two checks for the
12 following amounts made payable to: 1) “OEHHA” in the amount of \$7,500, and 2) “Ecological Rights
13 Foundation” in the amount of \$2,500.

14 **3.2 Attorneys’ Fees and Litigation Costs**

15 In settlement of all of the claims that are alleged, or could have been alleged, in the Complaint
16 concerning Covered Products, Picnic Time shall pay \$22,500 to the Ecology Law Center to cover
17 Plaintiff’s attorneys’ fees and costs.

18 **3.3 Payments**

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

22 Fredric Evenson
23 Ecology Law Center
24 P.O. Box 1000
25 Santa Cruz, CA 95061

26 The payment to OEHHA shall be delivered to:

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

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

2 **4.1** As to Covered Products, this Consent Judgment is a final and binding resolution between
3 ERF, acting on behalf of itself and (as to those matters raised in the 60-Day Notice Letter) acting in the
4 public interest, and Picnic Time of: (i) any violation of Proposition 65 (including but not limited to the
5 claims made in the Complaint); and (ii) any other statutory or common law claim to the fullest extent
6 that any of the foregoing described in (i) or (ii) were or could have been asserted by any person or entity
7 against Picnic Time or its parents, subsidiaries or affiliates, officers, directors, shareholders, employees,
8 agents, and all of their suppliers, customers, distributors, wholesalers, retailers, and all other upstream or
9 downstream entities in the distribution chain or any other person in the course of doing business, and the
10 successors and assigns of any of them, who may use, maintain, distribute or sell Covered Products
11 (“Released Entities”), based on its or their failure to provide clear and reasonable warnings of exposures
12 to carbon monoxide from Covered Products. As to alleged exposures to carbon monoxide from Covered
13 Products, compliance with the terms of this Consent Judgment resolves any issue, now and in the future,
14 concerning compliance by Picnic Time and the Released Entities, with the requirements of Proposition
15 65 with respect to Covered Products, and any alleged resulting exposure.

16 **5. ENTRY OF CONSENT JUDGMENT**

17 **5.1** The parties hereby request that the Court promptly enter this Consent Judgment. Upon
18 entry of the Consent Judgment, Picnic Time and ERF waive their respective rights to a hearing or trial
19 on the allegations of the Complaint.

20 **6. ENFORCEMENT OF JUDGMENT**

21 **6.1** The terms of this Consent Judgment shall be enforced exclusively by the parties hereto.
22 The parties may, by noticed motion or order to show cause before the Superior Court of San Francisco
23 County, giving the notice required by law, enforce the terms and conditions contained herein.

24 **6.2** In any proceeding brought by either party to enforce this Consent Judgment, such party
25 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation of
26 Proposition 65 or this Consent Judgment.

27 **7. MODIFICATION OF JUDGMENT**

28 **7.1** This Consent Judgment may be modified only upon written agreement of the parties and

1 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as
2 provided by law and upon entry of a modified Consent Judgment by the Court.

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

4 **8.1** This Court shall retain jurisdiction of this matter to implement and enforce the terms this
5 Consent Judgment.

6 **9. AUTHORITY TO STIPULATE**

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

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

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

17 **11. ENTIRE AGREEMENT**

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

24 **12. GOVERNING LAW**

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

1 **13. EXECUTION AND COUNTERPARTS**

2 13.1 This Consent Judgment may be executed in counterparts which taken together shall be
3 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 effect,
6 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 If to Ecological Rights Foundation: Fredric Evenson
11 Ecology Law Center
12 P.O. Box 1000
13 Santa Cruz, CA 95061

14 If to Picnic Time, Inc.: Melissa A. Jones
15 Stoel Rives, LLP
16 500 Capitol Mall, Ste. 1600
17 Sacramento, CA 95814

18 IT IS SO STIPULATED:

19 DATED: JUNE 15, 2017

20 ECOLOGICAL RIGHTS FOUNDATION
Ecological Rights Foundation

21 BY: *James Lampert* EXEC. DIR.
James Lampert, Executive Director

22 DATED: _____

23 PICNIC TIME, INC.

24 BY: _____

25 ITS: _____

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12 Ecology Law Center
13 P.O. Box 1000
14 Santa Cruz, CA 95061

15 If to Picnic Time, Inc.: Melissa A. Jones
16 Stoel Rives, LLP
17 500 Capitol Mall, Ste. 1600
18 Sacramento, CA 95814

19 IT IS SO STIPULATED:

20 DATED: _____

21 ECOLOGICAL RIGHTS FOUNDATION

22 BY: _____
23 James Lamport, Executive Director

24 DATED: 6/22/17

25 PICNIC TIME, INC.

26 BY: 

27 ITS: PRESIDENT

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IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT