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

27 Defendants.

Case No. CGC-16-555429

[PROPOSED] CONSENT JUDGMENT
AS TO SIYA, INC.

28 **1. INTRODUCTION**

1.1 On November 17, 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-16-555429, against defendant SIYA, Inc., (also referred to herein as “SIYA” 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

1 failing to give clear and reasonable warnings to those residents of California who use charcoal
2 grills and hibachis (“Covered Products”), that use of those products causes exposures to carbon
3 monoxide. Carbon monoxide is a chemical known to the State of California to cause reproductive
4 toxicity. The Complaint was based upon a 60-Day Notice letter, sent by ERF on September 12,
5 2016 to SIYA, the California Attorney General, all District Attorneys, and all City Attorneys with
6 populations exceeding 750,000.

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

25 1.4 The term “Effective Date” means the date on which ERF serves notice on SIYA
26 that this this Consent Judgment has been entered as a Judgment by the Court.
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28

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Warnings on Covered Products**

3 No later than 90 days after the Effective Date, Covered Products that are manufactured
4 and shipped for sale in 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 chemicals including carbon monoxide, which
10 are known to the State of California to cause cancer, or 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 all Covered Products themselves, or on
13 the Covered Products' packaging and in the Covered Product's instruction booklets (if an
14 instruction booklet is provided with the Covered Products). The warnings shall be prominently
15 affixed to or printed on the Covered Products and in their instruction booklets, and displayed with
16 such conspicuousness, as compared with other words, statements, designs, or devices on the
17 Covered Products and their instruction booklets, as to render them likely to be read and understood
18 by an ordinary individual under customary conditions of purchase or use. Warnings may be
19 contained in the same section of the instruction booklets that contains other safety warnings
20 concerning the use of the Covered Products. The type size of the warning must be legible, and no
21 smaller than any other warning provided with the Covered Products. The word "**WARNING:**"
22 shall be in upper case letters and bold text. Defendant may utilize a symbol consisting of a black
23 exclamation point in a yellow equilateral triangle with a bold black outline.

24 **2.2 Reporting**

25 No later than 120 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), SIYA shall pay \$3,000 in civil
4 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 \$2,250, and 2) “Ecological Rights Foundation” in the amount of \$750.

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, SIYA shall pay \$19,500 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
19 Fredric Evenson
20 Ecology Law Center
21 P.O. Box 1000
22 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

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

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

1 acting in the public interest, and SIYA 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 SIYA or its parents, subsidiaries, affiliates, divisions, officers,
5 directors, attorneys, representatives, shareholders, and all of their suppliers, customers,
6 distributors, wholesalers, retailers, and all other downstream entities, as well as any other person
7 in the course of doing business, and the successors and assigns of any of them, who may
8 manufacture, use, maintain, distribute or sell Covered Products (“Released Entities”), based on its
9 or their failure to provide clear and reasonable warnings of exposures to carbon monoxide from
10 Covered Products. As to alleged exposures to carbon monoxide from Covered Products,
11 compliance with the terms of this Consent Judgment resolves any issue, now and in the future,
12 concerning compliance by SIYA and the Released Entities, with the requirements of Proposition
13 65 with respect to Covered Products, and any alleged resulting exposure.

14 4.2 Civil Code Section 1542 Release

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

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
25 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
26 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
27 OR HER SETTLEMENT WITH THE DEBTOR.
28

1 ERF on behalf of itself only, and SIYA on behalf of itself only, acknowledge and understand
2 the significance and consequences of this specific waiver of California Civil Code Section
3 1542.

4 **5. ENTRY OF CONSENT JUDGMENT**

5 5.1 The parties hereby request that the Court promptly enter this Consent Judgment.
6 Upon entry of the Consent Judgment, SIYA and ERF waive their respective rights to a hearing or
7 trial on the allegations of the Complaint.

8 **6. ENFORCEMENT OF JUDGMENT**

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

13 6.2 In any proceeding brought by either party to enforce this Consent Judgment, such
14 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
15 violation of Proposition 65 or this Consent Judgment.

16 **7. MODIFICATION OF JUDGMENT**

17 7.1 This Consent Judgment may be modified only upon written agreement of the parties
18 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party
19 as provided by law and upon entry of a modified Consent Judgment by the Court.

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

21 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
22 this Consent Judgment.

23 **9. AUTHORITY TO STIPULATE**

24 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
26 the party represented and legally to bind that party.

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

2 10.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the
3 California Attorney General on behalf of the parties so that the Attorney General may review this
4 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
5 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
6 and in the absence of any written objection by the Attorney General to the terms of this Consent
7 Judgment, the parties may then submit it to the Court for approval.

8 **11. ENTIRE AGREEMENT**

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

15 **12. GOVERNING LAW**

16 The validity, construction and performance of this Consent Judgment shall be governed by
17 the laws of the State of California, without reference to any conflicts of law provisions of
18 California law.

19 **13. EXECUTION AND COUNTERPARTS**

20 13.1 This Consent Judgment may be executed in counterparts which taken together shall
21 be deemed to constitute one document.

22 **14. COURT APPROVAL**

23 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
24 effect, and cannot be used in any proceeding for any purpose.

25 **15. NOTICES**

26 15.1 Any notices or payments due under this Consent Judgment shall be sent by personal
27 delivery or Certified Mail.

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If to Ecological Rights Foundation:

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

If to SIYA, Inc.:

Brandon Fieldsted
TLD Law
3900 Kilroy Airport Way, Suite 240
Long Beach, CA 90806

IT IS SO STIPULATED:

DATED: JANUARY 16, 2018

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

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

DATED:

12/28/2017

SIYA, INC.

BY: *[Signature]*

ITS: *SUDHIR KUMAR MUNDRA PREC DIST*

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT