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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,

19 Plaintiff,

20 v.

21 WEBER-STEPHEN PRODUCTS LLC and  
22 ROSLE USA CORPORATION

23 Defendants.

Case No. CGC-17-559276

[PROPOSED] CONSENT JUDGMENT  
AS TO WEBER-STEPHEN PRODUCTS  
LLC

24 **1. INTRODUCTION**

25 1.1 On June 1, 2017, the Ecological Rights Foundation (“ERF”) acting on behalf of  
26 itself and the general public, filed a Complaint for civil penalties and injunctive relief  
27 (“Complaint”) in San Francisco Superior Court, Case No. 559276 against defendant Weber-  
28 Stephen Products LLC, (also referred to herein as “Weber” 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 about carbon monoxide exposures to those  
residents of California who use charcoal starters that are manufactured, distributed or sold by  
Defendant (“Covered Products”), that use of those products causes exposures to carbon  
monoxide, a chemical known to the State of California to cause birth defects and other

1 reproductive harm. The Complaint was based upon a 60-Day Notice letter, sent by ERF on  
2 December 12, 2016, to Weber, the California Attorney General, all District Attorneys, and all  
3 City Attorneys with populations exceeding 750,000 (the "60-Day Notice").

4 1.2 Defendant Weber-Stephen Products LLC is a Delaware limited liability company  
5 that employs more than ten persons, and manufactures, distributes, and/or sells Covered  
6 Products. ERF alleges that the Covered Products that Defendant distributes, markets and sells are  
7 designed to assist the ignition and combustion of charcoal, which creates carbon monoxide to be  
8 released into the air, causing inhalation exposures to those using or standing near the Covered  
9 Products when they are in use. Pursuant to Health and Safety Code Section 25249.8, carbon  
10 monoxide is a chemical known to the State of California to cause reproductive toxicity. ERF  
11 alleges that Covered Products that are manufactured, distributed or sold by Defendant for use in  
12 California require a warning under Proposition 65, pursuant to Health and Safety Code Section  
13 25249.6.

14 1.3 ERF and Weber are hereafter sometimes referred to individually as a "Party" or  
15 collectively as the "Parties."

16 1.4 For purposes of this Consent Judgment, the parties stipulate that this Court has  
17 jurisdiction over the allegations of violations contained in the Complaint and personal  
18 jurisdiction over Weber, that venue is proper in the County of San Francisco, and that this Court  
19 has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the  
20 allegations contained in the Complaint.

21 1.5 This Consent Judgment resolves claims that are denied and disputed. The parties  
22 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
23 between the parties for the purpose of avoiding prolonged litigation. Nothing in this Consent  
24 Judgment, nor compliance with its terms, shall constitute an admission by any of the Parties, or  
25 by any of their respective officers, directors, shareholders, employees, agents, parent companies,  
26 subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors, wholesalers, or  
27 retailers, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or  
28 liability, including without limitation, any admission concerning any alleged violation of  
Proposition 65 or any other material allegation of the Complaint, each and every allegation of

1 which Weber denies, nor may this Consent Judgment, or compliance with it, be used as evidence  
2 of any wrongdoing, misconduct, culpability or liability on the part of Weber.

3 1.6 The term “Effective Date” means the date that Defendant receives Notice that this  
4 Consent Judgment was entered by the Court.

5 **2. INJUNCTIVE RELIEF**

6 **2.1 Warnings on Covered Products**

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

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

12 Or,

13 **WARNING:** This product can expose you to carbon monoxide, which is a combustion  
14 byproduct known to the State of California to cause birth defects or other reproductive  
15 harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

16 Or,

17 **WARNING:** This product can expose you to chemicals including combustion by-  
18 products (including soot and carbon monoxide), which are known to the State of  
19 California to cause cancer and birth defects or other reproductive harm. For more  
20 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

21 The warning statements shall be affixed to or printed on packaging for Covered Products. The  
22 warnings shall be displayed with such conspicuousness, as compared with other words,  
23 statements, designs, or devices as to render them likely to be read and understood by an ordinary  
24 individual under customary conditions of purchase or use. The type size of the warning must be  
25 legible, and no smaller than any other warning provided with the Covered Products. The word  
26 “WARNING:” shall be in upper case letters and bold text. Defendant may utilize a symbol  
27 consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline  
28 or a black exclamation point in a white triangle with black border if no yellow is used in the  
section of the packaging, print or online material regarding the Covered Products that contains

1 other warning language regarding use of the Covered Products. Provided, however, that all  
2 Covered Products that have been or will have been distributed, shipped, or sold, or otherwise  
3 placed in the stream of commerce through and including the Effective Date of this Consent  
4 Judgment are exempt from the provisions of Section 2.1 and are included in the release in  
5 Section 4.1. Further provided that Weber may manufacture or package and sell Covered  
6 Products without providing a Proposition 65 compliant warning so long as such products are  
7 only for sale to consumers located outside of California and Weber does not distribute them into  
8 California.

9 2.2 The warning statement exemplar and graphic, attached hereto as Exhibit A, is  
10 hereby deemed to be a clear and reasonable warning under, and to fully comply with, Health &  
11 Safety Section 25249.6 and the implementing regulations. Defendant may comply with Section  
12 2.1 by either using the form of warning and graphic in Exhibit A or another form of warning  
13 statement that complies with the requirements of Section 2.1.

#### 14 2.3 Reporting

15 No later than 150 days after the Effective Date, Defendant shall provide a certification  
16 signed by an officer or director of Defendant to ERF confirming its compliance with the warning  
17 requirements of paragraph 2.1, and the payment to OEHHA pursuant to paragraphs 3.1.

### 18 3. SETTLEMENT PAYMENTS

19 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all claims  
20 contained in or referred to in the 60-Day Notice, Complaint, and this Consent Judgment, Weber  
21 shall make payments totaling \$29,500.00 (twenty-nine thousand five hundred dollars) within ten  
22 days of the Effective Date, as more specifically set forth in sections 3.1 and 3.2, below, which  
23 shall be in full and final satisfaction of any and all civil penalties and attorneys' fees and costs  
24 owed to ERF, OEHHA, and/or its counsel.

#### 25 3.1 Civil Penalties and Payments In Lieu of Penalties

26 Pursuant to Health and Safety Code section 25249.7(b)(2), Weber shall pay \$9,500 in  
27 civil penalties. The penalty payment will be allocated in accordance with California Health and  
28 Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the  
California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining

1 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will provide these  
2 payments in two checks for the following amounts made payable to: 1) "OEHHA" in the amount  
3 of \$7,125, and 2) "Ecological Rights Foundation" in the amount of \$2,375.

4 **3.2 Attorneys' Fees and Litigation Costs**

5 In settlement of all of the claims that are alleged, or could have been alleged, in the  
6 Complaint concerning Covered Products, Weber shall pay \$20,000 to the Ecology Law Center to  
7 cover Plaintiff's attorneys' fees and costs.

8 **3.3 Payments**

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

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

16 The payment to OEHHA shall be delivered to:

17 Mike Gyurics  
18 Fiscal Operations Branch Chief  
19 Office of Environmental Health Hazard Assessment  
20 P.O. Box 4010  
21 Sacramento, CA 95812-4010

22 **4. RELEASE OF CLAIMS.**

23 4.1 As to Covered Products, this Consent Judgment is a final and binding resolution  
24 between ERF, acting on behalf of itself and, as to those matters raised in the 60-Day Notice,  
25 acting in the public interest. ERF, acting on its own behalf and in the public interest, forever  
26 releases and discharges Weber and its past and present officers, directors, owners, shareholders,  
27 employees, agents, attorneys, parent companies, subsidiaries, divisions, affiliates, suppliers,  
28 franchisees, licensees, customers, distributors, wholesalers, retailers, and all other upstream and  
downstream entities and persons in the distribution chain of any Covered Product, and the  
predecessors, successors and assigns of any of them (collectively the "Released Persons"), from  
any and all claims and causes of action for (i) any violation of Proposition 65 (including but not  
limited to the claims made in the Complaint) based on exposure to carbon monoxide from the

1 Covered Products or failure to provide clear and reasonable warnings in connection therewith;  
2 and/or (ii) any other statutory or common law claim based on failure to provide clear and  
3 reasonable warnings for exposure to carbon monoxide from the Covered Products, to the fullest  
4 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any  
5 person or entity up to and including the Effective Date, against Weber or the other Released  
6 Persons. As to actual or alleged exposures to carbon monoxide from Covered Products,  
7 compliance with the terms of this Consent Judgment resolves any issue, now and in the future,  
8 concerning compliance by Weber and the other Released Persons, with the requirements of  
9 Proposition 65 with respect to Covered Products, and any actual or alleged resulting exposure.

10 4.2 Compliance with the terms of this Consent Judgment constitutes compliance  
11 now and in the future by Weber and the other Released Persons with Proposition 65 regarding  
12 any actual or alleged exposures to carbon monoxide from the Covered Products as set forth in  
13 the 60-Day Notice and the Complaint. This Consent Judgment shall apply to and shall benefit  
14 Weber and all other Released Persons.

15 4.3 It is possible that other claims not known to the Parties, arising out of the facts  
16 alleged in the 60-Day Notice or the Complaint and relating to the Covered Product, will  
17 develop or be discovered. ERF on behalf of itself only, and Weber on behalf of itself only,  
18 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
19 claims up through and including the Effective Date, including all rights of action therefor. ERF  
20 and Weber acknowledge that the claims released above may include unknown claims, and  
21 nevertheless they each waive California Civil Code Section 1542 as to any such unknown  
22 claims. California Civil 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 ERF on behalf of itself only, and Weber on behalf of itself only, acknowledge and understand the  
significance and consequences of this specific waiver of California Civil Code Section 1542.

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, Weber and ERF waive their respective rights to a hearing  
4 or 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 Before filing a motion or order to show cause under Section 6.1, ERF shall provide  
11 Weber with at least thirty (30) days written notice of any alleged violations of the terms and  
12 conditions contained in this Consent Judgment, and the parties shall meet and confer in good  
13 faith in an effort to resolve any such alleged violation.

14 6.3 In any proceeding brought by either party to enforce this Consent Judgment, such  
15 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
16 violation of Proposition 65 or this Consent Judgment.

17 **7. MODIFICATION OF JUDGMENT**

18 7.1 This Consent Judgment may be modified only upon written agreement of the parties  
19 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any  
20 party as provided by law and upon entry of a modified Consent Judgment by the Court. If either  
21 Party requests or initiates a modification, then it shall meet and confer with the other Party in  
22 good faith before filing a motion with the Court seeking to modify it.

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

24 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
25 terms this Consent Judgment.

26 **9. AUTHORITY TO STIPULATE**

27 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
28 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf  
of 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 of  
10 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  
14 deemed to exist or to bind any of the parties.

15 **12. GOVERNING LAW**

16 12.1 The validity, construction and performance of this Consent Judgment shall be  
17 governed by the laws of the State of California, without reference to any conflicts of law  
18 provisions of 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. A facsimile or .pdf signature shall be construed as valid  
22 and as the original signature.

23 **14. COURT APPROVAL**

24 14.1 Upon execution of this Consent Judgment by the Parties, ERF shall notice a Motion  
25 for Court Approval.

26 14.2 If the California Attorney General objects to any term in this Consent Judgment, the  
27 Parties shall use their reasonable and diligent best efforts to resolve the concern in a timely  
28 manner, and if possible prior to the hearing on the motion.



1 14.3 If this Consent Judgment is not approved by the Court, it shall be of no force or  
2 effect, and cannot be used in any proceeding for any purpose.

3 **15. NOTICES**

4 15.1 Any notices or payments due under this Consent Judgment shall be sent by USPS  
5 certified mail, return receipt requested.

6  
7 If to Ecological Rights Foundation: Fredric Evenson  
8 Ecology Law Center  
9 P.O. Box 1000  
10 Santa Cruz, CA 95061

11 If to Weber-Stephen Products LLC: Howard Slavitt  
12 Coblenz Patch Duffy & Bass LLP  
13 One Montgomery Street, Suite 3000  
14 San Francisco, California 94104

15 IT IS SO STIPULATED:



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

17 ECOLOGICAL RIGHTS FOUNDATION

18 BY: \_\_\_\_\_  
19 JAMES LAMPORT, EXECUTIVE DIRECTOR

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

21 WEBER STEPHEN PRODUCTS LLC

22 BY:  \_\_\_\_\_  
23 ITS:  \_\_\_\_\_

24 IT IS SO ORDERED, ADJUDGED AND DECREED:

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

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

1 effect, and cannot be used in any proceeding for any purpose.

2 **15. NOTICES**

3 1 Any notices or payments due under this Consent Judgment shall be sent by USPS certified  
4 mail, return receipt requested.

5 If to Ecological Rights Foundation: Fredric Evenson  
6 Ecology Law  
7 Center P.O. Box  
8 1000 Santa Cruz,  
9 CA 95061

10 If to Weber-Stephen Products, LLC: Howard Slavitt  
11 Coblenz Patch Duffy & Bass LLP  
12 One Montgomery Street, Suite 3000  
13 San Francisco, California 94104

14 IT IS SO STIPULATED:

15 DATED: NOVEMBER 7, 2017

16 ECOLOGICAL RIGHTS FOUNDATION  
*Ecological Rights Foundation*

17 BY: *James Lampton, EXEC. DIR.* JAMES  
18 LAMPOR, EXECUTIVE DIRECTOR

19 DATED:  
20 \_\_\_\_\_

21 WEBER STEPHEN PRODUCTS, LLC  
22 BY: \_\_\_\_\_  
23 ITS: \_\_\_\_\_

24 IT IS SO ORDERED, ADJUDGED AND DECREED:

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

26 \_\_\_\_\_  
27 JUDGE OF THE SUPERIOR COURT  
28

Exhibit A

**EN****Rapidfire chimney starter**

Specially designed for fast, easy charcoal ignition

**WARNING:** You must read the warning statements and operating instructions on reverse side before using this product.

**ES****Chimenea de encendido Rapidfire**

Especialmente diseñado para facilitar y acelerar el encendido de carbón

**ADVERTENCIA:** Debe leer las advertencias y las instrucciones de uso en el dorso antes de utilizar este producto.

**FR****Cheminée d'allumage Rapidfire**

Conçue spécialement pour un allumage rapide et facile du charbon

**AVERTISSEMENT:** Avant d'utiliser ce produit, vous devez lire les avertissements et le mode d'emploi au verso.

**DE****Rapidfire-Anzündkamin**

Speziell konzipiert für ein schnelles und einfaches Entzünden der Holzkohle

**WARNING:** Vor Gebrauch dieses Produkts sind unbedingt die Warnhinweise und die Bedienungsanleitung auf der Rückseite zu lesen.

**SV****Rapidfire skorstenständare**

Uttformat specifikt för snabb och enkel tändning av kol

**WARNING:** Läs varningsföreskrifterna och bruksanvisningarna på baksidan innan du använder produkten.

**IT****Ciminiera di accensione Rapidfire**

Appositamente progettato per una rapida e agevole accensione della carbonella

**AVVERTENZA:** prima di usare questo prodotto, leggere le precauzioni e le istruzioni sul lato opposto.

**CS****Zapalovací komin Rapidfire**

Speciálně navrženo pro rychlé a jednoduché zapálení uhlí

**VAROVÁNÍ:** Před použitím tohoto výrobku si musíte přečíst varovná upozornění a pokyny pro používání na druhé straně.

**DA****Rapidfire grillstarter**

Specialdesignet til hurtig og let antænding af trækul

**ADVARSEL:** Førelsesagn og brugsanvisninger på bagsiden skal læses, inden produktet tages i brug.

**ET****Rapidfire süitekorsten**

Disainitud spetsiaalselt nii, et süite oleks kiire ja lihtne süüdata

**OLATUS:** lugege enne toote kasutamist teisel küljel olevaid hoiatusi ja kasutusjuhiseid.

**FI****Rapidfire-piippusytyin**

Helppokäyttöinen ja katava apuväline briquetteien ja hiilien sytytykseen

**VAROITUS:** Lue taustapuolen varoitukset ja käyttöohjeet ennen tämän tuotteen käyttämistä.

**HR****Kamin za paljenje briketa Rapidfire**

Posebno osmišljen za brzo i jednostavno paljenje s pomoću ugljena

**UPOZORENJE:** prije upotrebe proizvoda morate pročitati priročnica s upozorenjem i upute za rukovanje na stražnjoj strani.

**HU****Rapidfire begyújtökémény**

Külömlégesen gyors és egyszerű faszénnes begyújtásra tervezve

**FIGYELMEZTETÉS:** A termék használatá előtt olvassa el a hátoldalon található figyelmeztetéseket és használati útmutatásokat.

**7447**