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Counsel for Plaintiff,
ECOLOGICAL RIGHTS FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ECOLOGICAL RIGHTS FOUNDATION,

Plaintiff,

v.

Zhejiang Yayi Technology Co., Ltd.

Defendant.

Case No. CGC-17-559190

[PROPOSED] CONSENT JUDGMENT

1. INTRODUCTION

1.1 On May 26, 2017, 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-17-559190, against defendant Zhejiang Yayi Technology Co., Ltd., (also referred to herein as “Yayi” 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-burning outdoor heating products, such as fire pits (“Covered Products”), that use of those products causes exposures to carbon monoxide. Carbon monoxide is a chemical known to the State of California to cause reproductive toxicity. The Complaint was based upon a 60-Day

Notice letter, sent by ERF on December 12, 2016 to Yayi, the California Attorney General, all District Attorneys, and all City Attorneys with populations exceeding 750,000.

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

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

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

2. INJUNCTIVE RELIEF

2.1 Warnings

No later than 60 days after the Effective Date, Covered Products offered for sale in California shall include one of the following warning statements:

WARNING: Combustion byproducts produced when using this product include carbon monoxide, a chemical known to the State of California to cause birth defects or other

reproductive harm.

Or,

WARNING: This product can expose you to chemicals, including carbon monoxide, which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Yayi also may, at its sole option, utilize the warning text options set forth in Title 27, California Code of Regulations, Section 25603(a)(2)(b), as long as such warning identifies the reproductive toxicity endpoint. The warning statements shall be affixed to or printed on the Covered Product itself or its Packaging and the Covered Product's instruction booklet (if any). The warning shall be prominently affixed to or printed on the Covered Product or its Packaging and its instruction booklet (if any), and displayed with such conspicuousness, as compared with other words, statements, designs, or devices on the Covered Product and its instruction booklet (if any), as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the instruction booklet (if any) that contains other safety warnings concerning the use of the Covered Product. The type size of the warning must be legible, and no smaller than any other warning provided with the Covered Product. The word "**WARNING**" shall be in all capital letters and bold print. Defendant may utilize a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline.

2.2 Reporting

No later than 75 days after the Execution Date, Defendant shall provide a report to ERF confirming its compliance with the warning requirements of paragraph 2.1, and the payment to OEHHA pursuant to paragraph 3.1.

3. SETTLEMENT PAYMENTS

3.1 Civil Penalties

Pursuant to Health and Safety Code section 25249.7(b)(2), Yayi shall pay \$7,500 in civil penalties. The penalty payment will be allocated in accordance with California Health and 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 25% of the

penalty amount paid to Ecological Rights Foundation. Defendant will provide these payments in two checks for the following amounts made payable to: 1) “OEHHA” in the amount of \$5,625, and 2) “Ecological Rights Foundation” in the amount of \$1,875.

3.2 Attorneys’ Fees and Litigation Costs

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

3.3 Payments

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

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

The payment to OEHHA shall be delivered to:

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

4. MATTERS COVERED BY THIS CONSENT JUDGMENT

4.1 This Consent Judgment is a full, final and binding resolution between ERF, acting on behalf of itself and (as to those matters raised in the 60-Day Notice Letter) in the public interest, and Yayi of: (i) any violation of Proposition 65 (including but not limited to the claims made in the Complaint); and (ii) any other statutory or common law claim to the fullest extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any person or entity against Yayi or its parents, subsidiaries or affiliates, and all of their suppliers, customers, distributors, wholesalers, retailers (including Wal-Mart Stores, Inc.), or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, distribute or sell Covered Products (“Released Entities”), based on its or their failure to provide clear and reasonable warnings of exposures to carbon monoxide from Covered Products. As to

alleged exposures to carbon monoxide from Covered Products, compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by Yayi and the Released Entities, with the requirements of Proposition 65 with respect to Covered Products, and any alleged resulting exposure.

4.2 ERF hereby fully releases and discharges the Released Entities from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been asserted from the handling or use of the Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Products regarding carbon monoxide.

4.3 It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice or the Complaint and relating to the Covered Products will develop or be discovered. ERF, on behalf of itself only, acknowledges that this Consent Judgment is expressly intended to cover and include all such unknown claims up through the Effective Date, including all rights of action therefor. ERF acknowledges that the claims released in Sections 4.1 and 4.2 above may 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:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER 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.

ERF acknowledges and understands the significance and consequences of this specific waiver of California Civil Code section 1542.

5. ENTRY OF CONSENT JUDGMENT

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

6. ENFORCEMENT OF JUDGMENT

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

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

7. MODIFICATION OF JUDGMENT

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

8. TERMINATION AND RETENTION OF JURISDICTION

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

9. AUTHORITY TO STIPULATE

9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized 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.

10. SERVICE ON THE ATTORNEY GENERAL

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

11. ENTIRE AGREEMENT

11.1 This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof and any and all prior discussions,

negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

12. GOVERNING LAW

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

13. EXECUTION AND COUNTERPARTS

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

14. COURT APPROVAL

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

15. NOTICES

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

If to Ecological Rights Foundation:

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

If to Zhejiang Yayi Technology Co., Ltd.:

IT IS SO STIPULATED:

DATED: _____

ECOLOGICAL RIGHTS FOUNDATION

BY: _____

JAMES LAMPORT, EXECUTIVE DIRECTOR

DATED: NOV. 13. 2017

ZHEJIANG YAYI TECHNOLOGY CO., LTD.

BY: 徐博馨

ITS: Vice President of Sales.

Evans Xu

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

IT IS SO STIPULATED:

DATED: NOVEMBER 14, 2017

ECOLOGICAL RIGHTS FOUNDATION
Ecological Rights Foundation

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

DATED: _____

ZHEJIANG YAYI TECHNOLOGY CO., LTD.

BY: _____

ITS: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT