

Fredric Evenson (State Bar No. 198059)
ECOLOGY LAW CENTER
P.O. Box 1000
Santa Cruz, California 95061
Telephone: (831) 454-8216
Email: evenson@ecologylaw.com

Christopher Sproul (Bar No. 126398)
ENVIRONMENTAL ADVOCATES
5135 Anza Street
San Francisco, California 94121
Telephone: (415) 533-3376, (510) 847-3467
Facsimile: (415) 358-5695
Email: csproul@enviroadvocates.com

Counsel for Plaintiff,
ECOLOGICAL RIGHTS FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ECOLOGICAL RIGHTS FOUNDATION,

Plaintiff,

v.

WEBER STEPHEN PRODUCTS, LLC and
ROSLE USA CORPORATION

Defendants.

Case No. CGC-17-559276

[PROPOSED] CONSENT JUDGMENT
AS TO ROSLE USA CORP.

1. INTRODUCTION

1.1 On June 1, 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-16-554012, against defendant ROSLE USA CORP, erroneously named in this action as ROSLE USA CORPORATION (also referred to herein as “Rosle” or “Defendant”). The Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,

1 Health and Safety Code Sections 25249.6, *et seq.* (“Proposition 65”) through the distribution
2 and/or sale of certain charcoal lighters/starters in California without providing warnings that use
3 of those products allegedly causes an exposure to carbon monoxide. Carbon monoxide is a
4 chemical listed by the State of California under Proposition 65 as known to cause reproductive
5 toxicity. The Complaint was based on a 60-Day Notice letter sent by ERF on December 12, 2016
6 to Rosle pursuant to Health & Safety Code § 25249.7(d)(1), and to the California Attorney General,
7 all District Attorneys, and all City Attorneys with populations exceeding 750,000.

8 1.2 ERF and Rosle are sometimes hereafter collectively referred to as the “Parties, and
9 individually as a “Party.” ERF alleges that charcoal lighters/starters that are manufactured,
10 distributed or sold by Defendant for use in California (hereafter “Covered Products”) require a
11 Proposition 65 warning pursuant to Health and Safety Code Section 25249.6, because they can
12 cause exposures to carbon monoxide. Plaintiff alleges that Defendant is a business that employs
13 more than ten persons, and that manufactures, distributes, and/or sells Covered Products in
14 California. For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
16 over Rosle, that venue is proper in the County of San Francisco, and that this Court has jurisdiction
17 to enter this Consent Judgment as a full and final settlement and resolution of the allegations
18 contained in the Complaint.

19 1.3 **No Admission.**

20 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
21 were raised in the Notice and Complaint, or that could have been raised in the Complaint, arising
22 out of the facts and/or conduct alleged therein. Rosle denies the material factual and legal
23 allegations contained in the Notice and the Complaint, and maintains that it is not a person subject
24 to Proposition 65, nor subject to personal jurisdiction in the State of California, and that all of the
25 products it has manufactured, imported, distributed and/or sold, including the Covered Products,
26 have been, and are, in compliance with all laws, and are completely safe for their intended use. By
27 execution of this Consent Judgment and agreeing to comply with its terms, Rosle does not admit
28 any facts or conclusions of law including, but not limited to, any facts or conclusions of law

1 suggesting or demonstrating that it has sold any products in the State of California, or that it has
2 committed any violations of Proposition 65, or that it has violated any other statutory, common
3 law or equitable requirements relating to exposure to carbon monoxide from use of Covered
4 Products, such being specifically denied by Rosle. Nothing in this Consent Judgment, nor
5 compliance with its terms, shall constitute or be construed as an admission by Rosle of any fact,
6 conclusion of law, issue of law or violation of law, nor an admission that it is subject to personal
7 jurisdiction in the State of California. Nothing in this Consent Judgment shall prejudice, waive or
8 impair any right, remedy, argument or defense Rosle may have in this or any other future legal
9 proceeding, including Rosle's position that it is not subject to Proposition 65 or personal
10 jurisdiction in California. This Consent Judgment is the product of negotiation and compromise
11 and is accepted by Rosle for purposes of settling, compromising, and resolving issues disputed in
12 the above captioned action. However, this Section shall not diminish or otherwise affect the
13 obligations, responsibilities and duties of Rosle under this Consent Judgment.

14 1.4 Consent to Jurisdiction.

15 For purposes of this Consent Judgment only, Rosle stipulates that this Court has
16 jurisdiction over Rosle as to the allegations contained in the Complaint, that venue is proper in the
17 County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions
18 of this Consent Judgment.

19 1.5 Except as expressly set forth herein, nothing in this Consent Judgment shall
20 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
21 other current or future legal proceeding.

22 1.6 The term "Effective Date" means the date this Consent Judgment is entered by the
23 Court.

24 **2. PRODUCT WARNINGS**

25 2.1 Covered Products are deemed to comply with Proposition 65 if Rosle provides
26 Proposition 65 warnings in the form attached hereto as Exhibit A or as set forth in Section 2.2.
27 Defendant shall also provide warnings for its barbeque grills in the form attached hereto as Exhibit
28

1 B or as set forth in Section 2.2. For the barbeque grills, the warning shall also be set forth in the
2 product's brochure or instruction booklet (if any):

3 Rosle shall provide either of the following warning statements:

4 **[California Proposition 65] WARNING:** Combustion byproducts produced when using
5 this product include carbon monoxide and other chemicals known to the State of
6 California to cause cancer, and birth defects or other reproductive harm.

7 Or,

8 **[California Proposition 65] WARNING:** This product can expose you to carbon
9 monoxide and other combustion byproducts known to the State of California to cause
10 cancer, and birth defects or other reproductive harm. For more information go to
11 www.P65Warnings.ca.gov.

12 Language in brackets is optional. The word "**WARNING**" shall be in all capital letters and bold
13 print. Preceding the warning, Rosle may utilize a symbol consisting of a black exclamation point
14 in a yellow equilateral triangle with a bold black outline at its option.

15 2.2. The warning statement shall be affixed to or printed on the Covered
16 Product itself, or its packaging, or its labeling. The warning shall be displayed with such
17 conspicuousness, as compared with other words, statements, designs, or devices on the Covered
18 Product or its packaging or labeling, so as to render it likely to be read and understood by an
19 ordinary individual under customary conditions of purchase or use. The type size of the warning
20 must be legible, and no smaller than any other warning provided with the Covered Product.

21 2.3. **Reporting**

22 No later than 75 days after the Execution Date, Defendant shall provide a certification
23 executed by an officer or director of Defendant to ERF confirming its compliance with the warning
24 requirements of this Section 2 for Covered Products that are manufactured for sale in California
25 after the Effective Date.

26 3. **SETTLEMENT PAYMENTS**

27 In complete resolution of any claims raised or that could have been raised in the captioned
28 action for civil penalties, attorney's fees, investigative expenses or costs of any kind, Defendant

1 shall pay a total sum of \$19,900 as follows:

2 **3.1 Civil Penalties**

3 Pursuant to Health and Safety Code section 25249.7(b)(2), Rosle shall pay \$2,500 in
4 complete resolution of any claim for civil penalties that is alleged, or could have been alleged, in
5 the Complaint. The payment will be allocated in accordance with California Health and Safety
6 Code section 25249.12(c)(1) & (d), with 75% of the amount remitted to the California Office of
7 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the amount paid
8 to Ecological Rights Foundation. Defendant will provide these payments in two checks for the
9 following amounts made payable to: (1) "OEHHA" in the amount of \$1,875; and (2) "Ecological
10 Rights Foundation" in the amount of \$625.

11 **3.2 Attorneys' Fees and Litigation Costs**

12 In settlement of all claims for attorney's fees that are alleged, or could have been
13 alleged, in the Complaint, and any claim plaintiff may have to investigative costs, expert fees,
14 attorney's fees, or any other costs or expenses of any kind in connection with this matter, including
15 but not limited to the expenses of preparing the motion to approve this Consent Judgment, Rosle
16 shall pay \$17,400 to the Ecology Law Center.

17 **3.3 Payments**

18 Payments to the Ecological Rights Foundation and the Ecology Law Center, referred to in
19 paragraphs 3.1 and 3.2 above, shall be sent no later than 10 days after the Effective Date via certified
20 mail, return receipt requested, or by federal express, to the following address:

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

25 The payment to OEHHA, referred to in paragraph 3.1 above, shall be sent no later than 10 days
26 after the Effective Date via certified mail, return receipt requested, or federal express, to the
27 following address:

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

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

4.1 This Consent Judgment is a final and binding resolution between ERF, acting on behalf of itself and in the public interest as to those matters raised in the 60-Day Notice Letter, and Rosle, 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 were or could have been asserted by any person or entity against Rosle or its parents, subsidiaries or affiliates, and all of their suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of doing business, and the successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell Covered Products ("Released Entities"), based on the actual or alleged failure to provide clear and reasonable warnings of exposures to carbon monoxide from Covered Products manufactured, distributed or sold through the Effective Date. 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 Rosle and the Released Entities with the requirements of Proposition 65 with respect to Covered Products, and any alleged resulting exposure.

4.2 ERF and Rosle recognize that other claims not known to the Parties may exist concerning the Covered Products or Defendant's barbeque grill products. Accordingly, the Parties, on behalf of themselves, their past and current agents, representatives, attorneys, successors, and/or assignees, provide a mutual general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character, or kind, known or unknown, suspected or unsuspected, arising out the manufacture, distribution, sale or use of Covered Products and Defendant's barbeque grill products manufactured prior to the Effective Date. The Parties acknowledge that they are familiar with Section 1542 of the California Civil Code, which provides 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

1 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
2 SETTLEMENT WITH THE DEBTOR.

3 The Parties hereby expressly waive and relinquish any and all rights and benefits which they may
4 have under, or which may be conferred on them by the provisions of Section 1542 of the California
5 Civil Code as well as under any other state or federal statute or common law principle of similar
6 effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the
7 released matters. In furtherance of such intention, the release hereby given shall be and remain in
8 effect as a full and complete release notwithstanding the discovery or existence of any such
9 additional or different claims or facts arising out of the released matters.

10 4.3 The Parties hereby request that the Court promptly enter this Consent Judgment.
11 Upon entry of the Consent Judgment, Rosle and ERF waive their respective rights to a hearing or
12 trial on the allegations of the Complaint, as well as any rights of appeal.

13 **5. ENFORCEMENT OF JUDGMENT**

14 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
15 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
16 San Francisco County, giving the notice required by law, enforce the terms and conditions
17 contained herein.

18 5.2 In any proceeding brought by either Party to enforce this Consent Judgment, such
19 Party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
20 violation of this Consent Judgment. Any Party seeking to modify this Consent Judgment or to
21 allege a violation thereof shall first attempt in good faith to meet and confer with the other Party
22 for a minimum period of 30 days prior to filing a motion to modify or enforce the Consent
23 Judgment.

24 **6. MODIFICATION OF JUDGMENT**

25 6.1 This Consent Judgment may be modified only upon written agreement of the
26 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
27 any Party as permitted or provided by law and upon entry of a modified Consent Judgment by the
28 Court.

1 **7. RETENTION OF JURISDICTION**

2 7.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
3 of this Consent Judgment.

4 **8. AUTHORITY TO STIPULATE**

5 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
6 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of
7 the Party represented and legally to bind that party.

8 **9. SERVICE ON THE ATTORNEY GENERAL**

9 9.1 ERF shall serve a copy of this Consent Judgment, signed by both Parties, on the
10 California Attorney General so that the Attorney General may review this Consent Judgment prior
11 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney
12 General has received the aforementioned copy of this Consent Judgment, and in the absence of
13 any written objection by the Attorney General to the terms of this Consent Judgment, the Parties
14 may then submit it to the Court for approval. ERF shall have the responsibility of preparing and
15 filing the motion to approve this Consent Judgment and all supporting papers.

16 **10. ENTIRE AGREEMENT**

17 10.1 This Consent Judgment contains the sole and entire agreement and understanding
18 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
19 negotiations, commitments and understandings related hereto. No representations, oral or
20 otherwise, express or implied, other than those contained herein have been made by any Party
21 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
22 to exist or to bind any of the Parties.

23 **11. GOVERNING LAW**

24 11.1 The validity, construction and performance of this Consent Judgment shall be
25 governed by the laws of the State of California, without reference to any conflicts of law provisions
26 of California law. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable
27 by reason of law generally, or as to the Covered Products, then Rosle may provide written notice
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1 to ERF of any asserted change in the law, and shall have no further obligations pursuant to this
2 Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

3 **12. EXECUTION AND COUNTERPARTS**

4 12.1 This consent judgment may be executed in counterparts and by facsimile or
5 portable document format (pdf), each of which shall be deemed an original, and all of which, when
6 taken together, shall constitute one and the same document.

7 **13. COURT APPROVAL**

8 13.1 If this Consent Judgment is not approved by the court, it shall be of no force or
9 effect, and cannot be used in any proceeding for any purpose. Further, if this Consent Judgment
10 is not approved, no term of this Consent Judgment or any draft thereof, or evidence of the
11 negotiation, documentation, or any other part or aspect of the Parties' settlement discussions,
12 including the parties' participation in the negotiation and preparation of this Consent Judgment,
13 shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this
14 action, or in any other proceeding, and the Parties agree to meet and confer to determine whether
15 to modify the terms of the Consent Judgment and to resubmit it for approval.

16 **14. NOTICES**

17 14.1 Any notices or payments due under this Consent Judgment shall be sent by personal
18 delivery, federal express, or Certified Mail to the following addresses.

19
20 If to Ecological Rights Foundation: Fredric Evenson
Ecology Law Center
21 P.O. Box 1000
Santa Cruz, CA 95061
22
23 If to Rosle USA Corporation: Gibbons P.C.
24 Attention: Terry Myers, Esq.
One Pennsylvania Plaza
25 New York, NY 10119-3701
26 With Copy to:
27 J. Robert Maxwell, Esq.
Rogers Joseph O'Donnell
28 311 California Street, 10th Floor
San Francisco, California 94104

1 Any Party may, from time to time, specify in writing to the other Party a change of
2 address to which all notices and other communications under this Consent Judgment shall be
3 sent.

4 IT IS SO STIPULATED:

5
6 DATED: OCTOBER 7, 2017

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

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

10 DATED: September 29, 2017

ROSLE USA CORP.

12 BY: *Command. Velly*
13 ITS: *President*

15 IT IS SO ORDERED, ADJUDGED AND DECREED:

16
17 DATED: _____

18 _____
19 JUDGE OF THE SUPERIOR COURT