

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 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 BULL OUTDOOR PRODUCTS, INC.;
22 CABELA’S, INC.; FOX RUN USA, LLC; THE
23 ALLEN COMPANY, INC.; THE KINGSFORD
24 PRODUCTS COMPANY, LLC; TRACTOR
25 SUPPLY COMPANY; WILLIAMS SONOMA,
26 INC.,

27 Defendants.

Case No. CGC-18-564503

[PROPOSED] CONSENT JUDGMENT
AS TO WILLIAMS SONOMA, INC.

28 **1. INTRODUCTION**

1.1 On February 21, 2018, the Ecological Rights Foundation (“ERF”) acting on behalf of itself and in the public interest, filed a Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco Superior Court, Case No. CGC-18-564503, against defendant WILLIAMS SONOMA, INC. (“Williams Sonoma” or “Settling Defendant”). The Complaint alleges that Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act

1 of 1986, Health and Safety Code Sections 25249.6, *et seq.* (“Proposition 65”) through the
2 distribution and/or sale of certain charcoal lighters/starters/chimneys in California without
3 providing warnings that use of those products allegedly cause an exposure to carbon monoxide.
4 Carbon monoxide is a chemical listed by the State of California under Proposition 65 as known to
5 cause reproductive toxicity. The Complaint was based on a 60-Day Notice letter sent by ERF on
6 June 29, 2017 to Williams Sonoma pursuant to Health & Safety Code § 25249.7(d)(1)(the
7 “Notice”), and to the California Attorney General, all District Attorneys, and all City Attorneys
8 with populations exceeding 750,000.

9 1.2 ERF and Williams Sonoma are sometimes hereafter collectively referred to as the
10 “Parties, and individually as a “Party.” ERF alleges that charcoal lighters/starters/chimneys that
11 are manufactured, distributed or sold by Settling Defendant in California (hereafter “Covered
12 Products”) require a Proposition 65 warning pursuant to Health and Safety Code Section 25249.6,
13 because they can cause exposures to carbon monoxide. Plaintiff alleges that Settling Defendant is
14 a business that employs ten or more persons, and that manufactures, distributes, and/or sells
15 Covered Products in California. Pursuant to Health and Safety Code Section 25249.8, carbon
16 monoxide is a chemical listed by the State of California as known to cause reproductive toxicity.

17 1.3 **No Admission.**

18 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
19 were raised in the Notice and Complaint, or that could have been raised in the Notice and
20 Complaint, arising out of the facts and/or conduct alleged therein. Williams Sonoma denies the
21 material factual and legal allegations contained in the Notice and Complaint, and maintains that
22 all of the products it has manufactured, imported, distributed and/or sold, including the Covered
23 Products, have been, and are, in compliance with all laws, and are completely safe for their
24 intended use. By execution of this Consent Judgment and agreeing to comply with its terms,
25 Williams Sonoma does not admit any facts or conclusions of law including, but not limited to, any
26 facts or conclusions of law suggesting or demonstrating that it has committed any violations of
27 Proposition 65, or any other statutory, common law or equitable requirements relating to carbon
28

1 monoxide from use of Covered Products, such being specifically denied by Williams Sonoma.
2 Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed
3 as an admission by Williams Sonoma of any fact, conclusion of law, issue of law or violation of
4 law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
5 argument or defense Williams Sonoma may have in this or any other future legal proceeding. This
6 Consent Judgment is the product of negotiation and compromise and is accepted by Williams
7 Sonoma solely for purposes of settling, compromising, and resolving issues disputed in the
8 captioned Action. However, this Section shall not diminish or otherwise affect the obligations,
9 responsibilities and duties of Williams Sonoma under this Consent Judgment.

10 **1.4 Consent to Jurisdiction.**

11 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
12 jurisdiction over the allegations of violations contained in the Notice and Complaint, personal
13 jurisdiction over Williams Sonoma, that venue is proper in the County of San Francisco, and that
14 this Court has jurisdiction to enter this Consent Judgment as a full and final settlement and
15 resolution of all allegations contained in the Notice and Complaint..

16 1.5 Except as expressly set forth herein, nothing in this Consent Judgment shall
17 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
18 other current or future legal proceeding.

19 1.6 The term “Effective Date” means the date this Consent Judgment is entered by the
20 Court.

21 **2. PRODUCT WARNINGS**

22 Covered Products manufactured, imported, distributed, and/or sold in California after the Effective
23 Date are deemed to comply with Proposition 65 and this Consent Judgment if Williams Sonoma
24 provides Proposition 65 warnings as set forth in Section 2.2. Pursuant to Section 2.2, Williams
25 Sonoma shall provide one of the two following warning statements for Covered Products
26 manufactured, imported, distributed, and/or sold in California after the Effective Date:

27 ///

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

4 Or,

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

9 Language in brackets is optional. The word “**WARNING**” shall be in all capital letters and bold
10 print. Preceding the warning, Williams Sonoma may at its option utilize a symbol consisting of
11 a black exclamation point in an equilateral triangle with a bold black outline.

12 2.2. The warning statement shall be affixed to or printed on the Covered
13 Product itself, or its packaging, or its labeling. The warning shall be displayed with such
14 conspicuousness, as compared with other words, statements, designs, or devices on the Covered
15 Product, its packaging, or its labeling, so as to render it reasonably likely to be read and
16 understood by an ordinary individual under customary conditions of purchase or use. The type
17 size of the warning must be legible, and no smaller than any other warning provided with the
18 Covered Product. The warning requirements of this Consent Judgment only apply to Covered
19 Products sold in California.

20 2.3. **Reporting**

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

25 **3. SETTLEMENT PAYMENTS**

26 In complete resolution of any claims raised or that could have been raised in the captioned
27 action for civil penalties, attorney’s fees, investigative costs, or expenses or costs of any other kind,
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1 Defendant shall pay a total sum of \$20,000 as follows:

2 **3.1 Civil Penalties**

3 Pursuant to Health and Safety Code section 25249.7(b)(2), Williams Sonoma shall pay
4 \$2,500 in complete resolution of any claim for civil penalties or any other form of monetary relief
5 other than Plaintiff’s attorney’s fees and expenses as set forth in Section 3.2 below. The payment
6 will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) &
7 (d), with 75% of the amount remitted to the California Office of Environmental Health Hazard
8 Assessment (“OEHHA”) and the remaining 25% of the amount paid to Ecological Rights
9 Foundation. Settling Defendant will provide these payments in two checks for the following
10 amounts made payable to: (1) “OEHHA” in the amount of \$1,875; and (2) “Ecological Rights
11 Foundation” in the amount of \$625.

12 **3.2 Attorneys’ Fees and Litigation Expenses**

13 In settlement of all claims that are alleged, or could have been alleged, in the
14 Complaint concerning Covered Products, and any claim Plaintiff may have to investigative costs,
15 expert fees, attorney’s fees, or any other costs or expenses of any kind in connection with this
16 matter, including but not limited to the expenses of preparing the motion to approve this Consent
17 Judgment, Williams Sonoma shall pay \$17,500 to the Ecology Law Center.

18 **3.3 Payments**

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

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

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

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

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

5 4.1 This Consent Judgment is a final and binding resolution between ERF, acting on
6 behalf of itself and in the public interest as to those matters alleged in the Notice and Complaint,
7 and Williams Sonoma, of: (i) any violation of Proposition 65 as to alleged exposures to carbon
8 monoxide from Covered Products (including but not limited to the claims made in the Notice and
9 Complaint); and (ii) any other statutory or common law claims to the fullest extent that any of the
10 foregoing were or could have been asserted by any person or entity against Williams Sonoma or
11 its parents, subsidiaries or affiliates, and all of their suppliers, customers, distributors, wholesalers,
12 retailers, or any other person in the course of doing business, and the successors and assigns of any
13 of them, who may manufacture, use, maintain, distribute and/or sell Covered Products (“Released
14 Entities”), based on their actual or alleged failure to provide clear and reasonable warnings of
15 exposures to carbon monoxide from Covered Products manufactured, distributed or sold through
16 the Effective Date. As to alleged exposures to carbon monoxide from Covered Products,
17 compliance with the terms of this Consent Judgment resolves any issue, now and in the future,
18 concerning compliance by Williams Sonoma and the Released Entities, with the requirements of
19 Proposition 65 with respect to Covered Products, and any alleged resulting exposures.

20 4.2 ERF and Williams Sonoma recognize that other claims not known to the Parties
21 may exist concerning the Covered Products or Defendant’s barbeque grill products. Accordingly,
22 the Parties, on behalf of themselves, their past and current agents, representatives, attorneys,
23 successors, and/or assignees, provide a mutual general release herein which shall be effective as a
24 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
25 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of any nature, character
26 or kind, known or unknown, suspected or unsuspected, arising out the manufacture, distribution,
27 sale or use of Covered Products and Defendant’s barbeque grill products manufactured prior to the
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1 Effective Date. The Parties acknowledge that they are familiar with Section 1542 of the California
2 Civil Code, which provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
5 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
6 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
7 SETTLEMENT WITH THE DEBTOR.

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

15 4.3 The Parties hereby request that the Court promptly enter this Consent Judgment.
16 Upon entry of the Consent Judgment, Williams Sonoma and ERF waive their respective rights to
17 a hearing or trial on the allegations of the Complaint, as well as any rights of appeal.

18 **5. ENFORCEMENT OF JUDGMENT**

19 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
20 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
21 San Francisco County, giving the notice required by law, enforce the terms and conditions
22 contained herein. Enforcement of this Consent Judgment shall be the only remedy for any alleged
23 violation hereof. Should ERF prevail on any motion to enforce this consent judgment it shall be
24 entitled to its reasonable attorney's fees and costs consistent with Code of Civil Procedure §
25 1021.5.

26 5.2 In any proceeding brought by either Party to enforce this Consent Judgment, such
27 Party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
28 violation of this Consent Judgment. Any Party seeking to modify this Consent Judgment or to

1 allege a violation thereof shall first attempt in good faith to meet and confer with the other Party
2 for a minimum period of 30 days prior to filing a motion to modify or enforce the Consent
3 Judgment.

4 **6. MODIFICATION OF JUDGMENT**

5 6.1 This Consent Judgment may be modified only upon written agreement of the
6 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
7 any Party as permitted or provided by law and upon entry of a modified Consent Judgment by the
8 Court.

9 **7. RETENTION OF JURISDICTION**

10 7.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
11 of this Consent Judgment.

12 **8. AUTHORITY TO STIPULATE**

13 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
14 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of
15 the Party represented and legally to bind that Party.

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

17 9.1 ERF shall serve a copy of this Consent Judgment, signed by both Parties, on the
18 California Attorney General so that the Attorney General may review this Consent Judgment prior
19 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney
20 General has received the aforementioned copy of this Consent Judgment, and in the absence of
21 any written objection by the Attorney General to the terms of this Consent Judgment, ERF shall
22 then submit it to the Court for approval. ERF shall have the responsibility of preparing and filing
23 the motion to approve this Consent Judgment and all supporting papers.

24 **10. ENTIRE AGREEMENT**

25 10.1 This Consent Judgment contains the sole and entire agreement and understanding
26 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
27 negotiations, commitments and understandings related hereto. No representations, oral or
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1 otherwise, express or implied, other than those contained herein have been made by any Party
2 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
3 to exist or to bind any of the Parties.

4 **11. JOINT PREPARATION**

5 11.1 The Parties have jointly participated in the preparation of this Consent Judgment
6 and this Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any
7 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
8 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
9 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
10 be resolved against the drafting Party should not be employed in the interpretation of this
11 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

12 **12. SEVERABILITY**

13 12.1 If, subsequent to the Court's approval and entry of this Consent Judgment as a
14 judgment, any provision of this Consent Judgment is held by a court to be unenforceable, the
15 validity of the remaining provisions shall not be adversely affected.

16 **13. GOVERNING LAW**

17 13.1 The validity, construction, and performance of this Consent Judgment shall be
18 governed by the laws of the State of California, without reference to any conflicts of law provisions
19 of California law. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable
20 by reason of law generally, or as to the Covered Products, then Williams Sonoma may provide
21 written notice to ERF of any asserted change in the law, and shall have no further obligations
22 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are
23 so affected.

1 **14. EXECUTION AND COUNTERPARTS**

2 14.1 This consent judgment may be executed in counterparts and by facsimile or
3 portable document format (pdf), each of which shall be deemed an original, and all of which, when
4 taken together, shall constitute one and the same document.

5 **15. COURT APPROVAL**

6 15.1 If this Consent Judgment is not approved by the court, it shall be of no force or
7 effect, and cannot be used in any proceeding for any purpose. Further, if this consent judgment is
8 not approved, no term of this consent judgment or any draft thereof, or evidence of the negotiation,
9 documentation, or other part or aspect of the Parties' settlement discussions, including the parties'
10 participation in the negotiation and preparation of this Consent Judgment, shall have any effect,
11 nor shall any such matter be admissible in evidence for any purpose in this action, or in any other
12 proceeding, and the Parties agree to meet and confer to determine whether to modify the terms of
13 this Consent Judgment and to resubmit it for approval.

14 **16. NOTICES**

15 16.1 Any notices or payments due under this Consent Judgment shall be sent by personal
16 delivery, federal express, or Certified Mail.

17
18 If to Ecological Rights Foundation: Fredric Evenson
Ecology Law Center
19 P.O. Box 1000
Santa Cruz, CA 95061

20
21 If to Williams Sonoma, Inc.: Danielle Hohos
Associate General Counsel
22 Williams-Sonoma, Inc.
23 3250 Van Ness Avenue
San Francisco, CA 94109
24
25
26
27
28

With Copy to:

J. Robert Maxwell, Esq.
Rogers Joseph O'Donnell
311 California Street, 10th Floor
San Francisco, California 94104

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

IT IS SO STIPULATED:

DATED: January 31, 2019

ECOLOGICAL RIGHTS FOUNDATION

Ecological Rights Foundation

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

DATED: 1/29/19

WILLIAMS SONOMA, INC.

BY: *[Signature]*

ITS: Deputy General Counsel

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT