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Counsel for Plaintiff,
ECOLOGICAL RIGHTS FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

BERGHOFF INTERNATIONAL, INC., BED
BATH & BEYOND, INC., TARGET
CORPORATION, SHOPPERSCHOICE.COM,
L.L.C., PACIFIC COAST MANUFACTURING,
INC., PATIO SITES, INC., HASTY-BAKE, INC.,
d.b.a. HASTY-BAKE, AMAZON.COM, INC.,

Defendants.

Case No. CGC-18-567066

[PROPOSED] CONSENT JUDGMENT
AS TO PACIFIC COAST
MANUFACTURING, INC.

1. INTRODUCTION

1.1 On June 8, 2018 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-18-567066, against defendant Pacific Coast Manufacturing, Inc. (“Pacific Coast” or “Defendant”). The Complaint alleges, among other things, that Defendant violated 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 Pacific Coast charcoal-burning grills (“Covered Products”) because use of those products causes exposures to carbon monoxide. Carbon monoxide is a chemical listed under Proposition 65 as known to the State of California to cause reproductive toxicity. The Complaint was based upon a 60-Day Notice letter, sent by ERF

1 on December 4, 2017 to Defendant, Pacific Coast Manufacturing, Inc., the California Attorney
2 General, all District Attorneys, and all City Attorneys with populations exceeding 750,000.

3 1.2 Defendant is a business that employs more than ten persons and either
4 manufactures, and/or distributes, and/or sells Covered Products to residents of California. The
5 Complaint alleges use of the Covered Products creates carbon monoxide released into the air,
6 causing inhalation exposures to those using, or standing near the Covered Products. ERF alleges
7 that Covered Products that are either manufactured, and/or distributed, and/or sold by Defendant
8 for use in California require a warning under Proposition 65, pursuant to Health and Safety Code
9 Section 25249.6. For purposes of this Consent Judgment, the parties stipulate that this Court has
10 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
11 over Pacific Coast Manufacturing Inc., that venue is proper in the County of San Francisco, and
12 that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution
13 of the allegations contained in the Complaint and the 60 Day Notice Letters.

14 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
15 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
16 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
17 not constitute an admission against interest with respect to any material allegation of the
18 Complaint, each and every allegation of which Pacific Coast denies, nor may this Consent
19 Judgment, or compliance with it, be used as evidence of any wrongdoing, misconduct, culpability
20 or liability on the part of Pacific Coast.

21 1.4 The term "Effective Date" means the date Plaintiff serves notice on Defendant that
22 this Consent Judgment is entered by the Court.

23 **2. INJUNCTIVE RELIEF**

24 **2.1 Warnings on Covered Products**

25 Covered Products that are manufactured, that Defendant distributes for sale in California,
26 and/or sells in California on or after the date which is ninety (90) days after the Effective
27
28

1 Date shall include one of the following warning options: **WARNING**¹: Combustion
2 byproducts produced when using this product include carbon monoxide, a chemical
3 known to the State of California to cause birth defects or other reproductive harm.

4 Or,

5 **WARNING:** This product can expose you to carbon monoxide, which is a combustion
6 byproduct known to the State of California to cause birth defects or other reproductive
7 harm. For more information go to www.P65Warnings.ca.gov.

8 Or,

9 **WARNING:** Combustion byproducts near this grill include carbon monoxide, a chemical
10 known to the State of California to cause birth defects or other reproductive harm.

11 Or,



12 **WARNING:** This product can expose you to chemicals including
13 Chromium (hexavalent compounds) which are known to the State of California to cause
14 cancer, and Carbon Monoxide, which are known to the State of California to cause birth
15 defects or other reproductive harm. For more information go
16 to www.P65Warnings.ca.gov.

17
18 The warning statements shall be affixed to, or attached via a secure hang tag, or printed on
19 all Covered Products themselves, or on the immediate packaging of the Covered Products, and
20 also in the instruction booklets. The type size of the warning must be legible, and no smaller than
21 any other warning provided with the Covered Products. The word “**WARNING:**” shall be in
22 upper case letters and bold text. Defendant may utilize a symbol consisting of a black exclamation
23 point in a yellow equilateral triangle with a bold black outline. The warning shall be set forth in
24 their instruction booklets, and displayed with such conspicuousness, as compared with other
25 words, statements, or designs in the instruction booklets so as to render them likely to be read and
26 understood by an ordinary individual under customary conditions of purchase or use. Warnings

27
28 ¹ Defendant may use the phrases “Proposition 65” or “California Proposition 65” in front of the word **WARNING**,
provided the font and boldface text used as are the same as are used for the word **WARNING**.

1 may be contained in the same section of the instruction booklets that contains other safety warnings
2 concerning the use of the Covered Products. If the product labels, hang tag, or immediate
3 packaging, or the instruction booklets are printed only in black and white, then color need not be
4 used in the equilateral triangle, if used.

5 2.2 **Reporting**

6 No later than 120 days after the Effective Date, Defendant shall provide a certification
7 signed by an officer or director of Defendant to ERF confirming its compliance with the warning
8 requirements of paragraph 2.1, and the payment to OEHHA pursuant to paragraphs 3.1.

9 **3. SETTLEMENT PAYMENTS**

10 3.1 Civil Penalties and Payments In Lieu of Penalties

11 Pursuant to Health and Safety Code section 25249.7(b)(2), Pacific Coast shall pay \$5,000
12 in civil penalties. The penalty payment will be allocated in accordance with California Health
13 and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the
14 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
15 25% of the penalty amount paid to Ecological Rights Foundation. Defendant will provide these
16 payments in two checks for the following amounts made payable to: 1) “OEHHA” in the amount
17 of \$3,750, and 2) “Ecological Rights Foundation” in the amount of \$1,250.

18 3.2 **Attorneys’ Fees and Litigation Costs**

19 In settlement of all of the claims that are alleged, or could have been alleged, in the
20 Complaint concerning Covered Products, Pacific Coast shall pay \$17,500 to the Ecology Law
21 Center to cover Plaintiff’s attorneys’ fees and costs.

22 3.3 **Payments**

23 All Payments shall be sent no later than 10 business days after the Effective Date via USPS
24 certified mail, return receipt requested, or via Federal Express or another courier with a tracking
25 and receipt confirmation system to the following addresses: All payments to Ecological Rights
26 Foundation and Ecology Law Center shall be delivered to:

1 Fredric Evenson
2 Ecology Law Center
3 P.O. Box 1000
4 Santa Cruz, CA 95061.

5 The payment to OEHHA shall be delivered to:

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

11 Plaintiff shall cooperate in providing taxpayer identification information prior to the Effective Date
12 to allow for timely processing of the payments.

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

14 4.1 As to Covered Products, this Consent Judgment is a final and binding resolution
15 between ERF, acting on behalf of itself and (as to those matters raised in the 60-Day Notice Letter)
16 acting in the public interest, and Pacific Coast of: (i) any violation of Proposition 65 (including but
17 not limited to the claims made in the Complaint); and (ii) any other statutory or common law claim
18 to the fullest extent that any of the foregoing described in (i) or (ii) were or could have been asserted
19 by any person or entity against Pacific Coast or its parents, subsidiaries or affiliates, and all of their
20 suppliers, manufacturers, customers, distributors, wholesalers, retailers, or any other person in the
21 course of doing business, and the predecessors, successors and assigns of any of them, who may
22 use, maintain, distribute or sell Covered Products (“Released Entities”), based on its or their failure
23 to provide clear and reasonable warnings of exposures to carbon monoxide from Covered Products
24 and ERF hereby releases all of the foregoing claims against all the released entities up through and
25 including the Effective Date. After the Effective Date compliance by Defendant with the terms of
26 this Consent Judgment constitutes compliance with Proposition 65 by any Released Party with
27 regard to any alleged exposures to carbon monoxide from Covered Products.

28 4.2 It is possible that other claims not known to the parties, arising out of the facts
alleged in the 60 Day Notice Letter or the Complaint and relating to the Covered Products, will
develop or be discovered. ERF on behalf of itself only, and Defendant on behalf of itself only,

1 acknowledge that this Consent Judgment is expressly intended to cover and include all such
2 claims up through and including the Effective Date, including all rights of action therefor. ERF
3 and Pacific Coast acknowledge that the claims released above may include unknown claims, and
4 nevertheless waive California Civil Code Section 1542 as to any such unknown claims.

5 California Civil Code Section 1542 reads as follows:

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

11 ERF on behalf of itself only, and Pacific Coast on behalf of itself only, acknowledge and
12 understand the significant and consequences of this specific waiver of California Civil Code
13 Section 1542.

14 **5. ENTRY OF CONSENT JUDGMENT**

15 5.1 The parties hereby request that the Court promptly enter this Consent Judgment.
16 Upon entry of the Consent Judgment, Pacific Coast and ERF waive their respective rights to a
17 hearing or trial on the allegations of the Complaint.

18 **6. ENFORCEMENT OF JUDGMENT**

19 6.1 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.

23 6.2 In any proceeding brought by either party to enforce this Consent Judgment, such
24 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
25 violation of this Consent Judgment.

26 **7. MODIFICATION OF JUDGMENT**

27 7.1 This Consent Judgment may be modified only upon written agreement of the parties
28 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. Copies of any
motion to modify this Consent Judgment shall be served on the Office of the Attorney General.

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

2 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
3 this Consent Judgment.

4 **9. AUTHORITY TO STIPULATE**

5 9.1 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 **10. SERVICE ON THE ATTORNEY GENERAL**

9 10.1 ERF shall serve a copy of this Consent Judgment, signed by both parties, on the
10 California Attorney General on behalf of the parties so that the Attorney General may review this
11 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty-five (45)
12 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
13 and in the absence of any written objection by the Attorney General to the terms of this Consent
14 Judgment, Plaintiff may then submit it to the Court for approval. If the Attorney General tenders
15 a written objection, the Plaintiff may seek judicial approval only if both parties concur in seeking
16 such approval.

17 **11. ENTIRE AGREEMENT**

18 11.1 This Consent Judgment contains the sole and entire agreement and understanding
19 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
20 negotiations, commitments and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any party
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
23 to exist or to bind any of the parties.

24 **12. GOVERNING LAW**

25 12.1 The validity, construction and performance of this Consent Judgment shall be
26 governed by the laws of the State of California, without reference to any conflicts of law provisions
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of California law. This Consent Judgment shall not apply to Covered Products which are not sold in the State of California.

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 Pacific Coast Manufacturing Inc.: Judith M. Praitis
Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013

1 IT IS SO STIPULATED:

2
3 DATED: DECEMBER 6, 2018

ECOLOGICAL RIGHTS FOUNDATION

4 *Ecological Rights Foundation*

5 BY: *James Lamport*, EXEC. DIR.
6 JAMES LAMPORT, EXECUTIVE DIRECTOR

7
8
9
10 DATED:

PACIFIC COAST MANUFACTURING, INC.

11 BY: _____

12 ITS: _____

13
14
15 IT IS SO ORDERED, ADJUDGED AND DECREED:

16 DATED: _____

17 _____

18 JUDGE OF THE SUPERIOR COURT

1 IT IS SO STIPULATED:

2
3 DATED: DECEMBER 6, 2018

4 ECOLOGICAL RIGHTS FOUNDATION

5 *Ecological Rights Foundation*

6 BY:

7 *James L. Lampion*, EXEC. DIR.
8 JAMES LAMPION, EXECUTIVE DIRECTOR

9
10 DATED:

PACIFIC COAST MANUFACTURING, INC.

11 BY:

12 *Jane C. Parle*
13 ITS: *V. P.*

14
15 IT IS SO ORDERED, ADJUDGED AND DECREED:

16 DATED: _____

17 _____
18 JUDGE OF THE SUPERIOR COURT
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