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8 Attorneys for Plaintiff
9 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

MAR 22 2004

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12
13 COUNTY OF SAN FRANCISCO

14
15 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

CASE NO. 411379

16 Plaintiff,

~~[proposed]~~

(JCR)

17
18 vs.

ORDER APPROVING SETTLEMENT
(Kinderman J. & Sons)

19 KINDERMAN J. & SONS, et al.,

Date: March 22, 2004
Time: 9:30 a.m.
Dept.: 301

20 Defendants.
21 _____/

22
23 Plaintiff's motion for approval of settlement and entry of Consent Judgment came on
24 regularly for hearing on noticed motion on May 22, 2004. The court finds that

25 1. The warnings required by the Consent Judgment comply with the requirements of
26 Proposition 65.

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11 SUPERIOR COURT OF CALIFORNIA — UNLIMITED JURISDICTION
12 COUNTY OF SAN FRANCISCO

13 MATEEL ENVIRONMENTAL JUSTICE)
14 FOUNDATION,)

Case No. 411379

15 Plaintiff,)

16 vs.)

CONSENT JUDGMENT
(Kinderman J.)

17 KINDERMAN J. & SONS, et al.,)

18 Defendants.)
19

20 1. INTRODUCTION

21 1.1 On August 12, 2002, Plaintiff, the MATEEL ENVIRONMENTAL JUSTICE
22 FOUNDATION ("MEJF"), acting on behalf of itself and the general public, filed a Complaint for
23 civil penalties and injunctive relief in the California Superior Court in and for the City and County
24 of San Francisco, Case No. 411379 against various defendants including Kinderman J. & Sons,
25 Inc., ("Kinderman"). The Complaint alleges, among other things, that Kinderman violated
26 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
27 Code Sections 25249.5, *et seq.* ("Proposition 65"), and Business and Professions Code Sections
28 17200, *et seq.* (the "Unfair Competition Act") by knowingly and intentionally exposing persons to

1 products containing lead and/or lead compounds, which are chemicals known to the State of
2 California to cause cancer and birth defects or other reproductive harm, without first providing a
3 clear and reasonable warning to such individuals. The Complaint was based upon a 60-Day
4 Notice letter, dated January 15, 2002, sent by MEJF to Kinderman, the California Attorney
5 General, all District Attorneys, and all City Attorneys with populations exceeding 750,000. A
6 copy of the Notice is attached to the Complaint on file with the Court.

7 1.2 For purposes of this Consent Judgment, the term "Party" includes MEJF and
8 Kinderman and the term "Parties" shall refer to MEJF and Kinderman collectively.

9 1.3 For purposes of this Consent Judgment, the term "Covered Products" shall be
10 defined as decorative or holiday string lights or lighted products which are manufactured with
11 PVC or other thermoplastic coating covered wire or cable which have light(s) connected to or
12 located along the wire or cable.

13 1.4 Kinderman is a business that employs ten or more persons and distributes, markets
14 and/or sells Covered Products within the State of California. Lead and lead compounds are
15 chemicals known to the State of California to cause cancer, and lead is a chemical known to the
16 State of California to cause reproductive toxicity pursuant to Health and Safety Code Section
17 25249.9. Products containing lead and/or lead compounds that are sold or distributed in the State
18 of California are, under specified circumstances, subject to the Proposition 65 warning
19 requirement set forth in Health and Safety Code Section 25249.6. MEJF alleges that certain
20 Covered Products which contain lead and/or lead compounds in the cable coating are
21 manufactured, distributed, sold and/or marketed by Kinderman for use in California and require a
22 warning under Proposition 65.

23 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court has
24 jurisdiction over the allegations contained in the 60-Day Notice letter and personal jurisdiction
25 over Kinderman as to the acts alleged in the Complaint, that venue is proper in the City and
26 County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a
27 full and final settlement and resolution of the allegations contained in the Complaint and of all
28 claims which were or could have been raised based on the facts alleged therein or arising

1 therefrom or related thereto.

2 1.6 This Consent Judgment resolves claims that are denied and disputed. The Parties
3 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
4 between the Parties and those entities within Kindermans' chain of distribution for the purpose of
5 avoiding prolonged litigation. This Consent Judgment and compliance with it shall not constitute
6 an admission with respect to any allegation made in the 60-Day Notice letters or the Complaint,
7 each and every allegation of which Kinderman denies, nor may this Consent Judgment or
8 compliance with it be used as an admission or evidence of any fact, wrongdoing, misconduct,
9 culpability or liability on the part of Kinderman.

10 **2. INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNING**

11 2.1 As to the Covered Products, warnings described in section 2.2 are required unless
12 the conditions set forth below are met.

13 (a) The thermoplastic, plastic or polyvinyl chloride used in the cable or wire
14 coating shall have no lead as an intentionally added constituent:

15 (b) A representative sample of the thermoplastic, plastic or polyvinyl chloride
16 used in the cable or wire coating of Covered Products has shown lead content by weight of less
17 than 0.03% (300 parts per million "300 ppm"), using a test method of sufficient sensitivity to
18 establish a limit of quantification (as distinguished from detection) of less than 300 ppm.

19 Compliance may be met by relying on information obtained from suppliers, manufacturers or
20 distributors of Covered Products provided such reliance is in good faith; or

21 2.2 For Covered Products sold to consumers by Kinderman after the date of the entry
22 of this Consent Judgment or any other entity within its chain of distribution including, but not
23 limited to, customers, distributors, wholesalers or retailers, any of the following warning
24 statements, or any warning statement substantially similar (including an identification of the
25 exposure chemical as lead and an instruction to the consumer to wash their hands after handling),
26 shall be used in connection with the retail sale in the State of California:

1 (a) **WARNING:** This product contains lead, a chemical known to the
2 State of California to cause cancer and birth defects or other
3 reproductive harm. *Wash your hands after handling.*

4 or

5 (b) **PROPOSITION 65 WARNING:** Handling the coated electrical wires
6 of this product exposes you to lead, a chemical known to the State of
7 California to cause cancer, birth defects and other reproductive harm.
8 *Wash hands after use.*

9 or

10 (c) **WARNING:** Handling the coated electrical wires of this
11 product exposes you to lead, a chemical known to the State of
12 California to cause cancer and birth defects or other reproductive
13 harm. *Wash hands after use.*

14
15 2.2.1 The word(s) "WARNING" or "PROPOSITION 65 WARNING" shall be in
16 bold, capitals. The words "*Wash your hands after handling*" or "*Wash hands after use*" shall be
17 in bold and italicized, shall be prominently printed on or affixed to each unit of Covered Products,
18 its label, box package or packing, and displayed with such conspicuousness, as compared with
19 other words, statements, designs, or devices on the unit of Covered Products, its label, package or
20 display as to render it likely to be read and understood by an ordinary individual under customary
21 conditions prior to purchase. The warning shall be at least the same size as the largest of any
22 other safety warnings, if any, concerning the use of the product. The requirement for product
23 labeling set forth above is imposed pursuant to the terms of this Consent Judgment.

24 **3. MONETARY RELIEF**

25 3.1 In settlement of all of the claims referred to in this Consent Judgment, within ten
26 (10) business days of the entry of this Consent Judgment, Kinderman shall make the following
27 payments:

28 (a) In lieu of civil penalties, \$7,500 (Seven Thousand Five Hundred Dollars)

1 shall be paid to the Pacifica Reporters Against Censorship a California non-profit environmental
2 organization that, among other things, informs Californians about toxic exposures, for efforts to
3 inform Californians regarding environmental toxic exposure issues.

4 (b) To cover a portion of plaintiff's attorneys' fees and investigation and
5 testing costs, \$12,500 (Twelve Thousand and Five Hundred Dollars) shall be paid to the Klamath
6 Environmental Law Center ("KELC").

7 **4. ENFORCEMENT OF JUDGMENT/NOTICE/STIPULATED REMEDIES**

8 4.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
9 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
10 San Francisco County, giving the notice required by law, enforce the terms and conditions
11 contained herein, seek whatever fines, costs, penalties or remedies as may be provided by law for
12 any violation of the Consent Judgment.

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

14 5.1 As to Covered Products, this Consent Judgment is a final and binding resolution
15 between MEJF, acting on behalf of itself and as to those matters asserted in the 60 Day Notice
16 letter on behalf of the public interest pursuant to Health and Safety Code Section 25249.7(d) and
17 the general public pursuant to Business and Professions Code Section 17204, and Kinderman its
18 parents, officials, subsidiaries, affiliates, divisions, successors, predecessors, assigns, distributors,
19 retailers, wholesalers and/or customers (hereafter referred to as "Kinderman Releasees") of any
20 violation of Proposition 65 or the Unfair Competition Act, of all claims made or which could have
21 been made in the Notice letter and/or the Complaint, and of any other statutory, regulatory or
22 common law claim that could have been asserted against Kinderman for failure to provide clear,
23 reasonable and lawful warnings associated with the Covered Products. As to alleged exposures to
24 Covered Products, compliance with the terms of this Consent Judgment resolves any issue, past,
25 present and in the future, concerning compliance by Kinderman Releasees.

26 **6. COMPREHENSIVE AND GLOBAL RELEASE**

27 6.1 On its own behalf, and as to those matters raised in the 60-Day Notice letters
28 acting on behalf of the public interest pursuant to Health and Safety Code Section 25249.7(d) and

1 the general public pursuant to Business and Professions Code Section 17204 MEJF and its
2 respective agents, successors and assigns, waives all rights to institute any form of legal action,
3 and releases all claims against Kinderman Releasees arising out of or resulting from, or related
4 directly or indirectly to, in whole or in part, the Covered Products and claims alleged in the 60-
5 Day Notice letter and the Complaint, or facts similar to those alleged.

6 6.2 In furtherance of the foregoing, and as to those matters raised in the 60-Day
7 Notice letter, MEJF by and on behalf of itself, its parents, its agents, affiliates, successors and
8 assigns, and on behalf of the public interest pursuant to Health and Safety Code
9 Section 25249.7(d) and the general public pursuant to Business and Professions Code
10 Section 17204, hereby waives any and all rights and benefits which it now has, or in the future
11 may have, conferred upon it with respect to the Covered Products and claims alleged in the
12 Notice letters and the Complaint, or facts similar to those alleged by virtue of Section 1542 of the
13 California Civil Code, which provides as follows:

14 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
15 **WHICH THE CREDITOR DOES NOT KNOW OR**
16 **SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF**
17 **EXECUTING THE RELEASE, WHICH IF KNOWN BY**
18 **HIM MUST HAVE MATERIALLY AFFECTED HIS**
19 **SETTLEMENT WITH THE DEBTOR.**

20 Plaintiff MEJF understands and acknowledges that the significance and consequence of this
21 waiver of California Civil Code Section 1542 is that even if MEJF itself or any member of the
22 general public it represents suffers future damages arising out of or resulting from, or related
23 directly or indirectly to, in whole or in part, the Covered Products, and as to those matters raised
24 in the Notice, MEJF, its agents, successors, attorneys, assigns or affiliates will not be able to make
25 any claim for those damages against Kinderman Releasees who import, market, supply, sell or
26 distribute Covered Products for sale in the State of California.

27 **7. MODIFICATION OF JUDGMENT**

28 7.1 As to any Covered Products, if Proposition 65 warnings for lead or lead
compounds in PVC coated wire or cable should no longer be required, or if warning language
different from that set forth in this Consent Judgment is required, because of a change or changes

1 in law, or based on a California Attorney General opinion letter specific as to the Covered
2 Products, Kinderman shall have no further warning obligations pursuant to this Consent
3 Judgment. In the event that Kinderman ceases to implement or modify the warnings required
4 under this Consent Judgment, Kinderman shall provide written notice to MEJF of its intent to do
5 so, and of the basis for its intent, no less than thirty (30) days in advance. MEJF shall notify
6 Kinderman in writing of any objection within thirty (30) days of its receipt of such notice, or such
7 objection by Plaintiff MEJF shall be waived.

8 7.2 Except as provided for in Section 7.1, this Consent Judgment may be modified
9 only upon written agreement of the parties and upon entry of a modified Consent Judgment by the
10 Court thereon, or upon motion of any party as provided by law and upon entry of a modified
11 Consent Judgment by the Court.

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
15 of the party represented and legally to bind that party.

16 **9. RETENTION OF JURISDICTION**

17 9.1 This Court shall retain jurisdiction of this matter to implement the Consent
18 Judgment.

19 **10. GOVERNING LAW**

20 10.1 The validity, construction and performance of this Consent Judgment shall be
21 governed by the Laws of the State of California.

22 **11. ENTRY OF CONSENT JUDGMENT**

23 11.1 The parties hereby request that the Court promptly enter this Consent Judgment.
24 Upon entry of the Consent Judgment, KINDERMAN J. and MEJF waive their respective rights to
25 a hearing or trial on the allegations of the Complaint.

26 **12. ENTIRE AGREEMENT**

27 12.1 This Consent Judgment contains the sole and entire agreement and understanding
28 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,

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

5 **13. COURT APPROVAL**

6 13.1 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.

8 **14. NOTICES**

9 14.1 All Notices or correspondence to be given pursuant to this Consent Judgment or
10 relating to this Consent Judgment shall be served on any Party by the other at the
11 following address:

12 For MEJF: William Verick
13 Klamath Environmental Law Center
14 424 First Street
Eureka, CA 95501

15 For Kinderman J.,
16 Dennis J. Byrne
17 Ropers, Majeski, Kohn & Bentley
333 Market Street, Suite 3150
San Francisco, CA 94105

18 **15. COUNTERPARTS**

19 15.1 This Consent Judgment may be executed in counterparts or by facsimile each of
20 which shall be deemed an original and all of which when taken together shall constitute one and
21 the same document.

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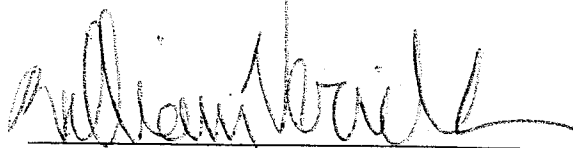
16. COURT FINDINGS

16.1 After review of the documents submitted by the Parties, considering the noticed motion by MEJF and as part of approving this settlement and entering this Consent Judgment, the Court finds: (1) the warnings required in this Consent Judgment comply with the requirements of Proposition 65; (2) the cy pres funding in lieu of civil penalties specified in this Consent Judgment is reasonable based on the criteria in California Health and Safety Code Section 25249.7(b)(2) and (3) the attorneys fees awarded under the Consent Judgment are reasonable under California law.

IT IS SO STIPULATED:

Date: _____

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

BY: 
William Verick
Mateel Environmental Justice Foundation

Date: _____

KINDERMAN J., & SONS, INC.

BY: _____

ITS: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

MAR 22 2004

RONALD EVANS QUADACHAN

Date: _____

OF THE SUPERIOR COURT JUDGE

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IT IS SO STIPULATED:

Date: _____

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

BY: *William Verick*
William Verick
Mateel Environmental Justice Foundation

Date: 2/2/04

KINDERMAN J., & SONS, INC.

BY: *of kinderman jr*
ITS: _____ (JCR)

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date: _____ JUDGE
OF THE SUPERIOR COURT

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

FORM JUS 1501
(03/01)

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Mateel Environmental Justice Foundation		
	DEFENDANT(S) INVOLVED IN SETTLEMENT Kinderman J. and Sons, Inc.		
CASE INFO	COURT DOCKET NUMBER 411379	COURT NAME San Francisco Superior Court	
	SHORT CASE NAME Mateel v. Kinderman J. & Sons, Inc.		
REPORT INFO	INJUNCTIVE RELIEF Reform. standard, warnings prior to purchase on unreformulated product		
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES 10,000	PAYMENT: OTHER 5,000
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED / /
	COPY OF SETTLEMENT MUST BE ATTACHED		
FILER INFO	NAME OF CONTACT David H. Williams		
	ORGANIZATION Attorney At Law		TELEPHONE NUMBER ((510)) 647-1900
	ADDRESS 2070 Allston Way, Suite 300		FAX NUMBER ((510)) 647-1905
	CITY Berkeley	STATE ZIP CA	E-MAIL ADDRESS davidhwilliams@earthlink.net

For Internal Use Only

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

PROOF OF SERVICE

I am over 18 years of age and not a party to the within action. My business address is 2070 Allston Way, Suite 300, Berkeley, CA 94704. On **February 6, 2004**, I served the documents entitled:

NOTICE OF MOTION AND MOTION TO APPROVE PROPOSITION 65 SETTLEMENT AND FOR ENTRY OF CONSENT JUDGMENT (Kinderman)

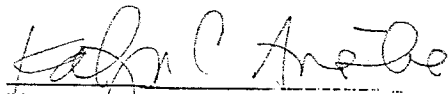
DECLARATION OF DAVID H. WILLIAMS IN SUPPORT OF MOTION TO APPROVE PROPOSITION 65 SETTLEMENT AND FOR ENTRY OF CONSENT JUDGMENT (Kinderman)

REPORT OF SETTLEMENT

by placing a true and correct copy of the document in a sealed envelope, and personally delivering the envelope to the receptionist at the following address:

Proposition 65 Coordinator
Office of Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 6, 2004.


Kathryn Ansite

PROOF OF SERVICE

I am employed in the County of Alameda; over the age of 18 years and not a party to this action. My business address is 2070 Allston Way, Suite 300; Berkeley, CA 94704 On March 23,2004, I served the following documents described as

ORDER APPROVING SETTLEMENT

CONSENT JUDGMENT

on the parties listed below:

through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below, or compiled for transmission by facsimile transmission, for services as designated below:

By First Class Mail - I caused each such envelope, with first class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in San Francisco, California, for collection and mailing to the office of the addressee on the date shown herein following ordinary course of business

By Federal Express - I caused each such envelope to be delivered to Federal Express Corporation with whom we have a direct billing account to be delivered to the office of the addressee on the next business day.

By Facsimile -- I caused such document to be served via facsimile electronic equipment transmission on the parties in this action by transmitting a true and correct copy using aHewlett Packard Laserjet 3100 facsimile machine which indicated successful transmission to the numbers shown above

By Personal Service -- I personally delivered such envelope to the addressee.

By Personal Service -- I caused each such envelope to be delivered to a courier of a messenger service who personally delivered each such envelope to the office of the addressee.

I declare that the foregoing is true and correct and that I executed this declaration on March 23, 2004 in Berkeley, California.



Taissa Kuncio