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13 Attorneys for Plaintiff  
14 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED  
FILED  
San Francisco County Superior Court

JUN - 9 2006

GORDON PARK-LI, Clerk  
BY: PHILOMENA DIAS  
Deputy Clerk

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SAN FRANCISCO

17 MATEEL ENVIRONMENTAL JUSTICE  
18 FOUNDATION,

19 Plaintiff,

20 vs.

21 LOWES COMPANIES, INC., et al.

22 Defendants.

CASE NO. CGC-04-433954

~~proposed~~ ORDER APPROVING  
SETTLEMENT [FIBRECRAFT  
MATERIALS CORP.]

Date: June 9, 2006  
Time: 9:30 a.m.  
Dept. No.: 302

23 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on  
24 noticed motion on June 9, 2006. The court finds that:

- 25 1. The reformulation required by the Consent Judgment complies with the  
26 requirements of Proposition 65;

- 1 2. The payments in lieu of civil penalty specified in the Consent Judgment are
- 2 reasonable based on the criteria in Cal Health & Safety Code §25249.7(b)(2); and
- 3 3. The attorneys fees awarded under the Consent Judgment are reasonable under
- 4 California law.

5  
6 Based upon these findings, the settlement and Consent Judgment are approved.

7  
8 IT IS SO ORDERED.

9 Dated: JUN 09 2006

RONALD E. QUIDACHAY

10 \_\_\_\_\_  
11 Judge of the Superior Court  
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1 DAVID WILLIAMS, SBN 144479  
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Deputy Clerk

9 Attorneys for Plaintiff,  
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION  
10  
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14 (Unlimited Jurisdiction)

15  
16 MATEEL ENVIRONMENTAL JUSTICE  
17 FOUNDATION,

No. CGC-04-433954

18 PLAINTIFF,

~~[PROPOSED]~~ CONSENT JUDGMENT

19 V.

20 FIBRERAFT MATERIALS CORP, AND  
21 DOES 1 THROUGH 100, INCLUSIVE

22 DEFENDANTS.

23 1. INTRODUCTION

24 1.1 On or about March 19, 2003 plaintiff MATEEL ENVIRONMENTAL JUSTICE  
25 FOUNDATION ("Mateel"), provided a 60-day notice of violation ("Notice") to the California  
26 Attorney General, the District Attorneys of every county in California, the City Attorneys of  
27 every California city with a population greater than 750,000, and defendant Fibrecraft Materials  
28

CONSENT JUDGMENT

1 Corp. ("Defendant"), alleging that Defendant through sales in California of hand tools, the  
2 handles for which are coated with polyvinyl chloride ("PVC"), including but not limited to  
3 pruners, pliers, hammers, bench clamps, wrenches, screwdrivers, crimpers, and hacksaws, that  
4 are manufactured, distributed or sold by Defendant ("Covered Products"), was in violation of  
5 certain provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and  
6 Safety Code sections 25249.5, et seq. ("Proposition 65"), by knowingly and intentionally  
7 exposing persons to chemicals, including lead and lead compounds, lead phosphate, lead acetate  
8 and lead subacetate, (collectively, "lead"), known to the State of California to cause cancer  
9 and/or birth defects or other reproductive harm, without first providing a clear and reasonable  
10 warning.

11 1.2 On or about August 19, 2004, plaintiff Mateel, acting in the public interest  
12 pursuant to Health and Safety Code section 25249.7(d) and on behalf of the general public  
13 pursuant to Business and Professions Code section 17204 ("Plaintiff"), filed a Complaint for  
14 Civil Penalties and Injunctive Relief in San Francisco County Superior Court, Case No. 317279  
15 ("Complaint") against Defendant based on the allegations contained in the Notice. In addition to  
16 asserting claims directly under Proposition 65, the Complaint also alleges that the violations of  
17 Proposition 65 for which Defendant are allegedly responsible constitute separate violations of  
18 Business and Professions Code sections 17200 et seq. (the "Unfair Competition Act").

19 1.3 For purposes of this Consent Judgment, Mateel and Defendant stipulate that this  
20 Court has jurisdiction over the allegations of violations contained in the Complaint and personal  
21 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the  
22 County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a  
23 full and final settlement and resolution of the allegations contained in the Complaint and of all  
24 claims which were or could have been raised based on the facts alleged therein or arising  
25 therefrom.

26 1.4 Mateel and Defendant enter into this Consent Judgment pursuant to a full and  
27 final settlement of disputed claims between the parties for the purpose of avoiding prolonged  
28 litigation. This Consent Judgment shall not constitute an admission with respect to any

1 allegation made in the Notice or the Complaint, each and every allegation of which Defendant  
2 denies, nor may this Consent Judgment or compliance with it be used as evidence of any  
3 wrongdoing, misconduct, culpability or liability on the part of Defendant.

4 2. INJUNCTIVE RELIEF-REFORMULATION

5 2.1 Within two hundred and seventy (270) days after entry of this Consent  
6 Agreement, Defendant shall cease sales of Covered Products with PVC coated handles in  
7 California unless the Covered Products meet the following criteria:

8 (a) The formulation of PVC used shall have no intentionally added lead.

9 (b) A representative sample of the bulk PVC used to manufacture the Covered  
10 Products has been tested for lead content and shown lead content by  
11 weight of less than 0.02%, or 200 parts per million ("ppm"), using a test  
12 method of sufficient sensitivity, to establish a limit of quantification (as  
13 distinguished from detection) of less than 200 ppm.

14 2.2 Defendant may comply with the above requirements by relying on information  
15 obtained from its suppliers of the tools and PVC utilized on the handles thereof provided such  
16 reliance is in good faith.

17 3. MONETARY RELIEF

18 3.1 Within ninety (90) days after entry of this Consent Judgment by the Court,  
19 Defendant shall pay seven thousand five hundred dollars (\$7,500) to the Ecological Rights  
20 Foundation and seven thousand five hundred dollars (\$7,500) to Californians for Alternatives to  
21 Toxics. Each of the above listed entities is a California non-profit organization that advocates  
22 for workers' and consumers' safety and for awareness and reduction of toxic exposures. The  
23 foregoing settlement payment shall be mailed to the attention of William Verick, Esq., Klamath  
24 Environmental Law Center, 424 First Street, Eureka, California 95501, who shall provide them  
25 to the respective organizations within fifteen (15) days of receipt.

26 4. ATTORNEYS' FEES

27 4.1 Within fifteen (15) days after entry of this Consent Judgment, Defendant shall  
28 jointly pay twenty thousand dollars (\$20,000) to the Klamath Environmental Law Center to

1 cover plaintiffs' attorneys' fees and costs. The above payment shall be mailed care of William  
2 Verick, Esq., Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

3 4.2 Except as specifically provided in this Consent Judgment, plaintiff and Defendant  
4 shall bear their own costs and attorneys' fees.

5 5. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

6 5.1 The terms of this Consent Judgment are enforceable by and among the parties  
7 hereto or, with respect to the injunctive relief provided for herein, by the California Attorney  
8 General.

9 6. MATTERS COVERED BY THIS CONSENT JUDGMENT

10 6.1 This Consent Judgment is a full, final and binding resolution between the Plaintiff  
11 acting on behalf of itself and, (as to those matters referenced in the Notice Letters) in the public  
12 interest pursuant to Health and Safety Code section 25249.7(d) and on behalf of the general  
13 public pursuant to Business and Professions Code section 17204, and Defendant concerning any  
14 violation of Proposition 65 and/or the Unfair Competition Act regarding any claims made or  
15 which could have been made in the Notice and/or the Complaint, or any other statutory or  
16 common law claim that could have been asserted against Defendant and/or their affiliates, parent  
17 or subsidiary corporations, divisions, successors, officers, directors, assigns, distributors,  
18 retailers, and/or customers for failure to provide clear, reasonable, and lawful warnings of  
19 exposure to lead contained in or otherwise associated with Covered Products manufactured, sold  
20 or distributed by, for, or on behalf of, Defendant. Compliance with the terms of this Consent  
21 Judgment resolves any issue, now and in the future, concerning compliance by Defendant and/or  
22 their affiliates, parent or subsidiary corporations, divisions, successors, officers, directors,  
23 assigns, distributors, retailers, and/or customers with the requirements of Proposition 65 and the  
24 Unfair Competition Act with respect to lead contained in or otherwise associated with Covered  
25 Products.

26 6.2 As to any claims, violations (except violations of this Consent Judgment), actions,  
27 damages, costs, penalties or causes of action which may arise or have arisen after the original  
28 date of entry of this consent judgment, compliance by Defendant with the terms of this consent

1 judgment shall be deemed to be full and complete compliance with Proposition 65 and the Unfair  
2 Competition Act as to claims regarding exposure to lead in Covered Products.

3 6.3 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and  
4 benefits which it now has, or in the future may have, conferred upon it with respect to the  
5 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which  
6 provides as follows:

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

12 Plaintiff understands and acknowledges that the significance and consequence of this waiver of  
13 California Civil Code Section 1542 is that even if Plaintiff suffers future damages arising out of  
14 or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,  
15 they will not be able to make any claim for those damages against Defendant, or its parent,  
16 subsidiaries or affiliates, or any of its customers, distributors, wholesalers, retailers or any other  
17 person in the course of doing business who may manufacture, use, maintain, distribute, market or  
18 sell the Covered Products. Furthermore, Plaintiff acknowledges that it intends these  
19 consequences for any such claims which may exist as of the date of this release but which  
20 Plaintiff does not know exist, and which, if known, would materially affect its decision to enter  
21 into this Consent Judgment, regardless of whether its lack of knowledge is the result of  
22 ignorance, oversight, error, negligence, or any other cause.

23 7. SERVICE ON THE CALIFORNIA ATTORNEY GENERAL

24 7.1 Plaintiff shall serve a copy of this Consent Judgment, signed by both parties, on  
25 the California Attorney General on behalf of the Parties so that the California Attorney General  
26 may review this Consent Judgment at least forty five (45) days prior to its submittal to the Court  
27 for approval. As soon as is feasible following the forty-fifth (45th) day after the date on which  
28 the California Attorney General has been served with the aforementioned copy of this Consent

1 Judgment, and in the absence of any written objection by the California Attorney General to the  
2 terms of this Consent Judgment or written request by the California Attorney General for  
3 additional time, the Parties shall then submit promptly this Consent Judgment to the Court for  
4 approval. Prior to submittal to the Court for approval, Plaintiff shall attach a proof of service  
5 attesting that this Consent Judgment has been served on the California Attorney General and the  
6 manner and date on which that service was made.

7 8. APPLICATION OF JUDGMENT

8 8.1 The obligations of this Consent Judgment shall apply to and be binding upon any  
9 and all plaintiffs, acting in the public interest pursuant to Health and Safety Code section  
10 25249.7(d) and on behalf of the general public pursuant to Business and Professions Code  
11 section 17204, and Defendant and the successors or assigns of any of them.

12 9. MODIFICATION OF JUDGMENT

13 9.1 This Consent Judgment may be modified only upon written agreement of the  
14 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
15 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

16 10. NOTICE

17 10.1 When any Party is entitled to receive any notice or report under this Consent  
18 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to:

19 (a) For Mateel: William Verick, Esq., Klamath Environmental Law Center,  
20 424 First Street, Eureka, California 95501; and

21 (b) For Fibrecraft Materials Corp.:

22  
23  
24  
25 10.2 Any Party may modify the person and address to whom notice is to be sent by  
26 sending each other Party notice in accordance with this Paragraph.

27 11. AUTHORITY TO STIPULATE

28 11.1 Each signatory to this Consent Judgment certifies that he or she is fully



1 authorized by the party he or she represents to enter into this Consent Judgment and to execute it  
2 on behalf of the party represented and legally to bind that party.

3 12. RETENTION OF JURISDICTION

4 12.1 This Court shall retain jurisdiction over the matters covered herein and the  
5 enforcement and/or application of this Consent Judgment.

6 13. ENTIRE AGREEMENT

7 13.1 This Consent Judgment contains the sole and entire, agreement and understanding  
8 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,  
9 negotiations, commitments and understandings related hereto. No representations, oral or  
10 otherwise, express or implied, other than those contained herein have been made by any party  
11 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
12 deemed to exist or to bind any of the parties.

1 14. GOVERNING LAW

2 14.1 The validity, construction and performance of this Consent Judgment shall be  
3 governed by the laws of the State of California.

4 15. COURT APPROVAL

5 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or  
6 effect, and cannot be used in any proceeding for any purpose.

7  
8 IT IS SO STIPULATED:

9 DATED:

By: \_\_\_\_\_

10 Its: \_\_\_\_\_

11 Fibrecraft Materials Corp

12  
13 DATED:

By: \_\_\_\_\_

14 Its: \_\_\_\_\_

15 Plaintiff, Mateel Environmental Justice Foundation  
16  
17  
18

19 IT IS SO ORDERED, ADJUDGED AND DECREED:

20  
21 Dated:

JUN 09 2006

RONALD E. QUIROACHAY

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

14. GOVERNING LAW

14.1 The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California.

15. COURT APPROVAL

15.1 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.

IT IS SO STIPULATED:

DATED:

By: John Abens  
Its: President  
Fibre Craft Materials Corp

DATED:

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Plaintiff, Mateel Environmental Justice Foundation

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 14. GOVERNING LAW

2 14.1 The validity, construction and performance of this Consent Judgment shall be  
3 governed by the laws of the State of California.

4 15. COURT APPROVAL

5 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or  
6 effect, and cannot be used in any proceeding for any purpose.

7  
8 IT IS SO STIPULATED:

9 DATED:

By: \_\_\_\_\_

10 Its: \_\_\_\_\_

11 Fibrecraft Materials Corp

12  
13 DATED:

By: William Howell

14 Its: CEO

15 Plaintiff, Mateel Environmental Justice Foundation  
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17  
18

19 IT IS SO ORDERED, ADJUDGED AND DECREED:

20  
21 Dated: \_\_\_\_\_

22 JUDGE OF THE SUPERIOR COURT  
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