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ENDORSED
FILED
San Francisco County Superior Court

NOV 28 2005

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BY: CYNTHIA S. HERBERT
Deputy Clerk

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10 Attorneys for Plaintiff,
11 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

15
16 MATEEL ENVIRONMENTAL JUSTICE
17 FOUNDATION,

04-433954
No. ~~03-413920~~ GCC

18 PLAINTIFF,

[PROPOSED] CONSENT JUDGMENT
(LEVITON MANUFACTURING
COMPANY, INC.)

19 v.

20 LOWES COMPANIES, INC., et al.

21 DEFENDANTS.
22

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 LEVITON
28 MANUFACTURING COMPANY, INC. ("Defendant"), alleging that Defendant, through sales in

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

10 1.2 On or about August 19, 2004, plaintiff Mateel, acting in the public interest
11 pursuant to Health and Safety Code section 25249.7(d) and on behalf of the general public
12 pursuant to Business and Professions Code section 17204 ("Plaintiff"), filed a Complaint for Civil
13 Penalties and Injunctive Relief in San Francisco County Superior Court, Case No. CGC-04-
14 433954 ("Complaint") against Defendant based on the allegations contained in the Notice. In
15 addition to asserting claims directly under Proposition 65, the Complaint also alleges that the
16 violations of Proposition 65 for which Defendant is allegedly responsible constitute separate
17 violations of Business and Professions Code sections 17200 et seq. (the "Unfair Competition
18 Act").

19 1.3 For purposes of this Consent Judgment, the Mateel and Defendant stipulate that
20 this Court has jurisdiction over the allegations of violations contained in the Complaint and
21 personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper
22 in the County of San Francisco and that this Court has jurisdiction to enter this Consent
23 Judgment as a full and final settlement and resolution of the allegations contained in the
24 Complaint and of all claims which were or could have been raised based on the facts alleged
25 therein or arising 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 deny, 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 Judgment,
6 Defendant shall cease sales of Covered Products with PVC coated handles in California unless
7 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 fifteen (15) days after entry of this Consent Judgment by the Court,
19 Defendant shall pay two thousand five hundred dollars (\$2500) to the Ecological Rights
20 Foundation. The Ecological Rights Foundation is a California non-profit organization that
21 advocates for workers' and consumers' safety and for awareness and reduction of toxic exposures.
22 The foregoing settlement payments shall be mailed to the attention of William Verick, Esq.,
23 Klamath Environmental Law Center, 424 First Street, Eureka, California 95501, who shall
24 provide them to the respective organizations within fifteen (15) days of receipt.

25 4. ATTORNEYS' FEES

26 4.1 Within fifteen (15) days after entry of this Consent Judgment, Defendant shall pay
27 ten thousand five hundred dollars (\$10,000) to the Klamath Environmental Law Center to cover
28 plaintiffs' attorneys' fees and costs. The above payment shall be mailed to the attention of

1 William Verick, Esq., Klamath Environmental Law Center, 424 First Street, Eureka, California
2 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 its affiliates, parent or
17 subsidiary corporations, divisions, successors, officers, directors, assigns, distributors, retailers,
18 and/or customers for failure to provide clear, reasonable, and lawful warnings of exposure to lead
19 contained in or otherwise associated with Covered Products manufactured, sold or distributed by,
20 for, or on behalf of, Defendant. Compliance with the terms of this Consent Judgment resolves
21 any issue, now and in the future, concerning compliance by Defendant and/or its affiliates, parent
22 or subsidiary corporations, divisions, successors, officers, directors, assigns, distributors,
23 retailers, and/or customers with the requirements of Proposition 65 and the Unfair Competition
24 Act with respect to lead contained in or otherwise associated with Covered Products.

25 6.2 As to any claims, violations (except violations of this Consent Judgment), actions,
26 damages, costs, penalties or causes of action which may arise or have arisen after the original
27 date of entry of this consent judgment, compliance by Defendant with the terms of this consent
28 judgment shall be deemed to be full and complete compliance with Proposition 65 and the Unfair

1 Competition Act as to claims regarding exposure to lead in Covered Products.

2 6.3 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and
3 benefits which it now has, or in the future may have, conferred upon it with respect to the
4 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which
5 provides as follows:

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

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

22 7. SERVICE ON THE CALIFORNIA ATTORNEY GENERAL

23 7.1 Plaintiff shall serve a copy of this Consent Judgment, signed by both parties, on
24 the California Attorney General on behalf of the Parties so that the California Attorney General
25 may review this Consent Judgment at least forty five (45) days prior to its submittal to the Court
26 for approval. As soon as is feasible following the forty-fifth (45th) day after the date on which
27 the California Attorney General has been served with the aforementioned copy of this Consent
28 Judgment, and in the absence of any written objection by the California Attorney General to the

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

6 8. APPLICATION OF JUDGMENT

7 8.1 The obligations of this Consent Judgment shall apply to and be binding upon any
8 and all plaintiffs, acting in the public interest pursuant to Health and Safety Code section
9 25249.7(d) and on behalf of the general public pursuant to Business and Professions Code
10 section 17204, and Defendant and the successors or assigns of any of them.

11 9. MODIFICATION OF JUDGMENT

12 9.1 This Consent Judgment may be modified only upon written agreement of the
13 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
14 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

15 10. NOTICE

16 10.1 When any Party is entitled to receive any notice or report under this Consent
17 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to:

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

20 (b) For Leviton Manufacturing Company, Inc.: Vincent Lonigro, Esq.,
21 Richenthal, Abrams & Moss, 122 E. 42nd Street, New York, NY 10168
22

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

25 11. AUTHORITY TO STIPULATE

26 11.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
27 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
28 of the party represented and legally to bind that party.

1 12. RETENTION OF JURISDICTION

2 12.1 This Court shall retain jurisdiction over the matters covered herein and the
3 enforcement and/or application of this Consent Judgment.

4 13. ENTIRE AGREEMENT

5 13.1 This Consent Judgment contains the sole and entire, agreement and understanding
6 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,
7 negotiations, commitments and understandings related hereto. No representations, oral or
8 otherwise, express or implied, other than those contained herein have been made by any party
9 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
10 deemed to exist or to bind any of the parties.

11 14. GOVERNING LAW

12 14.1 The validity, construction and performance of this Consent Judgment shall be
13 governed by the laws of the State of California.

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1 15. COURT APPROVAL

2 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
3 effect, and cannot be used in any proceeding for any purpose.

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5 IT IS SO STIPULATED:

6 DATED:

By: 

Leviton Manufacturing Company, Inc.

7
8
9 DATED:

William Verick
Klamath Environmental Law Center

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14 IT IS SO ORDERED, ADJUDGED AND DECREED:

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16 Dated:

JUDGE OF THE SUPERIOR COURT

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Sent By: ;


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15. COURT APPROVAL

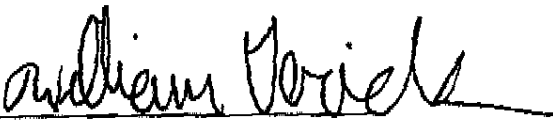
15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

DATED:

By: 
Leviton Manufacturing Company, Inc.

DATED:


William Verick
Klamath Environmental Law Center

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

NOV 28 2005

RONALD E. QUIDACHAY

JUDGE OF THE SUPERIOR COURT

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8 Attorneys for Plaintiff
 9 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED
 FILED
 San Francisco County Superior Court

NOV 28 2005

GORDON PARK-LI, Clerk
 BY: CYNTHIA S. HERBERT
 Deputy Clerk

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 11
 12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13
 14 COUNTY OF SAN FRANCISCO

15
 16 MATEEL ENVIRONMENTAL JUSTICE
 17 FOUNDATION,

CASE NO. ~~418920~~ 433954

18 Plaintiff,

[Proposed] ORDER APPROVING
 SETTLEMENT (LEVITON
 MANUFACTURING COMPANY, INC.)

19 vs.

20 LOWES COMPANIES, INC., et al.

Date: November 28, 2005

21 Defendants.

Time: 9:30 a.m.

Dept. No.: 302

22
 23 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
 24 noticed motion on November 28, 2005. The court finds that:

- 25 1. The reformulation required by the Consent Judgment complies with the
 26 requirements of Proposition 65;
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- 2. The payments in lieu of civil penalty specified in the Consent Judgment are reasonable based on the criteria in Cal Health & Safety Code §25249.7(b)(2); and
- 3. The attorneys fees awarded under the Consent Judgment are reasonable under California law.

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

IT IS SO ORDERED.

RONALD E. QUIDACHAY

Dated: NOV 28 2005

Judge of the Superior Court