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**ENDORSED
 FILED**
San Francisco County Superior Court

MAY 24 2005

5 DAVID WILLIAMS (SBN 144479)
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 2070 Allston Way, Suite 300
 7 Berkeley, CA 94704

GORDON PARK-LI, Clerk
 BY: MARJORIE SCHWARTZ-SCOTT
 Deputy Clerk

8 Attorneys for Plaintiff
 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 FOR THE COUNTY OF SAN FRANCISCO

13 MATEEL ENVIRONMENTAL JUSTICE
 FOUNDATION,

Case No. CGC-04-429912

Plaintiff,

**CONSENT JUDGMENT AS TO PANACEA
 PRODUCTS CORP.**

16 vs.

17 KMART CORPORATION; EDDIE BAUER,
 INC.; TOYS "R" US, INC.; PANACEA
 18 CORP.; PANACEA PRODUCTS CORP.;
 19 FISKARS BRANDS, INC.; WESTERN
 TRIMMING CORP.; PACON CORP.; EAST
 20 WEST DISTRIBUTING CO., INC.; AND
 DOES 1 through 100, inclusive,

21 Defendants.

24 **I. INTRODUCTION**

25 1.0 On March 25, 2004 the MATEEL ENVIRONMENTAL JUSTICE
 26 FOUNDATION ("Plaintiff MEJF") acting on behalf of itself and the general public, filed
 27 a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco
 28 Superior Court, Case No. CGC-04-428845, against defendant PANACEA PROEDUCTS

1 CORP.. ("Panacea" or "defendant). The Complaint alleges, among other things, that
2 Panacea violated provisions of the Safe Drinking Water and Toxic Enforcement Act of
3 1986, Health and Safety Code Sections 25249.5, *et seq.* (Proposition 65), and Business
4 and Professions Code Sections 17200 *et seq.* (the "Unfair Competition Act"), by
5 knowingly and intentionally exposing persons to products containing lead and/or lead
6 compounds, which are chemicals known to the State of California to cause cancer and/or
7 birth defects or other reproductive harm, without first providing a clear and reasonable
8 warning to such individuals. The Complaint was based upon a 60-Day Notice letter,
9 dated December 30, 2003, sent by MEJF to Panacea, the California Attorney General, all
10 District Attorneys, and all City Attorneys with populations exceeding 750,000.

11 1.1 Panacea is a business that employs more than ten persons and sells within
12 the State of California hand tools coated with polyvinyl chloride "PVC" materials.
13 Pursuant to Health and Safety Code Section 25249.9, lead and lead compounds are
14 chemicals known to the State of California to cause cancer and reproductive toxicity.
15 Products containing lead and/or lead compounds that are sold or distributed in the State
16 of California are, under specified circumstances, subject to the Proposition 65 warning
17 requirement set forth in Health and Safety Code Section 25249.6. Plaintiff MEJF alleges
18 that hand tools coated with polyvinyl chloride (hereinafter "PVC hand tools"), that are
19 sold by Panacea for use in California, require a warning under Proposition 65. For
20 purposes of this Consent Judgment, the term "Covered Products" shall be defined as
21 hand tools coated with polyvinyl chloride that are (1) manufactured by Panacea or
22 another entity under contract with Panacea, and (2) distributed and sold within the State
23 of California.

24 1.2 For purposes of this Consent Judgment, the parties stipulate that this Court
25 has jurisdiction over the allegations of violations contained in the Complaint and
26 personal jurisdiction over Panacea as to the acts alleged in the Complaint, that venue is
27 proper in the County of San Francisco and that this Court has jurisdiction to enter this
28 Consent Judgment as a full settlement and resolution of the allegations contained in the

1 Complaint and of all claims which were or could have been raised by any person or
2 entity based in whole or in part, directly or indirectly, on the facts alleged therein or
3 arising therefrom or related to.

4 1.3 This Consent Judgment resolves claims that are denied and disputed. The
5 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
6 all claims between the parties for the purpose of avoiding prolonged litigation. This
7 Consent Judgment shall not constitute an admission with respect to any material
8 allegation of the Complaint, each and every allegation of which Panacea denies, nor may
9 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
10 misconduct, culpability or liability on the part of Panacea.

11 2. **SETTLEMENT PAYMENT**

12 2.0 In settlement of all of the claims that are alleged, or could have been
13 alleged, in the Complaint concerning Covered Products, no later than twenty (20) days
14 after the court enters this Consent Judgment, Panacea shall pay \$15,000 to the Klamath
15 Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Panacea shall
16 not be required to pay a civil penalty pursuant to Health and Safety Code Section
17 25249.7(b).

18 2.1 Additionally, no later than twenty (20) days after the court enters this
19 Consent Judgment, Panacea shall pay \$7,500 to Californians for Alternatives to Toxics
20 and \$7,500 to the Ecological Rights foundation. These payments shall be used toward
21 reducing exposures to toxic chemicals and other pollutants, and toward increasing
22 consumer, worker and community awareness of health hazards posed by lead and other
23 toxic chemicals. The parties agree and acknowledge that the charitable contributions
24 made pursuant to this section shall not be construed as a credit against the personal
25 claims of absent third parties for restitution against the defendant.

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1 **3. ENTRY OF CONSENT JUDGMENT**

2 3.0 The parties hereby request that the Court promptly enter this Consent
3 Judgment. Upon entry of the Consent Judgment, Panacea and MEJF waive their
4 respective rights to a hearing or trial on the allegations of the Complaint.

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

6 4.0 This Consent Judgment is a final and binding resolution between MEJF,
7 acting on behalf of itself and (as to those matters raised in the 60-Day Notice Letter) the
8 general public, and Panacea of: (i) any violation of Proposition 65 or the Unfair
9 Competition Act (including but not limited to the claims made in the Complaint); and (ii)
10 any other statutory or common law claim to the fullest extent that any of the foregoing
11 described in (i) or (ii) were or could have been asserted by any person or entity against
12 Panacea or their parents, subsidiaries or affiliates, and all of their suppliers, customers,
13 distributors, wholesalers, retailers, or any other person in the course of doing business,
14 and the successors and assigns of any of them, who may use, maintain, distribute or sell
15 Covered Products ("Released Entities"), based on their alleged exposure of persons to
16 lead or lead compounds from Covered Products or their alleged failure to provide a clear
17 and reasonable warning of exposure to such individuals; and (iii) as to alleged exposures
18 to lead or lead compounds from Covered Products, any other claim based in whole or in
19 part on the facts alleged in the Complaint, whether based on actions committed by the
20 Released Entities. As to alleged exposures to lead or lead compounds from Covered
21 Products, compliance with the terms of this Consent Judgment resolves any issue, now
22 and in the future, concerning compliance by Panacea and the Released Entities, with the
23 requirements of Proposition 65 and the Unfair Competition Act with respect to Covered
24 Products, and any alleged resulting exposure.

25 4.1 As to alleged exposures to lead or lead compounds from Covered Products,
26 MEJF, by and on behalf of MEJF, and its respective agents, successors and assigns,
27 waives any and all rights to institute any form of legal action, and releases all claims
28 against Panacea and the Released Entities, and all of their respective parents, subsidiaries

1 or affiliates, and all of their suppliers, customers, distributors, wholesalers, retailers, or
2 any other person in the course of doing business, and the successors and assigns of any
3 of them, who may use, maintain, distribute or sell the Covered Products, whether, under
4 Proposition 65 or the Unfair Competition Act or otherwise, arising out of or resulting
5 from, or related directly or indirectly to, in whole or in part, the Covered Products,
6 including but not limited to any alleged exposure to, or alleged failure to warn with
7 respect to, the Covered Products (referred to collectively in this paragraph as the
8 "Claims"). In furtherance of the foregoing, as to alleged exposures to Covered Products,
9 MEJF hereby waives any and all rights and benefits which it now has, or in the future
10 may have, conferred upon it with respect to the Claims by virtue of the provisions of
11 section 1542 of the California Civil Code, which provides as follows:

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

18 MEJF understands and acknowledges that the significance and consequence of this waiver
19 of California Civil Code section 1542 is that even if MEJF suffers future damages arising out of or
20 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
21 including but not limited to any alleged exposure to, or alleged failure to warn with respect to
22 exposure to, lead or lead compounds from Covered Products, MEJF will not be able to make any
23 claim for those damages against Panacea or the Released Entities. Furthermore, MEJF
24 acknowledges that it intends these consequences for any such Claims as may exist as of the date of
25 this release but which MEJF does not know exist, and which, if known, would materially affect its
26 decision to enter into this Consent Judgment, regardless of whether their lack of knowledge is the
27 result of ignorance, oversight, error, negligence, or any other cause.

28 **5. ENFORCEMENT OF JUDGMENT**

5.0 The terms of this Consent Judgment shall be enforced exclusively by the parties hereto. The parties may, by noticed motion or order to show cause before the

1 Superior Court of San Francisco County, giving the notice required by law, enforce the
2 terms and conditions contained herein. In any proceeding brought by either party to
3 enforce this Consent Judgment, such party may seek whatever fines, costs, penalties or
4 remedies as may be provided by law for any violation of Proposition 65 or this Consent
5 Judgment.

6 **6. MODIFICATION OF JUDGMENT**

7 6.0 This Consent Judgment may be modified only upon written agreement of
8 the parties and upon entry of a modified Consent Judgment by the Court thereon, or upon
9 motion of any party as provided by law and upon entry of a modified Consent Judgment
10 by the Court.

11 **7. INJUNCTIVE RELIEF**

12 7.0 Covered Products shall be deemed to comply with Proposition 65 and be
13 exempt from any Proposition 65 warning requirements if the PVC used in the production
14 of Covered Products that are manufactured beginning ninety days after entry of this
15 Consent Judgment meet the following criteria:

16 (a) The PVC shall have no lead as an intentionally added constituent;

17 (b) A representative sample of either (1) the bulk PVC used to
18 manufacture the Covered Products, or (2) the finished Covered Product, at Panacea's sole
19 option shall have been tested for lead, and must have shown lead content by weight of less
20 than 0.02% (200 parts per million "200 ppm"), using a test method of sufficient sensitivity
21 to establish a limit of quantification (as distinguished from detection) of less than 30 ppm;
22 and

23 7.1 Panacea may comply with the requirements of Section 7.0 by relying on
24 information obtained from its suppliers of the Covered Products, and the PVC utilized in
25 their manufacture, so long as such reliance is in good faith. Demonstration of good faith
26 reliance may include, but is not limited to e-mails or other written correspondence from
27 suppliers attesting to compliance with the provisions of this Section 7.0.

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1 7.2 In the event that MEJF settles another actual or potential claim concerning
2 the alleged failure of a business to provide adequate Proposition 65 warnings concerning
3 its manufacture, distribution or sale of PVC coated tools in California, and agrees to a
4 standard for reformulation that allows for lead content by weight of greater than 200 ppm
5 in the PVC materials, Panacea's compliance with the less stringent standard will be
6 deemed to meet the requirements of Section 7.0(b) above. MEJF shall notify Panacea of
7 any and each such settlement by written notice pursuant to Section 14, within ten (10)
8 days of execution of such settlement or consent judgment.

9 **8. AUTHORITY TO STIPULATE**

10 8.0 Each signatory to this Consent Judgment certifies that he or she is fully
11 authorized by the party he or she represents to enter into this Consent Judgment and to
12 execute it on behalf of the party represented and legally to bind that party.

13 **9. DUTIES LIMITED TO CALIFORNIA**

14 9.0 This Consent Judgment shall have no effect on Covered Products sold by
15 Panacea outside the State of California.

16 **10. RETENTION OF JURISDICTION**

17 10.0 This Court shall retain jurisdiction of this matter to implement the Consent
18 Judgment.

19 **11. SERVICE ON THE ATTORNEY GENERAL**

20 11.0 KELC shall serve a copy of this Consent Judgment, signed by the parties,
21 on the California Attorney General on behalf of the parties so that the Attorney General
22 may review this Consent Judgment prior to its submittal to the Court for approval. No
23 sooner than forty five (45) days after the Attorney General has received the
24 aforementioned copy of this Consent Judgment, and in the absence of any written
25 objection by the Attorney General to the terms of this Consent Judgment, the parties may
26 then submit it to the Court for approval.

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1 **12. ENTIRE AGREEMENT**

2 12.0 This Consent Judgment contains the sole and entire agreement and
3 understanding of the parties with respect to the entire subject matter hereof and any and
4 all prior discussions, negotiations, commitments and understandings related hereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein
6 have been made by any party hereto. No other agreements not specifically referred to
7 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

8 **13. GOVERNING LAW**

9 13.0 The validity, construction and performance of this Consent Judgment shall
10 be governed by the laws of the State of California, without reference to any conflicts of
11 law provisions of California law.

12 **14. SEVERABILITY**

13 14.0 In the event that any of the provisions of this Consent Judgment are held by
14 a court to be unenforceable, the validity of the enforceable provisions shall not be
15 adversely affected.

16 **15. COURT APPROVAL**

17 15.0 If this Consent Judgment, in its entirety, is not approved by the Court, it
18 shall be of no force or effect, and cannot be used in any proceeding for any purpose.

19 **16. NOTICES**

20 16.0 Any notices under this Consent Judgment shall be by personal delivery of
21 First Class Mail.

23 If to MEJF:

William Verick, Esq.
Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

26 If to Panacea:

Randy Swords
Panacea Products Corp.
2711 International Street
Columbus, OH

28 With a copy to:

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Gregory L. Spallas
PHILLIPS, SPALLAS & ANGSTADT, L.L.P.
650 California Street, 10th Floor
San Francisco, CA 94108

17. COUNTERPARTS; FACSIMILE SIGNATURES

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

IT IS SO STIPULATED:

DATED: April 1, 2005

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

BY: William Verick
WILLIAM VERICK

DATED: MARCH 22, 2005

PANACEA CORPORATION

BY: [Signature]
ITS: VICE-PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: MAY 24 2005

RONALD E. QUIDACHAY

JUDGE OF THE SUPERIOR COURT