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**ENDORSED
 FILED**
San Francisco County Superior Court

OCT 24 2006

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

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15 Attorneys for Plaintiff,
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 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN FRANCISCO
 (Unlimited Jurisdiction)

16 MATEEL ENVIRONMENTAL JUSTICE
 17 FOUNDATION,

No. 433954

17 PLAINTIFF,

(JCR)
 (PROPOSED) CONSENT JUDGMENT

18 V.

19 LOWE'S HIW, INC., (erroneously sued as
 20 LOWE'S COMPANIES, INC.), et al.,

21 DEFENDANTS.

23 1. INTRODUCTION

24 1.1 On or about April 6, 2004, 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 Lowe's HIW, Inc.
 28 ("Defendant"), alleging that Defendant, through sales in California of Garden Plus 8" By-Pass

1 Pruning Shears and Task Force Hand Tools 8" Linesman Pliers, the handles for which are coated
2 with polyvinyl chloride ("PVC"), that are sold by Defendant ("Covered Products"), was in
3 violation of certain provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,
4 Health and Safety Code sections 25249.5, et seq. ("Proposition 65"), by knowingly and
5 intentionally exposing persons to chemicals, including lead and lead compounds, lead phosphate,
6 lead acetate and lead subacetate, (collectively, "lead"), known to the State of California to cause
7 cancer and/or birth defects or other reproductive harm, without first providing a clear and
8 reasonable warning.

9 JIIN HAUR INDUSTRIAL CO., LTD ("Jiin Haur") has been identified as the
10 manufacturer of Garden Plus 8" By-Pass Pruning Shears. HANGZHOU GREAT STAR TOOLS
11 CO., LTD ("Hangzhou") has been identified as the manufacturer of Task Force Hand Tools 8"
12 Linesman Pliers.

13 On September 28, 2006, Mateel sent a supplemental Notice to Jiin Haur and Hangzhou.
14 Eighty (80) days after this Notice was sent, provided no public enforcer has begun an
15 enforcement action with regard to the Covered Products, then the Complaint will be deemed
16 amended to have added Jiin Haur and Hangzhou as defendants, and they will therefore become
17 parties to this Consent Judgment. At the time that Jiin Haur and Hangzhou are added as parties
18 to the Consent Judgment, Lowe's HIW, Inc. will be dismissed from this action with prejudice,
19 effective as to the Covered Products.

20 1.2 On or about August 19, 2004, plaintiff Mateel, acting in the public interest
21 pursuant to Health and Safety Code section 25249.7(d) and on behalf of the general public
22 pursuant to Business and Professions Code section 17204 ("Plaintiff"), filed a Complaint for Civil
23 Penalties and Injunctive Relief in San Francisco County Superior Court, Case No. 317279
24 ("Complaint") against Defendant based on the allegations contained in the Notice. In addition to
25 asserting claims directly under Proposition 65, the Complaint also alleges that the violations of
26 Proposition 65 for which Defendant is allegedly responsible constitute separate violations of
27 Business and Professions Code sections 17200 et seq. (the "Unfair Competition Act"). As
28 provided in 1.1, above, the Complaint will be amended to name Jiin Haur and Hangzhou as

1 Defendants ("the Manufacturer Defendants"), and Lowe's IIIW, Inc. will be dismissed, with
2 prejudice, effective as to the Covered Products.

3 1.3 For purposes of this Consent Judgment, Mateel and the Manufacturer Defendants
4 stipulate that this Court has jurisdiction over the allegations of violations contained in the
5 Complaint and personal jurisdiction over the Manufacturer Defendants as to the acts alleged in
6 the Complaint, that venue is proper in the County of San Francisco and that this Court has
7 jurisdiction to enter this Consent Judgment as a full and final settlement and resolution of the
8 allegations contained in the Complaint and of all claims which were or could have been raised
9 based on the facts alleged therein or arising therefrom.

10 1.4 Mateel and the Manufacturer Defendants enter into this Consent Judgment
11 pursuant to a full and final settlement of disputed claims between the parties for the purpose of
12 avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with
13 respect to any allegation made in the Notice or the Complaint, each and every allegation of which
14 Defendant and the Manufacturer Defendants deny, nor may this Consent Judgment or compliance
15 with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
16 Defendant or the Manufacturer Defendants.

17 2. INJUNCTIVE RELIEF-REFORMULATION FOR COVERED PRODUCTS

18 2.1 Within two hundred and seventy (270) days after entry of this Consent
19 Agreement, the Manufacturer Defendants shall cease sales of Covered Products with PVC coated
20 handles in California unless the Tools Covered Products meet the following criteria:

- 21 (a) The formulation of PVC used shall have no intentionally added lead.
22 (b) A random sample of the bulk PVC used to manufacture the Tools Covered
23 Products has been tested for lead content and shown lead content by
24 weight of less than 0.02%, or 200 parts per million ("ppm"), using a test
25 method of sufficient sensitivity to establish a limit of quantification (as
26 distinguished from detection) of less than 200 ppm.

27 2.2 The Manufacturer Defendants may comply with the above requirements by
28 relying on information obtained from its suppliers of the tools and PVC utilized on the handles of

1 the Covered Products thereof provided such reliance is in good faith.

2 3. MONETARY RELIEF

3 3.1 Within fifteen (15) days after entry of this Consent Judgment by the Court, the
4 Manufacturer Defendants shall pay seven thousand five hundred dollars (\$7,500) to the
5 Ecological Rights Foundation and seven thousand five hundred dollars (\$7,500) to Californians
6 for Alternatives to Toxics. Both groups are California non-profit organizations that advocate for
7 workers' and consumers' safety and for awareness and reduction of toxic exposures. The
8 foregoing settlement payments shall be mailed to the attention of William Verick, Klamath
9 Environmental Law Center, 424 First Street, Eureka, California 95501, who shall provide them
10 to the respective organizations within fifteen (15) days of receipt.

11 4. ATTORNEYS' FEES

12 4.1 Within fifteen (15) days after entry of this Consent Judgment, the Manufacturer
13 Defendants shall pay Twenty thousand dollars (\$20,000) to the Klamath Environmental Law
14 Center to cover plaintiffs' attorneys' fees and costs. The above payment shall be mailed to the
15 attention of William Verick, Klamath Environmental Law Center, 424 First Street, Eureka,
16 California 95501.

17 4.2 Except as specifically provided in this Consent Judgment, plaintiff and all
18 Defendants shall bear their own costs and attorneys' fees.

19 5. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

20 5.1 The terms of this Consent Judgment are enforceable by and among the parties
21 hereto or, with respect to the injunctive relief provided for herein, by the California Attorney
22 General.

23 6. MATTERS COVERED BY THIS CONSENT JUDGMENT

24 6.1 This Consent Judgment is a full, final and binding resolution between the Plaintiff
25 acting on behalf of itself and, (as to those matters referenced in the Notice Letter) in the public
26 interest pursuant to Health and Safety Code section 25249.7(d), and the Manufacturer Defendants
27 concerning any violation of Proposition 65 regarding any claims made or which could have been
28 made in the Notices and/or the Complaint, or any other statutory or common law claim that could

1 have been asserted against the Manufacturer Defendants, Defendant and/or their affiliates, parent,
2 related or subsidiary corporations, divisions, successors, officers, directors, assigns, distributors,
3 retailers, and/or customers for failure to provide clear, reasonable, and lawful warnings of
4 exposure to lead contained in or otherwise associated with Covered Products manufactured, sold
5 or distributed by, for, or on behalf of, Defendant and the Manufacturer Defendants. Compliance
6 with the terms of this Consent Judgment resolves any issue, now and in the future, concerning
7 compliance by the Manufacturer Defendants and Defendant and/or their affiliates, parent or
8 subsidiary corporations, divisions, successors, officers, directors, assigns, distributors, retailers,
9 and/or customers with the requirements of Proposition 65 with respect to lead contained in or
10 otherwise associated with Covered Products.

11 6.2 As to any claims, violations (except violations of this Consent Judgment), actions,
12 damages, costs, penalties or causes of action which may arise or have arisen after the original
13 date of entry of this consent judgment, compliance by the Manufacturer Defendants with the
14 terms of this consent judgment shall be deemed to be full and complete compliance with
15 Proposition 65 as to claims regarding exposure to lead in Covered Products.

16 6.3 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and
17 benefits which it now has, or in the future may have, conferred upon it with respect to the
18 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which
19 provides as follows:

20 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
21 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
22 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
23 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
24 DEBTOR."

25 Plaintiff understands and acknowledges that the significance and consequence of this waiver of
26 California Civil Code Section 1542 is that even if Plaintiff suffers future damages arising out of
27 or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
28 they will not be able to make any claim for those damages against the Manufacturer Defendants

1 or Defendant, or their parent, subsidiaries or affiliates, or any of its customers, distributors,
2 wholesalers, retailers or any other person in the course of doing business who may manufacture,
3 use, maintain, distribute, market or sell the Covered Products. Furthermore, Plaintiff
4 acknowledges that it intends these consequences for any such claims which may exist as of the
5 date of this release but which Plaintiff does not know exist, and which, if known, would
6 materially affect its decision to enter into this Consent Judgment, regardless of whether its lack
7 of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

8 7. APPLICATION OF JUDGMENT

9 7.1 The obligations of this Consent Judgment shall apply to and be binding upon any
10 and all plaintiffs, acting in the public interest pursuant to Health and Safety Code section
11 25249.7(d) and on behalf of the general public pursuant to Business and Professions Code
12 section 17204, and the Manufacturer Defendants and the successors or assigns of any of them.

13 8. MODIFICATION OF JUDGMENT

14 8.1 This Consent Judgment may be modified only upon written agreement of the
15 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
16 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

17 9. NOTICE

18 9.1 When any Party is entitled to receive any notice or report under this Consent
19 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to:

- 20 (a) For Mateel: William Verick, Esq., Klamath Environmental Law Center,
21 424 First Street, Eureka, California 95501; and
22 (b) For Lowe's HIW, Inc.: Charles D. May/Stephanie Forman, Tharpe &
23 Howell, 12520 Ventura Boulevard, 9th Floor, Sherman Oaks, CA 91403
24 (c) For Jiin Haur: Mr. Shyh Biau Wu, President, JIIN HAUR INDUSTRIAL
25 CO., LTD., NO. 133 CHIU KANG LANE, LU KANG TOWN, CHANG
26 HUA HSIEN, TAIWAN 505.
27 (d) For Hangzhou: Mr. Champin Chou, President, HANGZHOU GREAT
28 STAR TOOLS CO, LTD., Room 402-406, Fuchun Building, 509 Qing Tai

1 Street, Hangzhou 31009, China.

2 9.2 Any Party may modify the person and address to whom notice is to be sent by
3 sending each other Party notice in accordance with this Paragraph.

4 10. AUTHORITY TO STIPULATE

5 10.1 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
7 of the party represented and legally to bind that party.

8 11. RETENTION OF JURISDICTION

9 11.1 This Court shall retain jurisdiction over the matters covered herein and the
10 enforcement and/or application of this Consent Judgment.

11 12. ENTIRE AGREEMENT

12 12.1 This Consent Judgment contains the sole and entire, agreement and understanding
13 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,
14 negotiations, commitments and understandings related hereto. No representations, oral or
15 otherwise, express or implied, other than those contained herein have been made by any party
16 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
17 deemed to exist or to bind any of the parties.

18 13. GOVERNING LAW

19 13.1 The validity, construction and performance of this Consent Judgment shall be
20 governed by the laws of the State of California.

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1 14. COURT APPROVAL

2 14.1 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.

4 IT IS SO STIPULATED:

5 DATED:

By: _____

6 Manufacturer Defendant Jiin Haur

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8 DATED:

By: _____

9 Manufacturer Defendant Hangzhou

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12 DATED:

13 William Verick
14 Klamath Environmental Law Center

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18 IT IS SO ORDERED, ADJUDGED AND DECREED:

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20 Dated:

21 JUDGE OF THE SUPERIOR COURT

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1 14. COURT APPROVAL

2 14.1 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.

4 IT IS SO STIPULATED:

5 DATED:

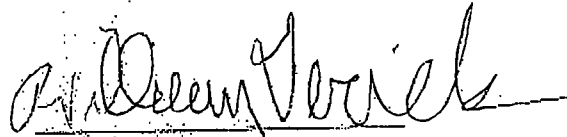


6 By: _____
7 Manufacturer Defendant Hanzhou

8 DATED:

9 By: _____
10 Manufacturer Defendant Hanzhou

11 DATED:

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13 William Verick
14 Klamath Environmental Law Center

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17 IT IS SO ORDERED, ADJUDGED AND DECREED:

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19 Dated: **OCT 24 2006**

RONALD E. QUIDACHAY

JUDGE OF THE SUPERIOR COURT

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15 Attorneys for Plaintiff,
 16 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 18 COUNTY OF SAN FRANCISCO
 19 (Unlimited Jurisdiction)

20 MATEEL ENVIRONMENTAL JUSTICE
 21 FOUNDATION,

No. 433954

(JCR)

22 PLAINTIFF,

~~PROPOSED~~ ORDER APPROVING
 CONSENT JUDGMENT AS TO
 DEFENDANT LOWES HIW, INC.,

23 v.

24 LOWE'S HIW, INC., (erroneously sued as
 25 LOWE'S COMPANIES, INC.), et al.,

Date: October 24, 2006
 Time: 9:30 a.m.
 Dept. 302

26 DEFENDANTS.

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

1. Based on the 60 Day Notice and the allegations in the Complaint in this action,
 this case is justiciable.

2. The reformulation the Consent Judgment requires complies with the requirements
 of Proposition 65.

1 3. The payments in lieu of civil penalties specified in the Consent Judgment are
2 reasonable and conform to the criteria of Health & Safety Code Section 25249.7(b)(2).

3 4. The attorneys fees awarded under the Consent Judgment are reasonable as are the
4 hourly rates awarded the attorneys.

5 5. Based on the injunctive relief regarding reformulation of the products at issue in
6 this case, the Consent Judgment approved concurrent with this Order is in the public interest.

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

8 IT IS SO ORDERED.

9 **OCT 24 2006**

RONALD E. QUIDACHAY

10 Dated: _____

Judge of the Superior Court

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