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11 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 (UNLIMITED JURISDICTION)
16

17 MATEEL ENVIRONMENTAL JUSTICE
18 FOUNDATION,
19 Plaintiff,
20 v.
21 WESTRIM, INC.; LKG INDUSTRIES, INC.;
and DOES 1 through 100, inclusive,
22 Defendants.

Case No. CGC-04-436589
[PROPOSED] CONSENT JUDGMENT
AS TO WESTRIM, INC.

ENDORSED
FILED
San Francisco County Superior Court

JUN 17 2005

GORDON PARK-LI, Clerk
BY: GARTH SAYERS
Deputy Clerk

1 **I. INTRODUCTION**

2 On or about June 4, 2004, plaintiff MATEEL ENVIRONMENTAL JUSTICE
3 FOUNDATION (“Plaintiff” or “Mateel”), provided a 60-day notice of violation (“Notice”) to the
4 California Attorney General, the District Attorneys of every county in California, the City Attorneys of
5 every California city with a population greater than 750,000, and defendant, WESTRIM, INC.
6 (“Westrim”), alleging that Westrim, through its sales in California of hand tools, the handles for which
7 are coated with polyvinyl chloride (“PVC”), that are manufactured, distributed or sold by Westrim
8 (“Covered Products”), was in violation of certain provisions of the Safe Drinking Water and Toxic
9 Enforcement Act of 1986, Health and Safety Code sections 25249.5, *et seq.* (“Proposition 65”), by
10 knowingly and intentionally exposing persons to chemicals, including lead and lead compounds,
11 (collectively, “lead”) known to the State of California to cause cancer and/or birth defects or other
12 reproductive harm, without first providing a clear and reasonable warning.

13 On or about November 23, 2004, Plaintiff, acting in the public interest pursuant to Health and
14 Safety Code section 25249.7(d), filed a Complaint for Civil Penalties and Injunctive Relief in
15 San Francisco County Superior Court, Case No. CGC-04-436589 (“Complaint”) against Westrim
16 based on the allegations contained in the Notice.

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

23 The parties enter into this Consent Judgment pursuant to a full and final settlement of disputed
24 claims between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
25 shall not constitute an admission with respect to any allegation made in the Notice or the Complaint,
26 each and every allegation of which Westrim denies, nor may this Consent Judgment or compliance
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1 with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
2 Westrim.

3 **II. INJUNCTIVE RELIEF—REFORMULATION**

4 Within ninety (90) days after entry of this Consent Judgment, all PVC used in the production
5 of Covered Products imported, manufactured, or distributed by Westrim for sale in California shall
6 meet the following criteria:

7 The formulation of PVC used shall have no intentionally added lead.

8 Covered Products shall be construed to have no intentionally added lead where a
9 representative sample of the product has shown lead content by weight of less than 0.02%, or 200
10 parts per million (“ppm”), using a test method of sufficient sensitivity to establish a limit of
11 quantification (as distinguished from detection) of less than 200 ppm.

12 Westrim may comply with the above requirements by relying on information obtained from its
13 suppliers of the tools and PVC utilized on the handles thereof provided such reliance is in good faith.

14 **III. MONETARY RELIEF**

15 Within forty-five (45) days after entry of this Consent Judgment, Westrim shall pay fifteen
16 thousand dollars (\$15,000) to the Environmental Protection Information Center (“EPIC”), a California
17 non-profit organization that advocates for awareness and reduction of toxic exposures. The foregoing
18 settlement payment shall be mailed to the attention of William Verick, Esq., Klamath Environmental
19 Law Center, 424 First Street, Eureka, California 95501, who shall provide it to EPIC within forty-five
20 (45) days of receipt.

21 The Parties agree and acknowledge that EPIC is a tax exempt, section 501(c)(3) non-profit
22 organization and that funds distributed to this organization pursuant to this Consent Judgment may
23 only be spent to reduce harm from toxic chemicals, or to increase awareness of health hazards posed
24 by lead and other toxic chemicals; the monetary payment made to EPIC is made in lieu of civil
25 penalties set forth herein and are not in any manner for restitution; this payment may not be used by
26 EPIC to fund attorneys fees in Proposition 65 enforcement litigation and shall not be construed as a
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1 credit against potential claims, if any, which individuals may assert for restitution against the Settling
2 Defendants in the future.

3 Westrim shall not be required to pay a civil penalty pursuant to Health and Safety Code
4 Sections 25249.7(b).

5 **IV. ATTORNEYS' FEES**

6 Within forty-five (45) days after entry of this Consent Judgment, Westrim shall pay twenty
7 thousand dollars (\$20,000) to the Klamath Environmental Law Center to cover plaintiffs' attorneys'
8 fees and costs. The attorneys' fees payment shall be mailed to the attention of William Verick, Esq.,
9 Klamath Environmental Law Center, 424 First Street, Eureka, California 95501, who shall be
10 responsible for its distribution to Mateel's attorneys.

11 **V. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES**

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

14 **VI. MATTERS COVERED BY THIS CONSENT JUDGMENT**

15 This Consent Judgment is a full, final and binding resolution between the Plaintiff, acting on
16 behalf of the public interest pursuant to Health and Safety Code section 25249.7(d) and Westrim
17 concerning any violation of Proposition 65 regarding any claims made or which could have been made
18 in the Notice and/or the Complaint, or any other statutory or common law claim that could have been
19 asserted against Westrim and/or its affiliates, subsidiaries, divisions, successors, assigns, distributors,
20 retailers, and/or customers ("Covered Parties") for failure to provide clear, reasonable, and lawful
21 warnings of exposure to lead contained in or otherwise associated with Covered Products
22 manufactured, sold or distributed by, for, or on behalf of, Westrim. For the purposes of this Consent
23 Judgment, Covered Products include those manufactured, imported, or distributed by Westrim,
24 including, but not limited to, those Covered Products supplied by Westrim which are sold by any
25 Covered Party under its own private label and/or any other brand name. Compliance with the terms of
26 this Consent Judgment resolves any issue, now and in the future, concerning compliance by Defendant

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1 with the requirements of Proposition 65 with respect to lead contained in or otherwise associated with
2 Covered Products.

3 **VII. EXECUTION, SERVICE ON THE ATTORNEY GENERAL, AND**
4 **SUBMISSION FOR ENTRY BY COURT**

5 Mateel shall submit this Consent Judgment to the Court for approval and entry at a hearing
6 scheduled upon a formally noticed motion to be filed by Mateel. Mateel shall serve a copy of said
7 motion and this Consent Judgment on the California Attorney General on behalf of the Parties so that
8 the California Attorney General may review the motion and this Consent Judgment at least forty-five
9 (45) days prior to its consideration by the Court at a hearing to be scheduled by means of the noticed
10 motion. Prior to or concurrent with its submittal to the Court for approval, Mateel shall file with the
11 court a proof of service attesting that this Consent Judgment has been served on the California
12 Attorney General and the manner and date on which that service was made. Service of the motion to
13 enter this Consent Judgment may be made on Westrim by electronic mail and/or through provision of
14 a diskette and may be effectuated by Mateel's counsel through effectuating service on counsel to
15 Westrim.

16 **VIII. APPLICATION OF JUDGMENT**

17 The obligations of this Consent Judgment shall apply to and be binding upon all plaintiffs,
18 acting in the public interest pursuant to Health and Safety Code section 25249.7(d), and Westrim and
19 the successors or assigns of any of them.

20 **IX. MODIFICATION OF JUDGMENT**

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

24 **X. NOTICE**

25 When any Party is entitled to receive any notice or report under this Consent Judgment, the
26 notice or report shall be sent by U.S. mail or overnight courier service to:
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1 For Mateel: William Verick, Esq., Klamath Environmental Law Center, 424 First Street,
2 Eureka, California 95501; and

3 For Westrim: Fred Gysi, Chief Financial Officer, Westrim Inc, 7855 Hayvenhurst Ave., Van
4 Nuys, Ca 91406, with a copy to Robert L. Falk, Morrison & Foerster LLP, 425 Market Street,
5 San Francisco, California 94105.

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

8 **XI. AUTHORITY TO STIPULATE**

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

12 **XII. RETENTION OF JURISDICTION**

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

15 **XIII. ENTIRE AGREEMENT**

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

22 **XIV. GOVERNING LAW**

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

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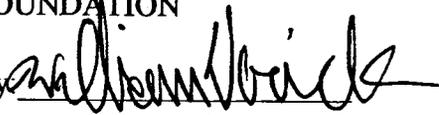
1 **XV. COURT APPROVAL**

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

4 IT IS SO STIPULATED:

5 DATED: April 25, 2005

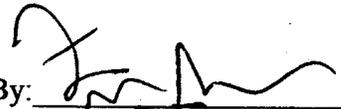
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

6
7 By: 

8 William Verick
9 Attorney for Plaintiff

10 DATED: 4/15/05

WESTRIM, INC.

11
12 By: 
13 Title: Chief Financial Officer

15 DATED: _____

MORRISON & FOERSTER LLP

17 Approved as to Form:

18 _____

19 Robert L. Falk
20 Attorney for Westrim

21
22 IT IS SO ORDERED, ADJUDGED AND DECREED:

23
24 Dated: JUN 17 2005

RONALD EVANS QUIDACHAY

JUDGE OF THE SUPERIOR COURT

1 **XV. COURT APPROVAL**

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

4 **IT IS SO STIPULATED:**

5 **DATED:** _____

**MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION**

6

7 **By:** _____

8

**William Verick
Attorney for Plaintiff**

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11 **DATED:** _____

WESTRIM, INC.

12

13 **By:** _____

14

Title: _____

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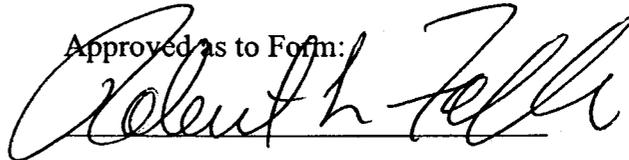
17 **DATED:** 4/19/05

MORRISON & FOERSTER LLP

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Approved as to Form:

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**Robert L. Falk
Attorney for Westrim**

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23 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

24

25 **Dated:** _____

26 **JUDGE OF THE SUPERIOR COURT**

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