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MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN FRANCISCO
13

14 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

15 Plaintiff,

16 vs.

17 SOUTHERN EXCHANGE LP, DBA
18 TEXSPORT., *et al.*,

19 Defendants.
20

Case No. 440570

~~[PROPOSED]~~ CONSENT JUDGMENT AS
TO DEFENDANT HELLY HANSEN US,
INC.

21
22 **1. INTRODUCTION**

23 1.0 On April 19, 2005, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
24 ("Plaintiff" or "MEJF") acting on behalf of itself and the general public, filed a Complaint for civil
25 penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. 440570,
26 against defendant, HELLY HANSEN US, INC.. ("Defendant" or "Helly Hansen"), among others.
27 (MEJF and Helly Hansen are collectively referred to as "the Parties.") The Complaint alleges that
28 Helly Hansen violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,

ENDORSED
FILED

San Francisco County Superior Court

JAN 25 2006

GORDON PARK-LI, Clerk

BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

1 Health and Safety Code sections 25249.5, *et seq.* (Proposition 65), and Business and Professions
2 Code sections 17200 *et seq.* (the “Unfair Competition Act”), by, among other things, knowingly
3 and intentionally exposing persons to products containing lead and/or lead compounds, which are
4 chemicals known to the State of California to cause cancer and/or birth defects or other
5 reproductive harm, without first providing a clear and reasonable warning to such individuals.
6 The Complaint was based upon a 60-Day Notice letter, dated December 31, 2004, sent by MEJF
7 to Helly Hansen, the California Attorney General, all District Attorneys, and all City Attorneys
8 with populations exceeding 750,000. A copy of the 60-Day Notice letter is attached as Exhibit A
9 to the complaint in this action.

10 1.1 Helly Hansen filed a timely answer to the Complaint denying each and every
11 allegation set forth therein and asserting numerous affirmative defenses.

12 1.2 Defendant is a business that employs more than ten persons and manufactures,
13 distributes and/or markets within the State of California clothing made with lead-containing
14 polyvinyl chloride, neoprene and/or other plastic materials (“**PVC Materials**”). Pursuant to
15 Proposition 65, lead and lead compounds are chemicals known to the State of California to cause
16 cancer and reproductive toxicity. Products containing lead and/or lead compounds that are sold or
17 distributed in the State of California may be, under specified circumstances, subject to the
18 Proposition 65 warning requirement set forth in Health and Safety Code section 25249.6. Plaintiff
19 alleges that clothing made with lead-containing PVC Materials (“**PVC Clothing**”) that is
20 manufactured, distributed, sold and/or marketed by Helly Hansen for use in California, requires a
21 warning under Proposition 65. For purposes of this Consent Judgment, the term “**Covered**
22 **Products**” shall be defined as PVC Clothing that is: (i) distributed, marketed, or sold within the
23 State of California, and (ii) manufactured by Helly Hansen or any other entity acting on its behalf,
24 and distributed, marketed and/or sold by Helly Hansen or by any other entity that distributes,
25 markets or sells Helly Hansen’s PVC Clothing, or manufactured by any other entity for Helly
26 Hansen, whether or not the clothing bears Helly Hansen labels.

27 1.3 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 subject matter jurisdiction over the allegations of violations contained in the Complaint and

1 personal jurisdiction over Helly Hansen as to the acts alleged in the Complaint, that venue is
2 proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
3 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of
4 all claims which were or could have been raised by any person or entity based in whole or in part,
5 directly or indirectly, on the facts alleged therein or arising therefrom or related to.

6 1.4 This Consent Judgment resolves claims that are denied and disputed. The parties
7 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
8 between the parties for the purpose of avoiding prolonged litigation. The Parties intend that this
9 Consent Judgment provide, to the maximum extent permitted by law, *res judicata* and *collateral*
10 *estoppel* protection for Helly Hansen against any and all other claims based on the same or similar
11 allegations under Proposition 65 and the Unfair Competition Act.

12 1.5 Helly Hansen disputes that it has violated Proposition 65 as described in the 60-
13 Day Notice Letter, the Complaint, or otherwise. This Consent Judgment shall not constitute an
14 admission with respect to any material allegation of the Complaint, each and every allegation of
15 which Helly Hansen denies, nor may this Consent Judgment or compliance with it be used as
16 evidence of any wrongdoing, misconduct, culpability or liability on the part of Helly Hansen.

17 **2. SETTLEMENT PAYMENT**

18 2.0 In settlement of all of the claims that are alleged, or could have been alleged, in the
19 Complaint concerning Helly Hansen, within 10 business days following the Court's entry of a
20 final judgment, including any third-party appeals to the entry of the judgment. Helly Hansen shall
21 pay \$20,000 to the Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys'
22 fees. Additionally, within 10 business days following the Court's entry of a final judgment,
23 including any third-party appeals to the entry of the judgment, Helly Hansen shall pay \$7,500 to
24 Californians for Alternatives to Toxics; and \$7,500 to the Ecological Rights foundation for use
25 toward reducing exposures to toxic chemicals and other pollutants, and toward increasing
26 consumer, worker and community awareness of health hazards posed by lead and other toxic
27 chemicals. The Parties agree and acknowledge that the charitable contributions made pursuant to
28 this section shall not be construed as a credit against the personal claims absent third parties for

1 restitution against Defendant. Helly Hansen shall not be required to pay a civil penalty pursuant to
2 Health and Safety Code section 25249.7(b).

3 **3. ENTRY OF CONSENT JUDGMENT**

4 3.0 The Parties hereby request that the Court enter this Consent Judgment forty-five
5 (45) days after the filing of a motion for approval of the Consent Judgment in accordance with
6 Title 11, *California Code of Regulations*, section 3003(a). Upon the Court's entry of a final
7 judgment, including any third-party appeals to the entry of the judgment, MEJF and Helly Hansen
8 waive their respective rights to a hearing or trial on the allegations in the Complaint.

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

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

27 4.1 As to alleged exposures to Covered Products and other claims in the Complaint,
28 MEJF, by and on behalf of itself, and its respective agents, successors, attorneys and assigns,

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

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

16 MEJF understands and acknowledges that the significance and consequence of this waiver of
17 California Civil Code section 1542 is that even if it suffers future damages arising out of or
18 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
19 including but not limited to any exposure to, or failure to warn with respect to exposure to, the
20 Covered Products, MEJF will not be able to make any claim for those damages against Helly
21 Hansen or the Released Entities. Furthermore, MEJF acknowledges that it intends these
22 consequences for any such Claims as may exist as of the date of this release but which MEJF does
23 not know exist, and which, if known, would materially affect their decision to enter into this
24 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
25 oversight, error, negligence, or any other cause.
26
27
28

1 **5. ENFORCEMENT AND PRECLUSIVE EFFECT OF JUDGMENT**

2 5.0 The terms of this Consent Judgment shall be enforced exclusively by the Parties
3 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
4 San Francisco County, giving the notice required by law, enforce the terms and conditions
5 contained herein. In any proceeding brought by either party to enforce this Consent Judgment,
6 such Party may seek whatever fines, costs, penalties or remedies as may be provided by law for
7 any violation of Proposition 65 or this Consent Judgment. Additionally, if in such a proceeding
8 the Court finds that Helly Hansen failed to comply with the reformulation requirements as
9 specified in Section 7 of this Consent Judgment, and notwithstanding any other provision of this
10 Consent Judgment, then as to such Covered Products, Helly Hansen shall not benefit from any
11 release from liability specified in any provision of this Consent Judgment.

12 5.1 Entry of judgment by the Court pursuant to this Consent Judgment, and
13 Defendant's compliance with its terms, *inter alia*:

14 i) Constitutes full and fair adjudication of all claims against Helly Hansen and
15 the Released Entities, including, but not limited to, all claims set forth in the Complaint, based
16 upon alleged violations of Proposition 65 and the Unfair Competition Act, as well as any other
17 statute, provision of common law or any theory or issue which arise from the alleged failure to
18 provide warning of exposure to the Covered Products;

19 ii) Bars any and all other persons, on the basis of *res judicata*, the doctrine of
20 mootness and the doctrine of *collateral estoppel* from prosecuting against Helly Hansen and the
21 Released Entities any Claims with respect to the Covered Products based upon alleged violations
22 of (a) Proposition 65, or (b) the Unfair Competition Act which arise from the alleged failure to
23 provide warning of exposure to the Covered Products which may contain lead and/or lead
24 compounds which are known to the State of California to cause cancer and/or birth defects or
25 other reproductive harm; and

26 iii) Constitutes full and fair adjudication of all claims against Helly Hansen and
27 the Released Entities based upon alleged violations of Proposition 65 and the Unfair Competition
28 Act, which arise from the alleged failure to provide warnings of exposure to the Covered Products

1 which may contain lead and/or lead compounds which are known to the State of California to
2 cause cancer and/or birth defects or other reproductive harm.

3 **6. MODIFICATION OF JUDGMENT**

4 6.0 This Consent Judgment may be modified only upon written agreement of the
5 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
6 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

7 **7. INJUNCTIVE RELIEF**

8 7.0 On and after January 1, 2006, the PVC Materials in all Covered Products sold by
9 Helly Hansen for resale in California shall meet the following criteria:

- 10 (a) The PVC Materials shall have no lead as an intentionally added constituent;
- 11 (b) A representative sample of the bulk PVC Materials used to manufacture the
12 Covered Products shall have been tested for lead, and must have shown lead
13 content by weight of less than 0.003% (30 parts per million "30 ppm"), using a test
14 method of sufficient sensitivity to establish a limit of quantification (as
15 distinguished from detection) of less than 30 ppm.

16 7.1 Helly Hansen may comply with the above requirements by relying on information
17 obtained from its suppliers of the Covered Products, and the PVC Materials utilized in their
18 manufacture, so long as such reliance is in good faith. Demonstration of good faith reliance may
19 include, but is not limited to e-mails or other written correspondence from suppliers attesting to
20 compliance with the provisions of this Section 7.1.

21 7.2 In the event that MEJF settles another actual or potential claim concerning the
22 alleged failure of a business to provide adequate Proposition 65 warnings concerning its
23 manufacture, distribution or sale of PVC Clothing in California, and agrees to a standard for
24 reformulation that allows for lead content by weight of greater than 30 ppm in the PVC Materials,
25 Helly Hansen's compliance with the less stringent standard will be deemed to meet the
26 requirements of Sections 7.0(b) above. MEJF shall notify Helly Hansen of any and each such
27 settlement by written notice pursuant to Section 15, within 10 days of execution of such settlement
28 or consent judgment.

1 **8. AUTHORITY TO STIPULATE**

2 8.0 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
4 the party represented and legally to bind that party.

5 **9. RETENTION OF JURISDICTION**

6 9.0 This Court shall retain jurisdiction of this matter to implement the Consent
7 Judgment.

8 **10. SERVICE ON THE ATTORNEY GENERAL**

9 10.0 MEJF shall serve a copy of this Consent Judgment, signed by both parties, on the
10 California Attorney General on behalf of the parties so that the Attorney General may review this
11 Consent Judgment. MEJF, in compliance with Title 11, *California Code of Regulations*, section
12 3003(a), also shall file and serve notice of the motion for approval of this Consent Judgment.

13 **11. ENTIRE AGREEMENT**

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

20 **12. GOVERNING LAW**

21 13.0 The validity, construction and performance of this Consent Judgment shall be
22 governed by the laws of the State of California, without reference to any conflicts of law
23 provisions of California law.

24 **13. COURT APPROVAL**

25 13.0 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of
26 no force or effect, and cannot be used in any proceeding for any purpose.

27 **14. NOTICES**

28

1 14.0 Any notices under this Consent Judgment shall be by personal delivery of First
2 Class Mail.

3 14.1

4 If to MEJF: William Verick, Esq.
5 Klamath Environmental Law Center
6 424 First Street
7 Eureka, CA 95501

8 If to Helly Hansen: J.W. Ring, Esq.
9 Preston Gates & Ellis LLP
10 222 SW Columbia Street, Suite 1400
11 Portland, Oregon 97201

12 IT IS SO STIPULATED:

13 DATED: 12/2/05

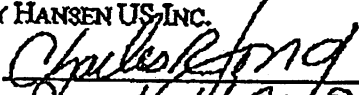
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



BY: WILLIAM VERICK

14 DATED:

HELLY HANSEN US, INC.

BY: 

ITS: 

15 IT IS SO ORDERED, ADJUDGED AND DECREED:

16 DATED: JAN 25 2006

RONALD EVANS QUIDACHAY

JUDGE OF THE SUPERIOR COURT

RONALD EVANS QUIDACHAY