

1 WILLIAM VERICK (SBN 140972)
Klamath Environmental Law Center
2 FREDRIC EVENSON (SBN 198059)
Law Offices of Fredric Evenson
3 424 First Street
Eureka, CA 95501
4 Telephone: (707) 268-8900
Facsimile: (707) 268-8901

5 DAVID WILLIAMS (SBN 144479)
6 BRIAN ACREE (SBN 202505)
370 Grand Avenue, Suite 5
7 Oakland, CA 94610
Telephone: (510) 271-0826
8 Facsimile: (510) 271-0829

9 Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

14 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,
15
16 Plaintiff,
17 vs.
18 SOUTHERN EXCHANGE LP, DBA
TEXSPORT. *et al.*,
19
20 Defendants.

Case No. 440570

~~[PROPOSED]~~ CONSENT JUDGMENT AS
TO DEFENDANTS LONDON FOG
INDUSTRIES, INC. AND PACIFIC TRAIL,
INC.

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 defendants, LONDON FOG INDUSTRIES, INC., and its subsidiary, PACIFIC TRAIL,
27 Inc. (hereinafter referred to collectively as "Defendants" or "London Fog"), among others. (MEJF
28 and London Fog are collectively referred to as "the Parties"). The Complaint alleges that London

ENDORSED
FILED
San Francisco County Superior Court

MAY - 3 2006

GORDON PARK-LI, Clerk
BY: PHILOMENA DIAS
Deputy Clerk

1 Fog violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
2 and Safety Code sections 25249.5, *et seq.* (Proposition 65), and Business and Professions Code
3 sections 17200 *et seq.* (the "Unfair Competition Act"), by, among other things, knowingly and
4 intentionally exposing persons to products containing lead and/or lead compounds, which are
5 chemicals known to the State of California to cause cancer and/or birth defects or other
6 reproductive harm, without first providing a clear and reasonable warning to such individuals.
7 The Complaint was based upon a 60-Day Notice letter, dated December 31, 2004, sent by MEJF
8 to London Fog, the California Attorney General, all District Attorneys, and all City Attorneys with
9 populations exceeding 750,000. A copy of the 60-Day Notice letter is attached as Exhibit A to the
10 complaint in this action.

11 1.1 London Fog filed a timely answer to the Complaint denying each and every
12 allegation set forth therein and asserting numerous affirmative defenses.

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

28

1 1.3 For purposes of this Consent Judgment only, the parties stipulate that this Court has
2 subject matter jurisdiction over the allegations of violations contained in the Complaint and
3 personal jurisdiction over London Fog as to the acts alleged in the Complaint, that venue is proper
4 in the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment
5 as a full settlement and resolution of the allegations contained in the Complaint and of all claims
6 which were or could have been raised by any person or entity based in whole or in part, directly or
7 indirectly, on the facts alleged therein or arising therefrom or related thereto.

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

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

19 **2. SETTLEMENT PAYMENT**

20 2.0 In settlement of all of the claims that are alleged, or could have been alleged, in the
21 Complaint concerning London Fog, within 10 days following the Court's entry of a final
22 judgment, including any third-party appeals to the entry of the judgment. London Fog shall pay
23 \$40,000 to the Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees.
24 Additionally, within 10 days following the Court's entry of a final judgment, including any third-
25 party appeals to the entry of the judgment, London Fog shall pay \$7,500 to Californians for
26 Alternatives to Toxics; and \$7,500 to the Ecological Rights foundation for use toward reducing
27 exposures to toxic chemicals and other pollutants, and toward increasing consumer, worker and
28 community awareness of health hazards posed by lead and other toxic chemicals. The parties

1 agree and acknowledge that the charitable contributions made pursuant to this section shall not be
2 construed as a credit against the personal claims absent third parties for restitution against
3 Defendant. London Fog shall not be required to pay a civil penalty pursuant to Health and Safety
4 Code section 25249.7(b).

5 **3. ENTRY OF CONSENT JUDGMENT**

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

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

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

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1 4.1 As to alleged exposures to Covered Products and other claims in the Complaint,
2 MEJF, by and on behalf of itself, and its respective agents, successors, attorneys and assigns,
3 waives any and all rights to institute any form of legal action, and releases all claims against
4 London Fog and the Released Entities, and all of their respective parents, subsidiaries or affiliates,
5 and all of their customers, distributors, wholesalers, retailers, or any other person in the course of
6 doing business, and the successors and assigns of any of them, who may use, maintain, distribute
7 or sell the Covered Products, whether, under Proposition 65, the Unfair Competition Act or any
8 other statute, provision of common law or any theory or issue, arising out of or resulting from, or
9 related directly or indirectly to, in whole or in part, the Covered Products, including but not
10 limited to any exposure to, or failure to warn with respect to, the Covered Products (referred to
11 collectively in this paragraph as the "Claims"). In furtherance of the foregoing, as to alleged
12 exposures to Covered Products, MEJF hereby waives any and all rights and benefits which it now
13 has, or in the future may have, conferred upon it with respect to the Claims by virtue of the
14 provisions of section 1542 of the California Civil Code, which provides as follows:

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

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

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 London Fog failed to comply with the reformulation requirements as specified
9 in Section 7 of this Consent Judgment, and notwithstanding any other provision of this Consent
10 Judgment, then as to such Covered Products, London Fog shall not benefit from any release from
11 liability specified in any provision of this Consent Judgment.

12 **6. MODIFICATION OF JUDGMENT**

13 6.0 This Consent Judgment may be modified only upon written agreement of the
14 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
15 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

16 **7. INJUNCTIVE RELIEF**

17 7.0 On and after July 1, 2006, the PVC Materials in all Covered Products sold by
18 London Fog for resale or use in California shall meet the following criteria:

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

25 7.1 London Fog may comply with the above requirements by relying on information
26 obtained from its suppliers of the Covered Products, and the PVC Materials utilized in their
27 manufacture, so long as such reliance is in good faith. Demonstration of good faith reliance may
28

1 include, but is not limited to e-mails or other written correspondence from suppliers attesting to
2 compliance with the provisions of this Section 7.1.

3 7.2 In the event that MEJF settles another actual or potential claim concerning the
4 alleged failure of a business to provide adequate Proposition 65 warnings concerning its
5 manufacture, distribution or sale of PVC Clothing in California, and agrees to a standard for
6 reformulation that allows for lead content by weight of greater than 30 ppm in the PVC Materials,
7 London Fog's compliance with the less stringent standard will be deemed to meet the
8 requirements of Sections 7.0(b) above. MEJF shall notify London Fog of any and each such
9 settlement by written notice pursuant to Section 15, within 10 days of execution of such settlement
10 or consent judgment.

11 8. AUTHORITY TO STIPULATE

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

15 9. RETENTION OF JURISDICTION

16 9.0 This Court shall retain jurisdiction of this matter to implement the Consent
17 Judgment.

18 10. SERVICE ON THE ATTORNEY GENERAL

19 10.0 MEJF shall serve a copy of this Consent Judgment, signed by both parties, on the
20 California Attorney General on behalf of the parties so that the Attorney General may review this
21 Consent Judgment. MEJF, in compliance with Title 11, *California Code of Regulations*, section
22 3003(a), also shall file and serve notice of the motion for approval of this Consent Judgment.

23 11. ENTIRE AGREEMENT

24 11.0 This Consent Judgment contains the sole and entire agreement and understanding
25 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
26 negotiations, commitments and understandings related hereto. No representations, oral or
27 otherwise, express or implied, other than those contained herein have been made by either Party
28

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
2 to exist or to bind any of the Parties.

3 **12. GOVERNING LAW**

4 12.0 The validity, construction and performance of this Consent Judgment shall be
5 governed by the laws of the State of California, without reference to any conflicts of law
6 provisions of California law.

7 **13. COURT APPROVAL**

8 13.0 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of
9 no force or effect, and cannot be used in any proceeding for any purpose.

10 **14. NOTICES**

11 14.0 Any notices under this Consent Judgment shall be by personal delivery of First
12 Class Mail.

13 14.1

14 If to MEJF: William Verick, Esq.
15 Klamath Environmental Law Center
16 424 First Street
Eureka, CA 95501

17 If to London Fog: David T. Biderman, Esq.
18 Perkins Coie LLP
19 180 Townsend Street, Third Floor
20 San Francisco, CA 94107

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IT IS SO STIPULATED:

DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

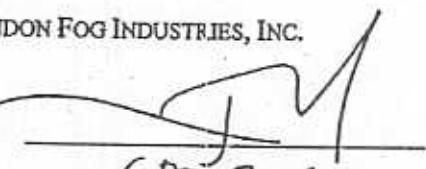


BY: WILLIAM VERICK

DATED:

LONDON FOG INDUSTRIES, INC.

BY:



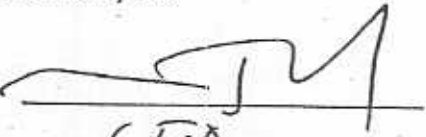
ITS:

CPS

DATED:

PACIFIC TRAIL, INC.

BY:



ITS:

CFO

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: MAY - 3 2006

RONALD E. GUIDACHAY

JUDGE OF THE SUPERIOR COURT

1 WILLIAM VERICK, CSB #140972
Klamath Environmental Law Center
2 FREDRIC EVENSON, CSB #198059
Law Offices of Fredric Evenson
3 424 First Street
Eureka, CA 95501
4 Telephone: (707) 268-8900
Facsimile: (707) 268-8901

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6 BRIAN ACREE, CSB #202505
370 Grand Avenue, Suite 5
7 Oakland, CA 94610
Telephone: (510) 271-0826
8 Facsimile: (510) 271-0829

9 Attorneys for Plaintiff

10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

14
15 MATEEL ENVIRONMENTAL JUSTICE
16 FOUNDATION,

17 Plaintiff,

18 vs.

19 SOUTHERN EXCHANGE LP, DBA
20 TEXSPORT; GEORGE R. CHABY, INC.;
HELLY HANSEN US INC.;
21 WASHINGTON SHOE COMPANY;
PACIFIC TRAIL, INC.; LONDON FOG
22 INDUSTRIES, INC., et al.,

23 Defendants.

CASE NO. 440570

[proposed] ORDER APPROVING
SETTLEMENT BETWEEN PLAINTIFF
AND DEFENDANTS LONDON FOG
INDUSTRIES, INC. AND PACIFIC TRAIL,
INC.

Date: May 3, 2006
Time: 9:30 a.m.
Dept. No.: 302

24
25 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
26 noticed motion on May 3, 2006. The court finds that:

- 27 1. The reformulation requirements of the Consent Judgment comply with the
28 requirements of Proposition 65;

ENDORSED
FILED
San Francisco County Superior Court

MAY - 3 2006

GORDON PARK-LI, Clerk
BY: PHILOMENA DIAS
Deputy Clerk

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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' rates and 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.

Dated: MAY - 3 2006

RONALD E. GUIDACHAY
Judge of the Superior Court