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ENDORSED
FILED
San Francisco County Superior Court

JUN 22 2005

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

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN FRANCISCO

9
10 MATEEL ENVIRONMENTAL JUSTICE
11 FOUNDATION,
12 Plaintiff,

Case No. 440570

CONSENT JUDGMENT

13 vs.

14 SOUTHERN EXCHANGE, L.P., doing
15 business as TEXSPORT,
16 Defendant.

17
18 1. INTRODUCTION

19 1.0 On April 19, 2005, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
20 ("Plaintiff" or "MEJF") acting on behalf of itself and the general public, filed a Complaint for civil
21 penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. 440570,
22 against defendant, Southern Exchange, L.P., a Texas limited partnership which is the successor by
23 conversion to Southern Exchange Co., Inc. (hereinafter collectively referred to as "Defendant" or
24 "Texsport"), among others (MEJF and Texsport are collectively referred to as "the Parties"). The
25 Complaint alleges that Texsport violated provisions of the Safe Drinking Water and Toxic
26 Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* ("Proposition 65") by,
27 among other things, knowingly and intentionally exposing persons to products containing lead and/or
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1 lead compounds, which are chemicals known to the State of California to cause cancer and/or
2 reproductive toxicity, without first providing a clear and reasonable warning to such individuals. The
3 Complaint was based upon a 60-Day Notice letter, dated December 31, 2004, sent by MEJF to
4 Texsport, the California Attorney General, all District Attorneys, and all City Attorneys with
5 populations exceeding 750,000, a copy of which 60-Day Notice Letter is attached to the complaint
6 filed in this action.

7 1.1 Texsport is a business that employs more than ten persons and manufactures,
8 distributes and/or markets within the State of California clothing made with lead-containing polyvinyl
9 chloride, neoprene and/or other plastic materials ("PVC Materials"). Pursuant to Proposition 65, lead
10 and lead compounds are chemicals known to the State of California to cause cancer and reproductive
11 toxicity. Products containing lead and/or lead compounds that are sold or distributed in the State of
12 California may be, under specified circumstances, subject to the Proposition 65 warning requirement
13 set forth in Health and Safety Code Section 25249.6. Plaintiff alleges that clothing made with lead-
14 containing PVC Materials ("PVC Clothing") that is manufactured, distributed, sold and/or marketed
15 by Texsport for use in California, requires a warning under Proposition 65. For purposes of this
16 Consent Judgment, the term "Covered Products" shall be defined as PVC Clothing that is: (i)
17 distributed, sold or used within the State of California, and (ii) manufactured by Texsport or any other
18 entity acting on its behalf, and distributed, marketed and/or sold by Texsport or by any other entity
19 that distributes, markets or sells Texsport's PVC Clothing, whether or not the clothing bears Texsport
20 labels.

21 1.2 For purposes of this Consent Judgment only, the parties stipulate that this Court has
22 subject matter jurisdiction over the allegations of violations contained in the Complaint and personal
23 jurisdiction over Texsport as to the acts alleged in the Complaint, that venue is proper in the County
24 of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full
25 settlement and resolution of the allegations contained in the Complaint and of all claims which were
26 or could have been raised by any person or entity based in whole or in part, directly or indirectly, on
27 the facts alleged therein or arising from or related to such facts.
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1 1.3 This Consent Judgment resolves claims that Texsport denies and disputes. The parties
2 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between
3 the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
4 constitute an admission or concession of liability or culpability by Texsport, at any time, for any
5 purpose. Texsport denies each and every material allegation of the Complaint. Neither this Consent
6 Judgment, nor any document referred to herein, nor any action taken to carry out this Consent
7 Judgment, shall be construed as giving rise to any presumption or inference of admission or
8 concession by Texsport as to any fault, wrongdoing or liability. Neither this Consent Judgment, nor
9 any of its terms or provisions, nor any of the negotiations or other proceedings connected with it, nor
10 any other action taken, to carry out this Consent Judgment by the Parties hereto, shall be referred to,
11 offered as evidence, or received in evidence in any pending or future civil, criminal or administrative
12 action or proceeding, except (i) in a proceeding to enforce this Consent Judgment, (ii) in a proceeding
13 wherein a new and independent violation or violations by Texsport, substantially the same as those
14 violations set forth in the Complaint and occurring subsequent to the date of the entry of this Consent
15 Judgment, are alleged, (iii) to support Texsport's invoking the doctrine of *res judicata* or a collateral
16 attack on this Consent Judgment, (iv) to defend against assertion of the Claims (as hereinafter
17 defined), or (v) as otherwise required by law.

18 **2. SETTLEMENT PAYMENT**

19 2.0 In settlement of all of the claims that are alleged, or could have been alleged, in the
20 Complaint concerning Texsport, within thirty (30) days following the Court's entry of this Consent
21 Judgment, including any third-party appeals to its entry, Texsport shall pay \$15,000 to the Klamath
22 Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally, within ninety
23 (90) days following the Court's entry of this Consent Judgment, including any third-party appeals to
24 its entry, Texsport shall pay \$7,500 to Californians for Alternatives to Toxics; and within one hundred
25 eighty (180) days following the Court's entry of this Consent Judgment, including any third-party
26 appeals to its entry, Texsport shall pay \$7,500 to the Ecological Rights Foundation, for use toward
27 reducing exposures to toxic chemicals and other pollutants, and toward increasing consumer, worker
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1 and community awareness of health hazards posed by lead and other toxic chemicals. The Parties
2 agree and acknowledge that the charitable contributions made pursuant to this Section shall not be
3 construed as a credit against the personal claims of absent third parties for restitution against
4 Texsport. Texsport shall not be required to pay a civil penalty pursuant to Health and Safety Code
5 Section 25249.7(b).

6 **3. ENTRY OF CONSENT JUDGMENT**

7 3.0 The parties hereby request that the Court promptly enter this Consent Judgment. Upon
8 entry of this Consent Judgment, Texsport and MEJF waive their respective rights to a hearing or trial
9 on the allegations of the Complaint.

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

11 4.0 This Consent Judgment, once entered by the Court, is a final and binding resolution
12 between MEJF, acting on behalf of itself, its respective agents, successors, attorneys and assigns and,
13 as to those matters raised in the Notice Letter, the general public (collectively referred to in this
14 Section as the "Releasing Parties"), and Texsport of, and, the Releasing Parties do hereby release
15 Texsport and its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers,
16 retailers, or any other person in the course of doing business, and the successors and assigns of any of
17 them, who may manufacture, use, maintain, distribute or sell the Covered Products (collectively
18 referred to in this Section as the "Released Parties") from: (i) any violation of Proposition 65
19 (including but not limited to the claims made in the Complaint); and (ii) any other statutory or
20 common law claim, to the fullest extent that any of the foregoing described in (i) or (ii) were or could
21 have been asserted by any person or entity against Texsport and/or any of the Released Parties, based
22 on its or their alleged exposure of the general public to Covered Products and/or their failure to
23 provide the general public with clear and reasonable warnings about the Covered Products as
24 allegedly required by Health and Safety Code Section 25249.6; and (iii) as to alleged exposures to
25 Covered Products, any other claim based in whole or in part on the facts alleged in the Complaint,
26 whether or not based on actions committed by the Released Parties. As to alleged exposures to
27 Covered Products, compliance with the terms of this Consent Judgment resolves, and absolves
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1 Texsport and the Released Parties from, any issue, now and in the future, concerning compliance by
2 Texsport and the Released Parties, with the requirements of Proposition 65 with respect to Covered
3 Products, and any alleged exposure of the general public to Covered Products and/or alleged failure to
4 provide the general public with clear and reasonable warnings about the Covered Products as
5 allegedly required by Health and Safety Code Section 25249.6.

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

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

25 MEJF, by and on behalf of itself and the Releasing Entities, understands and acknowledges that the
26 significance and consequence of this waiver of California Civil Code Section 1542 is that even if it or
27 a Releasing Entity suffers future damages arising out of or resulting from, or related directly or indirectly
28 to, in whole or in part, the Covered Products, including but not limited to any exposure to, and/or failure

1 to warn with respect to exposure to, the Covered Products, neither MEJF nor such Releasing Entity, will
2 be able to make any claim for those damages against Texsport or the Released Entities. Furthermore,
3 MEJF, by and on behalf of itself and the Releasing Entities, acknowledges that it intends these
4 consequences bind MEJF and the Releasing Entities for any such Claims as may exist as of the date of
5 this release, but which neither MEJF nor the Releasing Entities knows exist, and which, if known, would
6 materially affect their decision to enter into this Consent Judgment, regardless of whether their lack of
7 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

8 4.2 This Consent Judgment, to the maximum extent provided by law, shall constitute full and
9 final disposition of not only the Claims, but also any and all other claims based upon allegations under
10 Proposition 65 pertaining to the Covered Products (the "Unasserted Claims") and this Consent Judgment
11 shall be *res judicata* with respect to not only the Claims but also with respect to the Unasserted Claims.

12 4.3 The rights and obligations contained in this Consent Judgment are expressly conditioned
13 on the fact that the California Attorney General's Office lodges no objection to the entry of this Consent
14 Judgment. Should the California Attorney General object to the entry of this Consent Judgment, the
15 Parties shall negotiate in good faith to modify the Consent Judgment in a manner that resolves any such
16 objection.

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

18 5.0 The terms of this Consent Judgment shall be enforced exclusively by the Parties
19 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of San
20 Francisco County, giving the notice required by law, enforce the terms and conditions contained
21 herein. In any proceeding brought by either Party to enforce this Consent Judgment, such Party may
22 seek whatever fines, costs, penalties or remedies as may be provided by this Consent Judgment or, in
23 an instance where the Court finds that Texsport failed to comply with the requirements of this
24 Consent Judgment, then the moving Party may seek whatever fines, costs, penalties or remedies as
25 may be provided by law for any violation of Proposition 65. Additionally, if in such a proceeding the
26 Court finds that Texsport failed to comply with the reformulation requirements as specified in Section
27 7 of this Consent Judgment, and notwithstanding any other provision of this Consent Judgment, then
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1 as to such Covered Products, Texsport shall not benefit from any release from liability specified in
2 any provision of this Consent Judgment.

3 5.1 Entry of this Consent Judgment by the Court and Texsport's compliance with its terms
4 (i) constitutes full and fair adjudication of all Claims against Texsport and the Released Entities,
5 including, but not limited to, all claims set forth in the Complaint based upon alleged violations of
6 Proposition 65, and/or any other statute, provision of common law, or any other theory, which arise
7 from Texsport's alleged exposure of the general public to lead and/or lead compounds by or through
8 the Covered Products and/or Texsport's failure to give clear and reasonable warning to the general
9 public that the Covered Products contained lead and/or lead compounds, chemicals which are known
10 to the State of California to cause cancer or reproductive toxicity, (ii) bars any and all other persons,
11 on the basis of *res judicata* or collateral attack, from prosecuting any Claims against Texsport and the
12 Released Entities with respect to the Covered Products based upon alleged violations of Proposition
13 65 and/or any other statute, provision of common law, or any other theory, which arise from
14 Texsport's alleged exposure of the general public to lead and/or lead compounds and/or Texsport's
15 alleged failure to give clear and reasonable warning to the general public that the Covered Products
16 contained lead and/or lead compounds, chemicals which are known to the State of California to cause
17 cancer or reproductive toxicity.

18 **6. MODIFICATION OF JUDGMENT**

19 6.0 This Consent Judgment may be modified only upon written agreement of the parties
20 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as
21 provided by law and upon entry of a modified Consent Judgment by the Court.

22 **7. INJUNCTIVE RELIEF**

23 7.0 On and after July 1, 2005, the PVC Materials in all Covered Products sold by Texsport
24 for resale or use in California shall meet the following criteria:

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

6 7.1 Texsport may comply with the above requirements by relying on information obtained
7 from its manufacturers and/or suppliers of the Covered Products, and the PVC Materials utilized in their
8 manufacture, so long as such reliance is in good faith. Demonstration of good faith reliance may include,
9 but is not limited to e-mails or other written correspondence from suppliers attesting to compliance with
10 the provisions of this Section 7.1.

11 7.2 In the event that MEJF settles another actual or potential claim concerning the alleged
12 failure of a business to provide adequate Proposition 65 warnings concerning its manufacture, distribution
13 or sale of PVC Clothing in California, and agrees to a standard for reformulation that allows for lead
14 content by weight of greater than 30 ppm in the PVC Materials, Texsport's compliance with the less
15 stringent standard will be deemed to meet the requirements of Sections 7.0(b) above. MEJF shall notify
16 Texsport of any and each such settlement by written notice pursuant to Section 14, within ten (10) days
17 of execution of such settlement or consent judgment.

18 **8. AUTHORITY TO STIPULATE**

19 8.0 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
20 the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
21 party represented and legally to bind that Party.

22 **9. RETENTION OF JURISDICTION**

23 9.0 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

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

25 10.0 MEJF shall serve a copy of this Consent Judgment, signed by both parties, on the
26 California Attorney General on behalf of the Parties so that the Attorney General may review this Consent
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1 Judgment. MEJF, in compliance with Title 11, *California Code of Regulations*, Section 3003(a), also
2 shall file and serve notice of the motion for approval of this Consent Judgment.

3 10.1 Plaintiff agrees to comply with the Proposition 65 reporting requirements, including those
4 referenced in Health & Safety Code Section 25249.7(f) and Title 11, *California Code of Regulations*,
5 Sections 3303, 3304 and 3305.

6 10.2 Plaintiff represents and warrants that it will comply or has fully complied with all
7 regulatory requirements regarding submissions to the Attorney General of all required notices and
8 certificates of merit pertaining to the Complaint and this Consent Judgment.

9 **11. ENTIRE AGREEMENT**

10 11.0 This Consent Judgment contains the sole and entire agreement and understanding of the
11 Parties with respect to the entire subject matter hereof and any and all prior discussions, negotiations,
12 commitments and understandings related hereto. No representations, oral or otherwise, express or
13 implied, other than those contained herein have been made by either Party hereto. No other agreements
14 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

15 **12. GOVERNING LAW**

16 12.0 The validity, construction and performance of this Consent Judgment shall be governed
17 by the laws of the State of California, without reference to any conflict of laws provisions of California
18 law.

19 **13. COURT APPROVAL**

20 13.0 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of no
21 force or effect, and cannot be used in any proceeding for any purpose.

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1 **14. NOTICES**

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

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

7 If to Texsport: Mr. Ron Ramsey, President
8 Southern Exchange Management LLC
9 P.O. Box 55326
10 Houston, Texas 77 255-5326
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IT IS SO STIPULATED:

DATED: 5/9, 2005

Mateel Environmental Justice Foundation

By: William Verick
William Verick

DATED: _____, 2005

Southern Exchange, L.P.

By: Southern Exchange Management, LLC,
General Partner

By: Ronald D. Ramsey
Ronald D. Ramsey
Its: President

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JUN 22 2005

RONALD E. QUIDAGHAY

JUDGE OF THE SUPERIOR COURT

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9 Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

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15 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

16 Plaintiff,

17 vs.

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

22 Defendants.
23

ENDORSED
FILED
San Francisco County Superior Court

JUN 22 2005

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

CASE NO. 440570

[proposed] ORDER APPROVING
SETTLEMENT BETWEEN PLAINTIFF
AND SOUTHERN EXCHANGE LP, DBA
TEXSPORT

Date: June 22, 2005
Time: 9:30 a.m.
Dept. No.: 302

24 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
25 noticed motion on June 22, 2005. The court finds that:

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

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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: JUN 22 2005

RONALD E. QUIDAGHAY

Judge of the Superior Court