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15 ENVIRONMENTAL JUSTICE FOUNDATION

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SAN FRANCISCO**

18 MATEEL ENVIRONMENTAL
19 JUSTICE FOUNDATION,,

20 Plaintiff,

21 v.

22 EZ-FLO INTERNATIONAL, INC.;
23 HAMPTON PRODUCTS
24 INTERNATIONAL CORPORATION;
25 HICKORY HARDWARE; MASTER
26 LOCK COMPANY; ORCHARD
27 SUPPLY HARDWARE
28 CORPORATION; SEARS, ROEBUCK
AND CO.; VARIFLEX, INC., and
DOES 1 through 100 inclusive,

Defendants.

Case No. CGC 06456810

**CONSENT JUDGMENT AS TO
DEFENDANT HAMPTON PRODUCTS
INTERNATIONAL CORPORATION**

**ENDORSED
FILED**

San Francisco County Superior Court

JUN 12 2007

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

1. **INTRODUCTION**

1.1 On October 10, 2006, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a

1 Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco County
2 Superior Court, Case No.CGC-06-456810, against Defendant Hampton Products
3 International Corporation (“Hampton”); EZ-FLO International, Inc.; Hickory Hardware;
4 Master Lock Company; Orchard Supply Hardware Corporation; Sears, Roebuck and Co.;
5 Variflex, Inc. and DOES 1 through 100 (collectively, “Defendants”). The Complaint
6 alleges, among other things, that Defendants violated provisions of the Safe Drinking
7 Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5,
8 *et seq.* (“Proposition 65”). In particular, Mateel alleges that Hampton has knowingly and
9 intentionally exposed persons to padlocks made of brass containing lead and/or lead
10 compounds (hereinafter “lead brass”), which are chemicals known to the State of
11 California to cause cancer and birth defects or other reproductive harm, without first
12 providing a clear and reasonable warning to such individuals.

13 **1.2** On July 12, 2006, a 60-Day Notice letter (“Notice Letter”) was sent by
14 Mateel to Hampton, the California Attorney General, all California District Attorneys, and
15 all City Attorneys of every California city with populations exceeding 750,000.

16 **1.3** Hampton is a business that employs ten or more persons and manufactures,
17 distributes, and/or markets locks, including padlocks, within the State of California. Some
18 of those products are alleged to contain lead and/or lead compounds. Lead and lead
19 compounds are chemicals known to the State of California to cause cancer, and lead is a
20 chemical known to the State of California to cause reproductive toxicity pursuant to
21 Health and Safety Code Section 25249.9. Under specified circumstances, products
22 containing lead and/or lead compounds that are sold or distributed in the State of
23 California are subject to the Proposition 65 warning requirement set forth in Health and
24 Safety Code Section 25249.6. Plaintiff Mateel alleges that lead brass padlocks
25 manufactured, distributed, sold and/or marketed by Hampton for use in California require
26 a warning under Proposition 65.

27 **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall
28 be defined as locks containing lead and/or lead compounds, such as lead brass padlocks,

1 to the extent such products are distributed and sold within the state of California, that are
2 manufactured, distributed, marketed and/or sold by Hampton, regardless of whether they
3 bear Hampton labels.

4 **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court
5 has jurisdiction over the allegations of violations contained in the Complaint and personal
6 jurisdiction over Hampton as to the acts alleged in the Complaint, that venue is proper in
7 the County of San Francisco and that this Court has jurisdiction to enter this Consent
8 Judgment as a full settlement and resolution of the allegations contained in the Complaint
9 and of all claims that were or could have been raised by any person or entity based in
10 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
11 related thereto.

12 **1.6** This Consent Judgment resolves claims that are denied and disputed. The
13 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
14 all claims between the parties for the purpose of avoiding prolonged litigation. This
15 Consent Judgment shall not constitute an admission with respect to any material allegation
16 of the Complaint, each and every allegation of which Hampton denies, nor may this
17 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
18 misconduct, culpability or liability on the part of Hampton or any other Defendant.

19 **2. SETTLEMENT PAYMENT**

20 **2.1** In settlement of all of the claims referred to in this Consent Judgment
21 against the Settling Defendant, within thirty (30) business days of notice entry of this
22 Consent Judgment, Hampton shall pay \$20,000 to the Klamath Environmental Law
23 Center ("KELC") to cover Mateel's attorneys' fees and costs.

24 **2.2** Within thirty (30) business days of notice of entry of this Consent Judgment,
25 Hampton shall pay \$10,000 to the Ecological Rights Foundation and \$10,000 to
26 Californians for Alternatives to Toxics. Both are California non-profit environmental
27 organizations that advocate for workers' and consumers' safety, and for awareness and
28 reduction of toxic exposures.

1 **3. ENTRY OF CONSENT JUDGMENT**

2 **3.1** The parties hereby request that the Court promptly enter this Consent
3 Judgment. Upon entry of the Consent Judgment, Hampton and Mateel waive their
4 respective rights to a hearing or trial on the allegations of the Complaint.

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

6 **4.1** This Consent Judgment is a final and binding resolution between Mateel,
7 acting on behalf of itself and the general public, and Hampton, of: (i) any violation of
8 Proposition 65 with respect to the Covered Products, and (ii) any other statutory or
9 common law claim, to the fullest extent that any of the foregoing described in (i) or (ii)
10 were or could have been asserted by any person or entity against Hampton based upon,
11 arising out of or relating to Hampton's compliance with Proposition 65, or regulations
12 promulgated thereunder, with respect to the Covered Products, and any other claim based
13 in whole or part on the facts alleged in the Complaint, whether based on actions
14 committed by Hampton, or by any other Defendant or entity within the chain of
15 distribution, including, but not limited to, manufacturers, wholesale or retail sellers or
16 distributors and any other person in the course of doing business. As to alleged exposures
17 to Covered Products, compliance with the terms of this Consent Judgment resolves any
18 issue, now and in the future, concerning compliance by Hampton and its parents,
19 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their
20 manufacturers, customers, distributors, wholesalers, retailers or any other person in the
21 course of doing business, and the successors and assigns of any of these who may
22 manufacture, use, maintain, distribute, market or sell Covered Products, with the
23 requirements of Proposition 65.

24 **4.2** As to alleged exposures to Covered Products, Mateel, acting on behalf of
25 itself and the general public, and its agents, successors and assigns, waives all rights to
26 institute any form of legal action, and releases all claims against Hampton and its parents,
27 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its
28 customers, manufacturers, distributors, wholesalers, retailers or any other person in the

1 course of doing business, and the successors and assigns of any of them, who may
2 manufacture, use, maintain, distribute or sell the Covered Products, whether under
3 Proposition 65 or otherwise, arising out of or resulting from, or related directly or
4 indirectly to, in whole or in part, the Covered Products and claims identified in Mateel's
5 Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself and the
6 general public, hereby waives any and all rights and benefits which it now has, or in the
7 future may have, conferred upon it with respect to the Covered Products by virtue of the
8 provisions of Section 1542 of the California Civil Code, which provides as follows:

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

15 Mateel understands and acknowledges that the significance and consequence of this
16 waiver of California Civil Code Section 1542 is that even if Mateel or any member of the
17 general public suffers future damages arising out of or resulting from, or related directly
18 or indirectly to, in whole or in part, the Covered Products, it will not be able to make any
19 claim for those damages against Hampton, its parents, subsidiaries or affiliates,
20 predecessors, officers, directors, employees, and all of its customers, manufacturers,
21 distributors, wholesalers, retailers or any other person in the course of doing business, and
22 the successors and assigns of any of them, who may manufacture, use, maintain, distribute
23 or sell the Covered Products. Furthermore, Mateel acknowledges that it intends these
24 consequences for any such claims which may exist as of the date of this release but which
25 Mateel does not know exist, and which, if known, would materially affect its decision to
26 enter into this Consent Judgment, regardless of whether its lack of knowledge is the result
27 of ignorance, oversight, error, negligence, or any other cause.

1 **WARNING:** This product contains one or more chemicals known to the
2 State of California to cause cancer and birth defects or other reproductive
3 harm. *Wash hands after handling.*

4 The word "WARNING" shall be in bold. The words "Wash hands
5 after handling" shall be in bold and italicized.

6 Hampton shall provide such warning with the unit package of the
7 Covered Products. Such warning shall be prominently affixed to or printed
8 on each Covered Product's label or package. The warning shall be at least
9 the same size as the largest of any other safety warnings, if any, on the
10 product container. If printed on the label itself, the warning shall be
11 contained in the same section that states other safety warnings, if any,
12 concerning the use of the product.

13 (b) The requirements for product labeling, set forth in subparagraph (a)
14 above are imposed pursuant to the terms of this Consent Judgment. The
15 parties recognize that product labeling is not the exclusive method of
16 providing a warning under Proposition 65 and its implementing regulations.

17 (c) If Proposition 65 warnings for lead or lead compounds should no
18 longer be required, Hampton shall have no further warning obligations
19 pursuant to this Consent Judgment. In the event that Hampton ceases to
20 implement or modifies the warnings required under this Consent Judgment
21 (because of a change on the law or otherwise), Hampton shall provide
22 written notice to Mateel (through KELC) of its intent to do so, and of the
23 basis for its intent, no less than thirty (30) days in advance. Mateel shall
24 notify Hampton in writing of any objection within thirty (30) days of its
25 receipt of such notice, or such objection by Mateel shall be waived.

26 8. **AUTHORITY TO STIPULATE**

27 Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the party he or she represents to enter into this Consent Judgment and to

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notify Hampton in writing of any objection within thirty (30) days of its receipt of such notice, or such objection by Mateel shall be waived.

8. AUTHORITY TO STIPULATE

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

9. RETENTION OF JURISDICTION

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

10. ENTIRE AGREEMENT

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

11. GOVERNING LAW

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

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12. COURT APPROVAL

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

IT IS SO STIPULATED:

DATED: 4-27-07

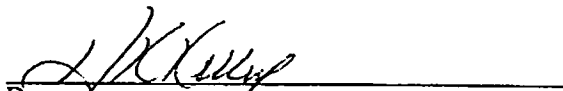
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



William Verick
CEO Mateel Environmental Justice
Foundation,
Klamath Environmental Law Center

DATED:
4-27-07

HAMPTON PRODUCTS
INTERNATIONAL CORPORATION



By:
Its: President

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JUN 12 2007

PATRICK J. MAHONEY

JUDGE OF THE SUPERIOR COURT

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13 Attorneys for Plaintiff
14 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SAN FRANCISCO

17 MATEEL ENVIRONMENTAL JUSTICE
18 FOUNDATION,

19 Plaintiff,

20 vs.

21 EZ-FLOW INTERNATIONAL, INC., et al.,

22 Defendants.

23 CASE NO. ~~452876~~ 456810

24 ~~[PROPOSED]~~ ORDER APPROVING
25 CONSENT JUDGMENT AS TO
26 DEFENDANT HAMPTON PRODUCTS

27 Date: ~~January~~ June 12, 2007
28 Time: 9:30 a.m.
Dept. No.: 302

29 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
30 noticed motion on June 12, 2007 The court finds that:

31 1. The warnings and reformulation the Consent Judgment requires comply with the
32 requirements of Proposition 65.
33

37 ENDORSED
38 FILED
San Francisco County Superior Court

JUN 12 2007

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

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

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

5 Based on these findings, the settlement and the Consent Judgment are approved.

6 IT IS SO ORDERED.

7 Dated: JUN 12 2007

PATRICK J. MAHONEY, J

Judge of the Superior Court