

**COPY**

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10 MATEEL ENVIRONMENTAL JUSTICE  
11 FOUNDATION

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

14  
15 MATEEL ENVIRONMENTAL  
16 JUSTICE FOUNDATION,,

Plaintiff,

v.

18 EZ-FLO INTERNATIONAL, INC.;  
19 HAMPTON PRODUCTS  
20 INTERNATIONAL CORPORATION;  
21 HICKORY HARDWARE; MASTER  
22 LOCK COMPANY; ORCHARD  
23 SUPPLY HARDWARE  
CORPORATION; SEARS, ROEBUCK  
AND CO.; VARIFLEX, INC., and  
DOES 1 through 100 inclusive,

Defendants.

**ENDORSED  
FILED**  
*San Francisco County Superior Court*

DEC 21 2007

**GORDON PARK-LI, Clerk**  
BY: ERICKA LARNAUTI  
Deputy Clerk

Case No. CGC 06456810

**CONSENT JUDGMENT AS TO  
DEFENDANT VARIFLEX, INC.**

25 **1. INTRODUCTION**

26 1.1 On October 10, 2006, the MATEEL ENVIRONMENTAL JUSTICE  
27 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a  
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1 Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco County  
2 Superior Court, Case No.CGC-06-456810, against Defendant Variflex, Inc. (“Variflex”);  
3 Hampton Products International Corporation (“Hampton”); EZ-FLO International, Inc.;  
4 Hickory Hardware; Master Lock Company; Orchard Supply Hardware Corporation; and  
5 Sears, Roebuck and Co.; and DOES 1 through 100 (collectively, “Defendants”). The  
6 Complaint alleges, among other things, that Defendants violated provisions of the Safe  
7 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections  
8 25249.5, *et seq.* (“Proposition 65”). In particular, Mateel alleges that Variflex has  
9 knowingly and intentionally exposed persons to locks that utilize plastic coatings that  
10 contain lead and/or lead compounds (hereinafter “leaded plastic”), which are chemicals  
11 known to the State of California to cause cancer and birth defects or other reproductive  
12 harm, without first 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 Variflex, 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** Variflex distributes and/or markets locks within the State of California.  
17 Some of those products are alleged to contain lead and/or lead compounds. Lead and lead  
18 compounds are chemicals known to the State of California to cause cancer, and lead is a  
19 chemical known to the State of California to cause reproductive toxicity pursuant to  
20 Health and Safety Code Section 25249.9. Under specified circumstances, products  
21 containing lead and/or lead compounds that are sold or distributed in the State of  
22 California are subject to the Proposition 65 warning requirement set forth in Health and  
23 Safety Code Section 25249.6. Plaintiff Mateel alleges that locks that utilize leaded plastic  
24 coatings, and that are distributed, sold and/or marketed by Variflex for use in California  
25 require a warning under Proposition 65.

26       **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall  
27 be defined as locks for which external plastic coatings contain lead and/or lead  
28 compounds, to the extent such products are distributed and sold within the state of

1 California, that are distributed, marketed and/or sold by Variflex, regardless of whether  
2 they bear Variflex labels.

3       **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court  
4 has jurisdiction over the allegations of violations contained in the Complaint and personal  
5 jurisdiction over Variflex as to the acts alleged in the Complaint, that venue is proper in  
6 the County of San Francisco and that this Court has jurisdiction to enter this Consent  
7 Judgment as a full settlement and resolution of the allegations contained in the Complaint  
8 and of all claims that were or could have been raised by any person or entity based in  
9 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or  
10 related thereto.

11       **1.6** This Consent Judgment resolves claims that are denied and disputed. The  
12 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
13 all claims between the parties for the purpose of avoiding prolonged litigation. This  
14 Consent Judgment shall not constitute an admission with respect to any material allegation  
15 of the Complaint, each and every allegation of which Variflex denies, nor may this  
16 Consent Judgment or compliance with it be used as evidence of any wrongdoing,  
17 misconduct, culpability or liability on the part of Variflex or any other Defendant.

18       **2.       SETTLEMENT PAYMENT**

19       **2.1** In settlement of all of the claims referred to in this Consent Judgment  
20 against the Settling Defendant, within thirty (30) business days of notice entry of this  
21 Consent Judgment, Variflex shall pay \$20,000 to the Klamath Environmental Law  
22 Center (“KELC”) to cover Mateel’s attorneys’ fees and costs.

23       **2.2** Within thirty (30) business days of notice of entry of this Consent Judgment,  
24 Variflex shall pay \$10,000 to the Ecological Rights Foundation and \$10,000 to  
25 Californians for Alternatives to Toxics. Both are California non-profit environmental  
26 organizations that advocate for workers’ and consumers’ safety, and for awareness and  
27 reduction of toxic exposures.

28

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

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

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

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

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

1 of ignorance, oversight, error, negligence, or any other cause.

2 **5. ENFORCEMENT OF JUDGMENT**

3 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the  
4 parties hereto. The parties may, by noticed motion or order to show cause before the  
5 Superior Court of San Francisco County, giving the notice required by law, enforce the  
6 terms and conditions contained herein.

7 **6. MODIFICATION OF JUDGMENT**

8 Except as provided for in Paragraph 7.2(c), this Consent Judgment may be  
9 modified only upon written agreement of the parties and upon entry of a modified Consent  
10 Judgment by the Court thereon, or upon motion of any party as provided by law and upon  
11 entry of a modified Consent Judgment by the Court.

12 **7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

13 **7.1** Covered Products shall be deemed to comply with Proposition 65 and be  
14 exempt from any Proposition 65 warning requirements if the plastic coatings on the locks  
15 meet the following criteria: (a) the surface contact layer of the plastic shall have no lead  
16 as an intentionally added constituent; and (b) the surface contact layer of the plastic shall  
17 have lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm").  
18 Variflex may comply with the above requirements by relying on information obtained  
19 from its suppliers regarding the content of the surface contact layer of the plastic,  
20 provided such reliance is in good faith. Obtaining test results showing that the lead  
21 content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit  
22 of quantification (as distinguished from detection) of less than 300 ppm shall be deemed  
23 to establish good faith reliance. Provided that the level of quantitation requirement set  
24 forth in the preceding sentence is met, the test protocol and methods described on Exhibit  
25 A hereto may be relied on. Nothing in the preceding two sentences shall preclude  
26 Variflex from establishing good faith reliance by an alternative means.

27 **7.2** Covered Products manufactured and shipped for distribution to or sale in  
28 California on or after the Effective Date that do not meet the warning exemption standard

1 set forth in Section 7.1 of this Consent Judgment shall be accompanied by a warning as  
2 described in Section 7.3 below. For purposes of this Section 90 days after the entry of this  
3 Consent Judgment shall be considered the "Effective Date."

4       **7.3** Should Variflex's Covered Products require Proposition 65 warnings under  
5 Section 7.2, Variflex shall either provide one of the warnings described below or any  
6 other Proposition 65 warning that has been reviewed and approved in writing by the  
7 California Attorney General for use with Covered Products regarding their plastic  
8 coatings:

9               **WARNING:** This product contains lead, a chemical known to the State of  
10 California to cause cancer and birth defects or other reproductive harm,  
11 *Wash your hands after touching this product.*

12               or

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

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

18               Variflex shall provide such warning with the unit package of the Covered  
19 Products. Such warning shall be prominently affixed to or printed on each Covered  
20 Product's label or package. The warning shall be at least the same size as the largest of  
21 any other safety warnings, if any, on the product container. If printed on the label itself,  
22 the warning shall be contained in the same section that states other safety warnings, if any,  
23 concerning the use of the product.

24               The requirements for product labeling, set forth above are imposed pursuant  
25 to the terms of this Consent Judgment. The parties recognize that product labeling is not  
26 the exclusive method of providing a warning under Proposition 65 and its implementing  
27 regulations.

28               If Proposition 65 warnings for lead or lead compounds should no longer be

1 required, Variflex shall have no further warning obligations pursuant to this Consent  
2 Judgment. In the event that Variflex ceases to implement or modifies the warnings  
3 required under this Consent Judgment (because of a change on the law or otherwise),  
4 Variflex shall provide written notice to Mateel (through KELC) of its intent to do so, and  
5 of the basis for its intent, no less than thirty (30) days in advance. Mateel shall notify  
6 Variflex in writing of any objection within thirty (30) days of its receipt of such notice, or  
7 such objection by Mateel shall be waived.

8 **8. AUTHORITY TO STIPULATE**

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

12 **9. RETENTION OF JURISDICTION**

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

15 **10. ENTIRE AGREEMENT**

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

22 **11. GOVERNING LAW**

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

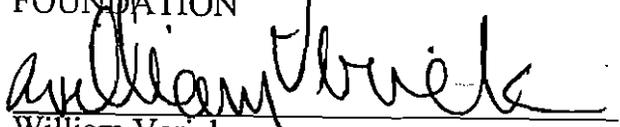
26 **12. COURT APPROVAL**

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

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IT IS SO STIPULATED:

DATED: Oct. 30, 2007

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION  
  
William Verick  
CEO Mateel Environmental Justice  
Foundation,  
Klamath Environmental Law Center

DATED:

VARIFLEX, INCORPORATED  
  
By: Anthony Armand  
Its: CEO

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: DEC 21 2007

PATRICK J. MAHONEY  
JUDGE OF THE SUPERIOR COURT

EXHIBIT A  
(Exemplar of Optional Testing Protocol)

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Step 1: Cut 3-inch section of a cable that has not previously been used or wiped.

Step 2. Remove any metallic inner components from the 3-inch section of the cable.

Place the outer nonmetallic covering into a lead free receptacle (such as a pre-labeled resealable plastic food storage bag).

Step 3. Repeat steps 1 and 2 above for two additional cables such that a total of three samples are produced for laboratory analysis.

Step 4. Prepare samples for laboratory analysis according to EPA Method 160.4 or 3050. Samples must be completely digested before proceeding to step 5.

Step 5. Analyze samples for total lead by EPA Method 7420 (AA Flame).

Step 6. Compute the arithmetic mean from the three samples.

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8 Attorneys for Plaintiff  
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

13 MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION,

14 Plaintiff,

15 vs.

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

17 Defendants.

CASE NO. 462810

~~PROPOSED~~ ORDER APPROVING  
CONSENT JUDGMENT AS TO  
DEFENDANT VARIFLEX, INC.

Date: December 21, 2007  
Time: 9:30 a.m.  
Dept. No.: 302

19 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on  
20 noticed motion on December 21, 2007 The court finds that:

21 1. The warnings and reformulation the Consent Judgment requires comply with the  
22 requirements of Proposition 65.  
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ENDORSED  
FILED  
San Francisco County Superior Court

DEC 21 2007

GORDON PARK-LI, Clerk  
BY: ERICKA LARNAUTI  
Deputy Clerk

