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9 Attorneys for Plaintiff
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
18 KITTRICH CORPORATION, *et al.*,

19 Defendants.

Case No. 06-457612

~~[PROPOSED]~~ CONSENT JUDGMENT

20
21 **1. INTRODUCTION**

22 1.0 On November 3, 2006, the MATEEL ENVIRONMENTAL JUSTICE
23 FOUNDATION ("Plaintiff" or "MEJF") acting on behalf of itself and the general public, filed a
24 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court,
25 Case No. 457612, against defendant, KITTRICH CORPORATION ("Defendant" or "Kittrich"),
26 among others. (MEJF and Kittrich are collectively referred to as "the Parties.") The Complaint
27 alleges that Kittrich violated provisions of the Safe Drinking Water and Toxic Enforcement Act of
28

ENDORSED
FILED
San Francisco County Superior Court

AUG 07 2007

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

1 1986, Health and Safety Code sections 25249.5, *et seq.* (Proposition 65), and Business and
2 Professions Code sections 17200 *et seq.* (the “Unfair Competition Act”), by, among other things,
3 knowingly and intentionally exposing persons to products containing lead and/or lead compounds,
4 which are 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 Kittrich, the California Attorney General, all District Attorneys, and all City Attorneys with
8 populations exceeding 750,000. A copy of the 60-Day Notice letter is attached as Exhibit A to the
9 complaint in this action.

10 1.1 Kittrich filed a timely answer to the Complaint denying each and every allegation
11 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 self adhesive and non-adhesive decorative
14 coverings allegedly made with lead-containing polyvinyl chloride, neoprene and/or other plastic
15 materials and/or lead-containing decorative ink (“**PVC Materials**”). Pursuant to Proposition 65,
16 lead and lead compounds are chemicals known to the State of California to cause cancer and
17 reproductive toxicity. Products containing lead and/or lead compounds that are sold or distributed
18 in the State of California may be, under specified circumstances, subject to the Proposition 65
19 warning requirement set forth in Health and Safety Code section 25249.6. Plaintiff alleges that
20 self adhesive and non-adhesive decorative coverings made with lead-containing PVC Materials
21 and/or lead-containing decorative ink (“**Decorative Coverings**”) that are manufactured,
22 distributed, sold and/or marketed by Kittrich for use in California, require a warning under
23 Proposition 65. For purposes of this Consent Judgment, the term “**Covered Products**” shall be
24 defined as Decorative Coverings that are: (i) distributed, sold or used within the State of
25 California, and (ii) Manufactured by Kittrich or any other entity acting on its behalf, and
26 distributed, marketed and/or sold by Kittrich or by any other entity that distributes, markets or
27 sells Kittrich’s Decorative Coverings in California, or manufactured by any other entity for
28 Kittrich, whether or not the Decorative Coverings bear Kittrich labels.

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 Kittrich as to the acts alleged in the Complaint, that venue is proper in
4 the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as
5 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 to.

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 Kittrich against any and all other claims based on the same or similar
13 allegations under Proposition 65.

14 1.5 Kittrich 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 Kittrich denies, nor may this Consent Judgment or compliance with it be used as evidence
18 of any wrongdoing, misconduct, culpability or liability on the part of Kittrich.

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 Kittrich, within 10 days following the Court's entry of a final judgment,
22 Kittrich shall pay \$30,000 to the Klamath Environmental Law Center ("KELC") to cover
23 Plaintiff's attorneys' fees and costs. Additionally, within 10 days following the Court's entry of a
24 final judgment, Kittrich shall pay \$10,000 to Californians for Alternatives to Toxics; and \$10,000
25 to the Ecological Rights foundation for use toward reducing exposures to toxic chemicals and
26 other pollutants, and toward increasing consumer, worker and community awareness of health
27 hazards posed by lead and other toxic chemicals. The parties agree and acknowledge that the
28 charitable contributions made pursuant to this section shall not be construed as a credit against the

1 personal claims absent third parties for restitution against Defendant. Kittrich shall not be
2 required to pay a civil penalty pursuant to 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, MEJF and Kittrich waive their respective rights to a hearing or trial on the allegations in
8 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 Kittrich of: (i) any violation of Proposition 65 or the Unfair Competition Act
13 (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 Kittrich or its parents, subsidiaries or
16 affiliates, and all of their customers, distributors, wholesalers, retailers, or any other person in the
17 course of doing business, and the successors and assigns of any of them, who may use, maintain,
18 distribute or sell Covered Products ("Released Entities"), based on its or their exposure of persons
19 to Covered Products or their failure to provide a clear and reasonable warning of exposure to such
20 individuals; and (iii) as to alleged exposures to Covered Products, any other claim based in whole
21 or in part on the facts alleged in the Complaint, whether based on actions committed by the
22 Released Entities. As to alleged exposures to Covered Products, compliance with the terms of this
23 Consent Judgment resolves any issue, now and in the future, concerning compliance by Kittrich
24 and the Released Entities, with the requirements of Proposition 65 and the Unfair Competition Act
25 with respect to Covered Products, and any alleged resulting exposure.

26 4.1 As to alleged exposures to Covered Products and other claims in the Complaint,
27 MEJF, by and on behalf of itself, and its respective agents, successors, attorneys and assigns,
28 waives any and all rights to institute any form of legal action, and releases all claims against

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

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

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

26
27 **5. ENFORCEMENT AND PRECLUSIVE EFFECT OF JUDGMENT**
28

1 5.0 The terms of this Consent Judgment shall be enforced exclusively by the Parties
2 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
3 San Francisco County, giving the notice required by law, enforce the terms and conditions
4 contained herein. In any proceeding brought by either party to enforce this Consent Judgment,
5 such Party may seek whatever fines, costs, penalties or remedies as may be provided by law for
6 any violation of Proposition 65 or this Consent Judgment. Additionally, if in such a proceeding
7 the Court finds that Kittrich failed to comply with the reformulation requirements as specified in
8 Section 7 of this Consent Judgment, and notwithstanding any other provision of this Consent
9 Judgment, then as to such Covered Products, Kittrich shall not benefit from any release from
10 liability specified in any provision of this Consent Judgment.

11 **6. MODIFICATION OF JUDGMENT**

12 6.0 This Consent Judgment may be modified only upon written agreement of the
13 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
14 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

15 **7. INJUNCTIVE RELIEF**

16 7.0 On and after November 1, 2007, the PVC Materials in all Covered Products sold by
17 Kittrich for resale or use in California shall meet the following criteria:

- 18 (a) The PVC Materials shall have no lead as an intentionally added constituent;
19 (b) A representative sample of the bulk PVC Materials used to manufacture the
20 Covered Products shall have been tested for lead, and must have shown lead
21 content by weight of less than 0.03% (300X00 parts per million "300 ppm"), using
22 a test method of sufficient sensitivity to establish a limit of quantification (as
23 distinguished from detection) of less than 300 ppm.

24 7.1 Kittrich may comply with the above requirements by relying on information
25 obtained from its suppliers of the Covered Products, and the PVC Materials utilized in their
26 manufacture, so long as such reliance is in good faith. Demonstration of good faith reliance may
27 include, but is not limited to e-mails or other written correspondence from suppliers attesting to
28 compliance with the provisions of this Section 7.1.

1 7.2 In the event that MEJF settles another actual or potential claim concerning the
2 alleged failure of a business to provide adequate Proposition 65 warnings concerning its
3 manufacture, distribution or sale of Decorative Coverings in California, and agrees to a standard
4 for reformulation that allows for lead content by weight of greater than 300 ppm in the PVC
5 Materials, Kittrich's compliance with the less stringent standard will be deemed to meet the
6 requirements of Sections 7.0(b) above. MEJF shall notify Kittrich of any and each such settlement
7 by written notice pursuant to Section 15, within 10 days of entry of such settlement or consent
8 judgment.

9 **8. AUTHORITY TO STIPULATE**

10 8.0 Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
12 the party represented and legally to bind that party.

13 **9. RETENTION OF JURISDICTION**

14 9.0 This Court shall retain jurisdiction of this matter to implement the Consent
15 Judgment.

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

17 10.0 MEJF shall serve a copy of this Consent Judgment, signed by both parties, on the
18 California Attorney General on behalf of the parties so that the Attorney General may review this
19 Consent Judgment. MEJF, in compliance with Title 11, *California Code of Regulations*, section
20 3003(a), also shall file and serve notice of the motion for approval of this Consent Judgment.

21 **11. ENTIRE AGREEMENT**

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

28 **12. GOVERNING LAW**

1 12.0 The validity, construction and performance of this Consent Judgment shall be
2 governed by the laws of the State of California, without reference to any conflicts of law
3 provisions of California law.

4 **13. COURT APPROVAL**

5 13.0 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of
6 no force or effect, and cannot be used in any proceeding for any purpose.

7 **14. NOTICES**

8 14.0 Any notices under this Consent Judgment shall be by personal delivery of First
9 Class Mail.

10 14.1

11 If to MEJF: William Verick, Esq.
12 Klamath Environmental Law Center
424 First Street
13 Eureka, CA 95501

14 If to Kittrich Corp.: Robert Friedland
15 Kittrich Corporation
14555 Alondra Blvd.
La Mirada, CA 90638

16 With a copy to: Legal Department

17
18 IT IS SO STIPULATED:

19 DATED: 6/19/07

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



21 BY: WILLIAM VERICK

22 DATED: June 4, 2007

23 KITTRICH CORPORATION

24 BY: 

25 ITS: President

26 IT IS SO ORDERED, ADJUDGED AND DECREED:

27 DATED: AUG 07 2007

PATRICK J. MAHONEY

28

JUDGE OF THE SUPERIOR COURT

1 WILLIAM VERICK, CSB #140972
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10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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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 KITTRICH CORPORATION, et al.,

20 Defendants.

CASE NO. 457612

~~[proposed]~~ ORDER APPROVING
SETTLEMENT

Date: August 7, 2007
Time: 9:30 a.m.
Dept. No.: 302

21
22 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
23 noticed motion on August 7, 2007. The court finds that:

- 24 1. The reformulation requirements of the Consent Judgment comply with the
25 requirements of Proposition 65;
26 2. The payments in lieu of civil penalty specified in the Consent Judgment are
27 reasonable based on the criteria in Cal Health & Safety Code §25249.7(b)(2); and
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ENDORSED
FILED
San Francisco County Superior Court
AUG 07 2007
GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

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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.

PATRICK J. MAHONEY

Dated: AUG 07 2007

Judge of the Superior Court