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12 ENVIRONMENTAL JUSTICE FOUNDATION

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

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,
17 Plaintiff,
18 vs.
19 ENERCO GROUP, INC., et al.,
20 Defendants.

Case No. CGC 06- 456753
CONSENT JUDGMENT AS TO
DEFENDANT W.C. BRADLEY CO.

ENDORSED
FILED
San Francisco Superior Court
DEC 14 2007
GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

1 **1. INTRODUCTION**

2 1.1 On November 3, 2006, the MATEEL ENVIRONMENTAL JUSTICE
3 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a
4 complaint for civil penalties and injunctive relief in San Francisco County Superior Court,
5 Case No.CGC-06-456753. The complaint, as amended, (hereafter referenced as “First
6 Amended Complaint”) names, inter alia, defendant W.C. Bradley Co. (“Settling
7 Defendant”). For purposes of this Consent Judgment, Settling Defendant shall include
8 W.C. Bradley Co. and its parents, subsidiaries or affiliates, specifically including but not
9 limited to Char-Broil, LLC. The First Amended Complaint alleges, among other things,
10 that Settling Defendant violated provisions of the Safe Drinking Water and Toxic
11 Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition
12 65”). In particular, Mateel alleges that Settling Defendant has knowingly and
13 intentionally exposed persons to the leaded PVC and leaded brass components of hoses
14 designed to be used with portable propane or natural gas devices such as barbeque grills,
15 camp stoves, camp lanterns, and portable heaters, that these components are made of brass
16 containing lead and/or lead compounds (“Leaded Brass”), and/or PVC hose materials
17 containing lead and/or lead compounds (“Leaded PVC”), without first providing a clear
18 and reasonable warning to such individuals. Lead and lead compounds are chemicals
19 known to the State of California to cause cancer and birth defects or other reproductive
20 harm.

21 1.2 On July 27, 2006, a 60-Day Notice letter (“Notice Letter”) was sent by
22 Mateel to Settling Defendant, the California Attorney General, all California District
23 Attorneys, and all City Attorneys of every California City with populations exceeding
24 750,000.

25 1.3 The Settling Defendant is a business that employs ten or more persons and
26 manufactures, distributes, and/or markets products within the State of California. Some of
27 those products are alleged to contain lead and/or lead compounds. Lead and lead
28 compounds are chemicals known to the State of California to cause cancer, and lead is a

1 chemical known to the State of California to cause reproductive toxicity pursuant to
2 Health and Safety Code Section 25249.9. Under specified circumstances, products
3 containing lead and/or lead compounds that are sold or distributed in the State of
4 California are subject to the Proposition 65 warning requirement set forth in Health and
5 Safety Code Section 25249.6. Plaintiff Mateel alleges that the Leaded PVC hose material
6 and the Leaded Brass valve hose ends of the adaptor hoses manufactured, distributed, sold
7 and/or marketed by Settling Defendant for use in California require a warning under
8 Proposition 65.

9 **1.4** For purposes of this Consent Judgment, the term "Covered Products" shall
10 be defined as hoses that contain Leaded PVC hose material and/or Leaded Brass parts, as
11 well as their component parts, that are designed to be used with portable propane or
12 natural gas operated devices, such as barbeque grills, heaters, stoves, and lamps, to the
13 extent such products are distributed and sold within the state of California, which are
14 manufactured, distributed, marketed and/or sold by the Settling Defendant, regardless of
15 whether they bear the label of the Settling Defendant.

16 **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court
17 has jurisdiction over the allegations of violations contained in the First Amended
18 Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the
19 First Amended Complaint, that venue is proper in the County of San Francisco and that
20 this Court has jurisdiction to enter this Consent Judgment as a full settlement and
21 resolution of the allegations contained in the First Amended Complaint and of all claims
22 that were or could have been raised by any person or entity based in whole or in part,
23 directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

24 **1.6** This Consent Judgment resolves claims that are denied and disputed. The
25 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
26 all claims between the parties for the purpose of avoiding prolonged litigation. This
27 Consent Judgment shall not constitute an admission with respect to any material allegation
28 of the First Amended Complaint, each and every allegation of which Settling Defendant

1 denies, nor may this Consent Judgment or compliance with it be used as evidence of any
2 wrongdoing, misconduct, culpability or liability on the part of Settling Defendant or any
3 other Defendant.

4 **2. SETTLEMENT PAYMENT**

5 2.1 In settlement of all of the claims referred to in this Consent Judgment
6 against the Settling Defendant, within ten (10) calendar days of entry of this Consent
7 Judgment by the Court, Settling Defendant shall pay \$19,500 to the Klamath
8 Environmental Law Center ("KELC") to cover a portion of Mateel's attorneys' fees and
9 costs.

10 2.2 Within ten (10) calendar days of entry of this Consent Judgment by the
11 Court, Settling Defendant shall pay \$7,250 to the Ecological Rights Foundation and
12 \$7,250 to Californians for Alternatives to Toxics for work informing the California
13 Consumers about the hazards of and exposures to toxic chemicals and for work to reduce
14 exposures to and pollution from toxic chemicals. Both are California non-profit
15 environmental organizations that advocate for workers' and consumers' safety, and for
16 awareness and reduction of toxic exposures.

17 **3. ENTRY OF CONSENT JUDGMENT**

18 3.1 The parties hereby request that the Court promptly enter this Consent
19 Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive
20 their respective rights to a hearing or trial on the allegations of the First Amended
21 Complaint.

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

23 4.1 This Consent Judgment is a final and binding resolution between Mateel,
24 acting on behalf of itself and, as to those matters raised in the 60 Day Notice Letter, the
25 general public, and Settling Defendant, of: (i) any violation of Proposition 65 with respect
26 to the Covered Products, and (ii) any other statutory or common law claim, to the fullest
27 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by
28 any person or entity against the Settling Defendant based upon, arising out of or relating

1 to Settling Defendant's compliance with Proposition 65, or regulations promulgated
2 thereunder, with respect to the Covered Products, and any other claim based in whole or
3 part on the facts alleged in the First Amended Complaint, whether based on actions
4 committed by Settling Defendant, or by (a) any other entity within the chain of
5 distribution of the Covered Products, including, but not limited to, manufacturers,
6 wholesale or retail sellers or distributors and any other person in the course of doing
7 business, or (b) any entity that manufactured, sold, or distributed the Covered Products.
8 As to alleged exposures to chemicals listed in the 60 Day Notice from Covered Products,
9 compliance with the terms of this Consent Judgment resolves any issue, now and in the
10 future, concerning compliance by Settling Defendant and its parents, subsidiaries or
11 affiliates, predecessors, officers, directors, employees, and all manufacturers, customers,
12 distributors, wholesalers, retailers or any other person in the course of doing business
13 involving the Covered Products, and the successors and assigns of any of these who may
14 manufacture, use, maintain, distribute, market or sell Covered Products, with the
15 requirements of Proposition 65.

16 **4.2** As to alleged exposures to Covered Products, Mateel, acting on behalf of
17 itself and, as to the matters in the 60 Day Notice on behalf of the general public, and its
18 agents, successors and assigns, waives all rights to institute any form of legal action, and
19 releases all claims against Settling Defendant and its parents, subsidiaries or affiliates,
20 predecessors, officers, directors, employees, and all customers, manufacturers,
21 distributors, wholesalers, retailers or any other person in the course of doing business
22 involving the Covered Products, and the successors and assigns of any of them, who may
23 manufacture, use, maintain, distribute or sell the Covered Products, whether under
24 Proposition 65 or otherwise, arising out of or resulting from, or related directly or
25 indirectly to, in whole or in part, the Covered Products and claims identified in Mateel's
26 Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself and the
27 general public, hereby waives any and all rights and benefits which it now has, or in the
28

1 future may have, conferred upon it with respect to the Covered Products by virtue of the
2 provisions of Section 1542 of the California Civil Code, which provides as follows:

3 "A GENERAL RELEASE DOES NOT EXTEND TO
4 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
5 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
6 EXECUTING THE RELEASE, WHICH IF KNOWN BY
7 HIM MUST HAVE MATERIALLY AFFECTED HIS
8 SETTLEMENT WITH THE DEBTOR."

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

23 5. ENFORCEMENT OF JUDGMENT

24 5.1 The terms of this Consent Judgment shall be enforced exclusively by the
25 parties hereto. The parties may, by noticed motion or order to show cause before the
26 Superior Court of San Francisco County, giving the notice required by law, enforce the
27 terms and conditions contained herein.

28 6. MODIFICATION OF JUDGMENT

This Consent Judgment may be modified only upon written agreement of the
parties and upon entry of a modified Consent Judgment by the Court thereon, or upon

1 motion of any party as provided by law and upon entry of a modified Consent Judgment
2 by the Court.

3 **7. INJUNCTIVE RELIEF**

4 **7.1 LEADED PVC HOSE MATERIAL**

5 (a) For Covered Products shipped for sale at retail more than 90 days
6 after the entry of this Consent Judgment, a warning that complies
7 with this section will be provided unless the reformulation standard
8 of the next section has been met.

9 (b) Reformulation Standard

10 Reformulation conditions include both of the following: (a) the PVC
11 used in the outer surface of the hose materials shall have no lead as
12 an intentionally added constituent; and (b) a representative sample of
13 the bulk PVC used to manufacture the surface coatings of the hose
14 materials has shown lead content by weight of less than 0.03% (300
15 parts per million "300 ppm"), using a test method of sufficient
16 sensitivity to establish a limit of quantification (as distinguished from
17 detection) of less than 300 ppm. Compliance may be met by relying
18 on information obtained from suppliers of the Covered Products
19 provided such reliance is in good faith.

20 (c) Warnings:

21 If a warning is required, Settling Defendant shall provide a
22 Proposition 65 warning for Covered Products as described below, or
23 according to any warning agreed to by the California Attorney
24 General:

25 (i) Settling Defendant shall provide the following warning
26 statement for all units of Covered Products that: (i) are
27 distributed, marketed, or shipped by Settling Defendant for
28 retail sale to take place in California 90 days after the entry of

1 this Consent Judgment; and (ii) do not meet the reformulation
2 requirements of paragraph 7.1(b) above:

3 **PROP 65 WARNING: This product contains chemicals, including lead**
4 **and lead compounds, known to the State of California to cause [cancer,**
5 **and] birth defects or other reproductive harm. *Wash your hands after***
6 ***handling this product.***

7 or

8 **PROP 65 WARNING: Handling the hose material on this product**
9 **exposes you to lead, a chemical known to the State of California to**
10 **cause [cancer, and] birth defects and other reproductive harm. *Wash***
11 ***hands after use.***

12 or

13 **PROP 65 WARNING: Handling the hose material of this product**
14 **exposes you to lead, a chemical known to the State of California to**
15 **cause [cancer, and] birth defects or other reproductive harm. *Wash***
16 ***hands after use.***

17 The phrase "PROP 65" may be excluded at the Defendant's discretion. If included,
18 the phrase "PROP 65" shall be in capitals. The word "WARNING" shall be in capitals.
19 The words "*Wash hands after handling this product*" or "*Wash hands after use,*" shall be
20 italicized or underlined. Inclusion of the bracketed words "cancer, and" in the above
21 warning shall be at Settling Defendant's option. The foregoing does not preclude Settling
22 Defendant from adding a warning for additional Proposition 65 listed chemicals unless the
23 Attorney General takes the position that such a warning would be misleading or an over-
24 warning. Such warning shall be prominently affixed to or printed on each Covered
25 Product, its label, owner's manual or package and contained in the same section of the
26 label that contains other safety warnings, if any, concerning the use of the Covered
27 Product or near its displayed price and/or UPC code, and with such conspicuousness, as
28 compared with other words, statements, designs, or devices on the Covered Product, its
label, package or display as to render it likely to be read and understood by an ordinary
individual. The warning shall be at least the same size as the largest of any other safety
warnings, if any. A warning in an owners manual may only be used if the Covered
Product is itself, or is sold as part of and packaged with an associated product which is, of

1 a nature that one or more features or aspects are such that a consumer must read about the
2 product in order to know how to program or use the product.

3 **7.2 LEADED BRASS MATERIAL**

4 (a) If after 90 days after the entry of this consent judgment, the Covered
5 Products continue to use leaded brass ends or fittings with the adaptor
6 hoses such that a leaded brass component continues to be designed
7 to be hand tightened or hand manipulated on either the gas or
8 propane source end of the hose or the gas operated device end of the
9 hose, a warning that complies with this section shall be provided.

10 (b) **WARNING:**

11 If a warning is required, Settling Defendant shall provide a
12 Proposition 65 warning for Covered Products as described below, or
13 according to any warning agreed to by the California Attorney
14 General:

15 (i) Settling Defendant shall provide the following warning
16 statement for all units of Covered Products that: (i) are
17 distributed, marketed, or shipped by Settling Defendant for
18 retail sale to take place in California 90 days after the entry of
19 this Consent Judgment ; and (ii) use Leaded Brass components
20 as described in section 7.2(a) above.

21
22 **PROP 65 WARNING: This product contains chemicals, including lead
23 and lead compounds, known to the State of California to cause [cancer,
24 and] birth defects or other reproductive harm. *Wash your hands after
handling this product.***

25 or

26 **PROP 65 WARNING: Handling the brass material on this product exposes
27 you to lead, a chemical known to the State of California to cause [cancer, and]
28 birth defects and other reproductive harm. *Wash hands after use.***

or

1 **10. ENTIRE AGREEMENT**

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

8 **11. GOVERNING LAW**

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

12 **12. FEES AND EXPENSES**

13 The parties acknowledge and agree that, except as set provided in Section 2.1 of
14 this Consent Judgment, each party shall bear its own costs, expenses, consultant and
15 expert fees, and attorneys fees arising out of and/or in connection with the litigation, the
16 negotiation, drafting and execution of this Consent Judgment, and all matters arising out
17 of and/or connected therewith, except that, in the event any action or proceeding is
18 brought to enforce this Consent Judgment, the prevailing party shall be entitled to
19 reasonable and necessary attorneys' fees, expenses, and costs in addition to all other relief
20 to which that party may be entitled.

21 **13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)**

22 Mateel agrees to comply with the reporting form and approval requirements
23 referenced in Health & Safety Code Section 25249.7(f) and as implemented by various
24 regulations.

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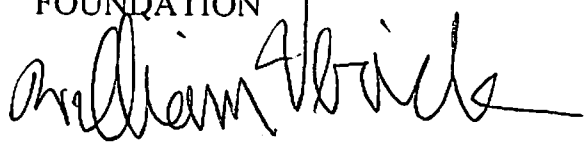
1 **14. COURT APPROVAL**

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

4 **IT IS SO STIPULATED:**

5
6 Dated: December 10, 2007

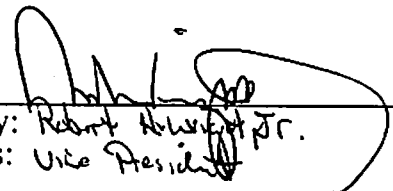
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

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11 Dated: December 5, 2007

W.C. BRADLEY CO.


By: Robert Holwick, Jr.
Its: Vice President

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14
15
16 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

17 **DEC 14 2007**

PAUL H. ALVARADO

18 Dated: December __, 2007

JUDGE OF THE SUPERIOR COURT

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