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11 ENVIRONMENTAL JUSTICE FOUNDATION

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

15 MATEEL ENVIRONMENTAL JUSTICE
16 FOUNDATION,,

17 Plaintiff,

18 v.

19 ENERCO GROUP, INC., ET AL

20 Defendants.

Case No. CGC 06- 456753

CONSENT JUDGMENT AS TO
DEFENDANT ENERCO GROUP, INC.

21 1. INTRODUCTION

22 1.1 On November 3, 2006, the MATEEL ENVIRONMENTAL JUSTICE
23 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a complaint for
24 civil penalties and injunctive relief in San Francisco County Superior Court, Case No.CGC-06-
25 456753. The complaint, as amended, (hereafter referenced as "First Amended Complaint")
26 names, inter alia, defendant Enerco Group, Inc. ("Settling Defendant"). For purposes of this
27 Consent Judgment, Settling Defendant shall include Enerco Group, Inc., and its parents,
28 subsidiaries or affiliates. The First Amended Complaint alleges, among other things, that Settling

ENDORSED
FILED
San Francisco Superior Court

DEC 14 2007

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

1 Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986.
2 Health and Safety Code Sections 25249.5, et seq. ("Proposition 65"). In particular, Mateel
3 alleges that Settling Defendant has knowingly and intentionally exposed persons to the leaded
4 brass components of hoses designed to be used with portable propane or natural gas devices such
5 as barbeque grills, camp stoves, camp lanterns, and portable heaters, that these components are
6 made of brass containing lead and/or lead compounds without first providing a clear and
7 reasonable warning to such individuals. Lead and lead compounds are chemicals known to the
8 State of California to cause cancer and birth defects or other reproductive harm.

9 1.2 On July 27, 2006, a 60-Day Notice letter ("Notice Letter") was sent by Mateel to
10 Settling Defendant, the California Attorney General, all California District Attorneys, and all City
11 Attorneys of every California City with populations exceeding 750,000.

12 1.3 The Settling Defendant is a business that employs ten or more persons and
13 manufactures, distributes, and/or markets products within the State of California. Some of those
14 products are alleged to contain lead and/or lead compounds. Lead and lead compounds are
15 chemicals known to the State of California to cause cancer, and lead is a chemical known to the
16 State of California to cause reproductive toxicity pursuant to Health and Safety Code Section
17 25249.9. Under specified circumstances, products containing lead and/or lead compounds that
18 are sold or distributed in the State of California are subject to the Proposition 65 warning
19 requirement set forth in Health and Safety Code Section 25249.6. Plaintiff Mateel alleges that the
20 Leaded Brass valve hose ends of the adaptor hoses manufactured, distributed, sold and/or
21 marketed by Settling Defendant for use in California require a warning under Proposition 65.

22 1.4 For purposes of this Consent Judgment, the term "Covered Products" shall be
23 defined as hoses, and their component parts, designed to be used with portable propane or natural
24 gas operated devices, such as barbeque grills, heaters, stoves, and lamps, to the extent such
25 products are distributed and sold within the state of California, which are manufactured,
26 distributed, marketed and/or sold by the Settling Defendant, regardless of whether they bear the
27 label of the Settling Defendant.

1 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court has
2 jurisdiction over the allegations of violations contained in the First Amended Complaint and
3 personal jurisdiction over Settling Defendant as to the acts alleged in the First Amended
4 Complaint, that venue is proper in the County of San Francisco and that this Court has
5 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations
6 contained in the First Amended Complaint and of all claims that were or could have been raised
7 by any person or entity based in whole or in part, directly or indirectly, on the facts alleged
8 therein or arising therefrom or related thereto.

9 1.6 This Consent Judgment resolves claims that are denied and disputed. The parties
10 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
11 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
12 shall not constitute an admission with respect to any material allegation of the First Amended
13 Complaint, each and every allegation of which Settling Defendant denies, nor may this Consent
14 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability
15 or liability on the part of Settling Defendant or any other Defendant.

16 2. **SETTLEMENT PAYMENT**

17 2.1 In settlement of all of the claims referred to in this Consent Judgment against the
18 Settling Defendant, within ten (10) calendar days of entry of this Consent Judgment by the Court,
19 Settling Defendant shall pay \$ 20,000 to the Klamath Environmental Law Center ("KELC") to
20 cover a portion of Mateel's attorneys' fees and costs.

21 2.2 Within ten (10) calendar days of entry of this Consent Judgment by the Court,
22 Settling Defendant shall pay \$ 5,000 to the Ecological Rights Foundation and \$ 5,000 to
23 Californians for Alternatives to Toxics for work informing the California Consumers about the
24 hazards of and exposures to toxic chemicals and for work to reduce exposures to and pollution
25 from toxic chemicals. Both are California non-profit environmental organizations that advocate
26 for workers' and consumers' safety, and for awareness and reduction of toxic exposures.
27
28

1 3. ENTRY OF CONSENT JUDGMENT

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

5 4. MATTERS COVERED BY THIS CONSENT JUDGMENT

6 4.1 This Consent Judgment is a final and binding resolution between Mateel, acting on
7 behalf of itself and, as to those matter raised in the 60 Day Notice Letter, the general public, and
8 Settling Defendant, of: (i) any violation of Proposition 65 with respect to the Covered Products,
9 and (ii) any other statutory or common law claim, to the fullest extent that any of the foregoing
10 described in (i) or (ii) were or could have been asserted by any person or entity against the
11 Settling Defendant based upon, arising out of or relating to Settling Defendant's compliance with
12 Proposition 65, or regulations promulgated thereunder, with respect to the Covered Products, and
13 any other claim based in whole or part on the facts alleged in the First Amended Complaint,
14 whether based on actions committed by Settling Defendant, or by (a) any other entity within the
15 chain of distribution of the Covered Products, including, but not limited to, manufacturers,
16 wholesale or retail sellers or distributors and any other person in the course of doing business, or
17 (b) any entity that manufactured, sold, or distributed the Covered Products. As to alleged
18 exposures to the chemicals identified in the 60 Day Notice Letter from Covered Products,
19 compliance with the terms of this Consent Judgment resolves any issue, now and in the future,
20 concerning compliance by Settling Defendant and its parents, subsidiaries or affiliates,
21 predecessors, officers, directors, employees, and all manufacturers, customers, distributors,
22 wholesalers, retailers or any other person in the course of doing business involving the Covered
23 Products, and the successors and assigns of any of these who may manufacture, use, maintain,
24 distribute, market or sell Covered Products, with the requirements of Proposition 65.

25 4.2 As to alleged exposures to Covered Products, Mateel, acting on behalf of itself
26 and, as to the matters in the 60 Day Notice Letter, the general public, and its agents, successors
27 and assigns, waives all rights to institute any form of legal action, and releases all claims against
28 Settling Defendant and its parents, subsidiaries or affiliates, predecessors, officers, directors,

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

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

16 Mateel understands and acknowledges that the significance and consequence of this waiver of
17 California Civil Code Section 1542 is that even if Mateel or any member of the general public
18 suffers future damages arising out of or resulting from, or related directly or indirectly to, in
19 whole or in part, the claims raised in the 60 Day Notice regarding the Covered Products, it will
20 not be able to make any claim for those damages against the Settling Defendant, its parents,
21 subsidiaries or affiliates, predecessors, officers, directors, employees, and all customers,
22 manufacturers, distributors, wholesalers, retailers or any other person in the course of doing
23 business involving the Covered Products, and the successors and assigns of any of them, who
24 may manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel
25 acknowledges that it intends these consequences for any such claims which may exist as of the
26 date of this release but which Mateel does not know exist, and which, if known, would materially
27 affect its decision to enter into this Consent Judgment, regardless of whether its lack of
28 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

1 5. ENFORCEMENT OF JUDGMENT

2 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
3 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
4 San Francisco County, giving the notice required by law, enforce the terms and conditions
5 contained herein.

6 6. MODIFICATION OF JUDGMENT

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

10 7. INJUNCTIVE RELIEF

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

17 (b) WARNING:

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

21 Settling Defendant shall provide the following warning statement for all units of Covered
22 Products that are manufactured for sale in California any time 90 days following entry of this
23 Consent Judgment.

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

5
6 **or**

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

10
11 **or**

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

15
16 The word "WARNING" shall be in bold. The words "Wash hands after handling" or "Wash
17 hands after use" shall be italicized. The warning shall be provided with the unit package of the
18 Covered Products. Such warning shall be prominently affixed to or printed on each Covered
19 Product's label or package. The warning shall be at least the same size as the largest of any other
20 warnings, if any, on the product container. If printed on the label itself, the warning shall be
21 contained in the same section that states other safety warnings, if any, concerning the use of the
22 product.

23 **8. AUTHORITY TO STIPULATE**

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

12. **FEEES AND EXPENSES**

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

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

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

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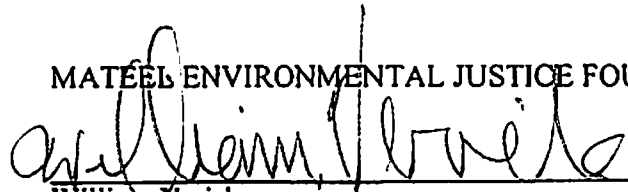
14. COURT APPROVAL

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:

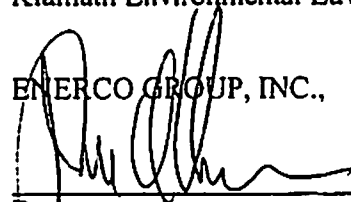

12/14/07



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

DATED:

ENERCO GROUP, INC.,


By: _____
Its: 

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

DEC 14 2007

PAUL H. ALVARADO

JUDGE OF THE SUPERIOR COURT