



1 the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections  
2 25249.5, et seq. (Proposition 65) by failing to give clear and reasonable warnings to those  
3 residents of California who handle and use products made of, or incorporate parts made of, brass  
4 and/or bronze, that handling and use of these products causes those residents to be exposed to  
5 lead and/or lead compounds. Lead is known to the State of California to cause cancer and/or  
6 birth defects or other reproductive harm. The Complaint was based upon a 60-Day Notice letter,  
7 dated October 19, 2006, sent by MEJF to Newell Rubbermaid, the California Attorney General,  
8 all District Attorneys, and all City Attorneys with populations exceeding 750,000.

9 1.2 Defendant, through its affiliates BernzOmatic® and Lenox®, is a business that  
10 employs more than ten persons, and manufactures, distributes, and sells BernzOmatic® and  
11 Lenox® welding and brazing torches, torch plumbing kits, gas matches, and torch accessories  
12 (“Torches”). Many Torches contain components manufactured from brass that contains lead  
13 and/or lead compounds. These components are usually torch tips, where brass is the ideal  
14 material to withstand the high heat conditions. Pursuant to Health and Safety Code Section  
15 25249.8, lead and lead compounds are chemicals known to the State of California to cause cancer  
16 and reproductive toxicity. Plaintiff MEJF alleges that Torches with components containing lead-  
17 containing brass that are sold by Newell Rubbermaid for use in California require a warning  
18 under Proposition 65, pursuant to Health and Safety Code Section 25249.6. Newell Rubbermaid  
19 denies that a warning is required. For purposes of this Consent Judgment, the parties stipulate  
20 that this Court has jurisdiction over the allegations of violations contained in the Complaint and  
21 personal jurisdiction over Newell Rubbermaid as to the acts alleged in the Complaint, that venue  
22 is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent  
23 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of  
24 all claims which were or could have been raised by any person or entity based in whole or in part,  
25 directly or indirectly, on the facts alleged therein or arising therefrom or related to.

26 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties  
27 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
28 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment

1 shall not constitute an admission with respect to any material allegation of the Complaint, each  
2 and every allegation of which Newell Rubbermaid denies, nor may this Consent Judgment or  
3 compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on  
4 the part of Newell Rubbermaid.

5 1.4 For purposes of this Consent Judgment, the term "Covered Products" means  
6 Torches as described in paragraph 1.2 that contain one or more components manufactured from  
7 brass.

8 1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

9 **2. SETTLEMENT PAYMENT**

10 2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the  
11 Complaint concerning Covered Products, Newell Rubbermaid shall pay \$17,500 to the Klamath  
12 Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally, Newell  
13 Rubbermaid shall pay \$17,500 to the Ecological Rights Foundation for use toward reducing  
14 exposures to toxic chemicals and other pollutants, and toward increasing consumer, worker and  
15 community awareness of health hazards posed by lead and other toxic chemicals. The parties  
16 agree and acknowledge that the charitable contributions made pursuant to this section shall not be  
17 construed as a credit against the personal claims of absent third parties for restitution against the  
18 defendant. The above described payments shall be forwarded by Defendant so that they are  
19 received at least 5 days prior to the hearing date scheduled for approval of this Consent  
20 Judgment. If the Consent Judgment is not approved with 120 days of the date scheduled for  
21 approval, the above described payments shall be returned and the provisions of this Consent  
22 judgment shall become null and void.

23 2.2 Newell Rubbermaid shall not be required to pay a civil penalty pursuant to Health  
24 and Safety Code Section 25249.7(b).

25 **3. ENTRY OF CONSENT JUDGMENT**

26 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.  
27 Upon entry of the Consent Judgment, Newell Rubbermaid and MEJF waive their respective rights  
28 to a hearing or trial on the allegations of the Complaint.

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

2 4.1 This Consent Judgment is a final and binding resolution between MEJF, acting on  
3 behalf of itself and (as to those matters raised in the 60-Day Notice Letter) the general public, and  
4 Newell Rubbermaid of: (i) any violation of Proposition 65 (including but not limited to the claims  
5 made in the Complaint); and (ii) any other statutory or common law claim to the fullest extent  
6 that any of the foregoing described in (i) or (ii) were or could have been asserted by any person or  
7 entity against Newell Rubbermaid or its parents, subsidiaries or affiliates, and all of their  
8 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of  
9 doing business, and the successors and assigns of any of them, who may use, maintain, distribute  
10 or sell Covered Products ("Released Entities"), based on its or their exposure of persons to lead or  
11 lead compounds from Covered Products or their failure to provide a clear and reasonable warning  
12 of exposure to such individuals; and (iii) as to alleged exposures to lead or lead compounds from  
13 Covered Products, any other claim based in whole or in part on the facts alleged in the Complaint,  
14 whether based on actions committed by the Released Entities or others. As to alleged exposures  
15 to lead or lead compounds from Covered Products, compliance with the terms of this Consent  
16 Judgment resolves any issue, now and in the future, concerning compliance by Newell  
17 Rubbermaid and the Released Entities, with the requirements of Proposition 65 with respect to  
18 Covered Products, and any alleged resulting exposure.

19 4.2 As to alleged exposures to lead or lead compounds from Covered Products, MEJF,  
20 by and on behalf of itself and its respective agents, successors and assigns, waives any and all  
21 rights to institute any form of legal action, and releases all claims against Newell Rubbermaid and  
22 the Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their  
23 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of  
24 doing business, and the successors and assigns of any of them, who may use, maintain, distribute  
25 or sell the Covered Products, whether, under Proposition 65 or otherwise, arising out of or  
26 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,  
27 including but not limited to any exposure to, or failure to warn with respect to, the Covered  
28 Products (referred to collectively in this paragraph as the "Claims"). In furtherance of the

1 foregoing, as to alleged exposures to Covered Products, MEJF hereby waives any and all rights  
2 and benefits which it now has, or in the future may have, conferred upon it with respect to the  
3 Claims by virtue of the provisions of section 1542 of the California Civil Code, which provides as  
4 follows:

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

10 4.3 MEJF understands and acknowledges that the significance and consequence of this  
11 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising  
12 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered  
13 Products, including but not limited to any exposure to, or failure to warn with respect to exposure  
14 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for  
15 those damages against Newell Rubbermaid or the Released Entities. Furthermore, MEJF  
16 acknowledges that it intends these consequences for any such Claims as may exist as of the date  
17 of this release but which MEJF does not know exist, and which, if known, would materially affect  
18 their decision to enter into this Consent Judgment, regardless of whether their lack of knowledge  
19 is the result of ignorance, oversight, error, negligence, or any other cause.

20 **5. ENFORCEMENT OF JUDGMENT**

21 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
22 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
23 San Francisco County, giving the notice required by law, enforce the terms and conditions  
24 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment  
25 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the  
26 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to  
27 comply in an open and good faith manner.  
28

1           5.2     In any proceeding brought by either party to enforce this Consent Judgment, such  
2 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
3 violation of Proposition 65 or this Consent Judgment.

4     **6.     MODIFICATION OF JUDGMENT**

5           6.1     This Consent Judgment may be modified only upon written agreement of the  
6 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
7 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

8           6.2     If, with respect to brass containing lead, the Attorney General of the State of  
9 California or Plaintiff permit any other reformulation standard by way of settlement or  
10 compromise with any other person in the course of doing business, or any other entity, or if  
11 another reformulation standard for brass is incorporated by way of final judgment as to any other  
12 person in the course of doing business, or any other entity, then Defendant is entitled to seek a  
13 modification to this Consent Judgment on the same terms as provided in those settlements,  
14 compromises or judgments.

15     **7.     INJUNCTIVE RELIEF**

16           7.1     The requirements of this paragraph 7 shall apply only to Covered Products that are  
17 manufactured by Newell Rubbermaid after the Effective Date.

18           7.2     As to any Covered Product that contains a component made from brass that  
19 contains lead as an intentionally added ingredient, where such brass comes into contact with the  
20 user, a warning that contains one of the following warning statements shall be provided:

21                   (a)     **“WARNING: This product contains chemicals, including lead, known to**  
22 **the State of California to cause birth defects and other reproductive harm. *Wash hands after***  
23 ***handling*”** or

24                   (b)     **“WARNING: Handling the brass parts of this product will expose you to**  
25 **lead, a chemical known to the State of California to cause birth defects and other reproductive**  
26 **harm. *Wash hands after handling.*”**

27                   The word “WARNING” shall be in bold text, and the phrase “Wash hands after handling”  
28 shall be in bold italic text.

1 (c) The warning statements required in paragraph 7.2 shall be affixed to or  
2 printed on the Covered Product itself or to the Covered Product's packaging, labeling, or  
3 instruction booklet, if any. The warning shall be prominently affixed to or printed on the Covered  
4 Product or packaging, labeling, or instruction booklet, and displayed with such conspicuousness,  
5 as compared with other words, statements, designs, or devices on the Covered Product, or its  
6 packaging, labeling, or instruction booklet, as to render it likely to be read and understood by an  
7 ordinary individual under customary conditions of purchase or use. For purposes of this  
8 paragraph, a warning may be contained in the same section of the packaging, labeling, or  
9 instruction booklet that contains other safety warnings, if any, concerning the use of the Covered  
10 Product, or near its displayed price and/or UPC code. The type size of the warning must be  
11 legible, but need not be any larger than any other warning provided for the Covered Product, and  
12 its relative size may take into account the nature, immediacy, and acuteness of the risks for which  
13 other warnings are provided.

14 **8. RETENTION OF JURISDICTION**

15 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
16 terms this Consent Judgment.

17 **9. AUTHORITY TO STIPULATE**

18 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
19 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
20 the party represented and legally to bind that party.

21 **10. DUTIES LIMITED TO CALIFORNIA**

22 10.1 This Consent Judgment shall have no effect on Covered Products sold by Newell  
23 Rubbermaid outside the State of California.

24 **11. SERVICE ON THE ATTORNEY GENERAL**

25 11.1 KELC shall serve a copy of this Consent Judgment, signed by both parties, on the  
26 California Attorney General on behalf of the parties so that the Attorney General may review this  
27 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)  
28 days after the Attorney General has received the aforementioned copy of this Consent Judgment,

1 and in the absence of any written objection by the Attorney General to the terms of this Consent  
2 Judgment, the parties may then submit it to the Court for approval.

3 **12. ENTIRE AGREEMENT**

4 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
5 of the parties with respect to the entire subject matter hereof and any and all prior discussions,  
6 negotiations, commitments and understandings related hereto. No representations, oral or  
7 otherwise, express or implied, other than those contained herein have been made by any party  
8 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
9 deemed to exist or to bind any of the parties.

10 **13. GOVERNING LAW**

11 13.1 The validity, construction and performance of this Consent Judgment shall be  
12 governed by the laws of the State of California, without reference to any conflicts of law  
13 provisions of California law.

14 **14. EXECUTION AND COUNTERPARTS**

15 14.1 This Consent Judgment may be executed in counterparts and by means of  
16 facsimile, which taken together shall be deemed to constitute one document.

17 **15. COURT APPROVAL**

18 15.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of  
19 no force or effect, and cannot be used in any proceeding for any purpose.

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1 **16. NOTICES**

2 16.1 Any notices under this Consent Judgment shall be by personal delivery of First  
3 Class Mail.

4 If to MEJF: William Verick, Esq.  
5 Klamath Environmental Law Center  
6 424 First Street  
7 Eureka, CA 95501

8 If to Newell Rubbermaid: Ms. Lori A. Prokes  
9 Vice President and Assistant General Counsel  
10 Newell Rubbermaid Legal Services  
11 2707 Butterfield Road  
12 Suite 100  
13 Oak Brook, IL 60523

14 With a copy to:  
15 Jeffrey B. Margulies  
16 FULBRIGHT & JAWORSKI, L.L.P.  
17 555 S. Flower Street, 41st Floor  
18 Los Angeles, California 90071

19 IT IS SO STIPULATED:

20 DATED: Aug 29, 2007

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

21 BY:   
22 WILLIAM VERICK

23 DATED: July 9, 2007

NEWELL RUBBERMAID INC.

24 BY:   
25 ITS: Vice-President, Asst. General Counsel

26 IT IS SO ORDERED, ADJUDGED AND DECREED:

27 DATED: OCT 18 2007

**DIANE ELAN WICK**

28 JUDGE OF THE SUPERIOR COURT

1 WILLIAM VERICK, CSB #140972  
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10 Attorneys for Plaintiff  
11 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

15  
16 MATEEL ENVIRONMENTAL JUSTICE  
17 FOUNDATION,

18 Plaintiff,

19 vs.

20 NEWELL RUBBERMAID, INC., et al.,

21 Defendants.

CASE NO. 463540

~~[proposed]~~ ORDER APPROVING  
SETTLEMENT

Date: October 18, 2007  
Time: 9:30 a.m.  
Dept. No.: 302

22  
23 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on  
24 noticed motion on October 18, 2007. The court finds that:

- 25 1. The warning requirements of the Consent Judgment comply with the requirements  
26 of Proposition 65;

ENDORSED  
FILED  
San Francisco County Superior Court

OCT 18 2007

GORDON PARK-LI, Clerk

BY: \_\_\_\_\_  
Deputy Clerk

