



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

10 1.2 Defendant is a business that employs more than ten persons, and manufactures,  
11 distributes, and sells brass products, such as couplers and clamps ("Brass Products"). Many Brass  
12 Products contain components manufactured from brass that contains lead and/or lead compounds.  
13 Pursuant to Health and Safety Code Section 25249.8, lead and lead compounds are chemicals  
14 known to the State of California to cause cancer and reproductive toxicity. Plaintiff MEJF alleges  
15 that Brass Products with components containing lead-containing brass that are sold by Forney for  
16 use in California require a warning under Proposition 65, pursuant to Health and Safety Code  
17 Section 25249.6. Forney denies that a warning is required. For purposes of this Consent  
18 Judgment, the parties stipulate that this Court has jurisdiction over the allegations of violations  
19 contained in the Complaint and personal jurisdiction over Forney as to the acts alleged in the  
20 Complaint, that venue is proper in the County of San Francisco and that this Court has  
21 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations  
22 contained in the Complaint and of all claims which were or could have been raised by any person  
23 or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising  
24 therefrom or related to.

25 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties  
26 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
27 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment  
28 shall not constitute an admission with respect to any material allegation of the Complaint, each

1 and every allegation of which Forney denies, nor may this Consent Judgment or compliance with  
2 it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of  
3 Forney.

4 1.4 For purposes of this Consent Judgment, the term "Covered Products" means Brass  
5 Products as described in paragraph 1.2 that contain one or more components manufactured from  
6 brass.

7 1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

8 **2. SETTLEMENT PAYMENT**

9 2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the  
10 Complaint concerning Covered Products, Forney shall pay \$20,000 to the Klamath  
11 Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally, Forney  
12 shall pay \$15,000 to the Ecological Rights Foundation for use toward reducing exposures to toxic  
13 chemicals and other pollutants, and toward increasing consumer, worker and community  
14 awareness of health hazards posed by lead and other toxic chemicals. The parties agree and  
15 acknowledge that the charitable contributions made pursuant to this section shall not be construed  
16 as a credit against the personal claims of absent third parties for restitution against the defendant.  
17 The above described payments shall be forwarded by Defendant so that they are received at least  
18 5 days prior to the hearing date scheduled for approval of this Consent Judgment. If the Consent  
19 Judgment is not approved within 120 days of the date scheduled for approval, the above described  
20 payments shall be returned and the provisions of this Consent judgment shall become null and  
21 void.

22 2.2 Forney shall not be required to pay a civil penalty pursuant to Health and Safety  
23 Code Section 25249.7(b).

24 **3. ENTRY OF CONSENT JUDGMENT**

25 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.  
26 Upon entry of the Consent Judgment, Forney and MEJF waive their respective rights to a hearing  
27 or trial on the allegations of the Complaint.

28

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     Forney of: (i) any violation of Proposition 65 (including but not limited to the claims made in the  
5     Complaint); and (ii) any other statutory or common law claim to the fullest extent that any of the  
6     foregoing described in (i) or (ii) were or could have been asserted by any person or entity against  
7     Forney or its parents, subsidiaries or affiliates, and all of their suppliers, customers, distributors,  
8     wholesalers, retailers, or any other person in the course of doing business, and the successors and  
9     assigns of any of them, who may use, maintain, distribute or sell Covered Products (“Released  
10    Entities”), based on its or their exposure of persons to lead or lead compounds from Covered  
11    Products or their failure to provide a clear and reasonable warning of exposure to such  
12    individuals; and (iii) as to alleged exposures to lead or lead compounds from Covered Products,  
13    any other claim based in whole or in part on the facts alleged in the Complaint, whether based on  
14    actions committed by the Released Entities or others. As to alleged exposures to lead or lead  
15    compounds from Covered Products, compliance with the terms of this Consent Judgment resolves  
16    any issue, now and in the future, concerning compliance by Forney and the Released Entities,  
17    with the requirements of Proposition 65 with respect to Covered Products, and any alleged  
18    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 Forney and the Released  
22    Entities, and all of their respective parents, subsidiaries or affiliates, and all of their suppliers,  
23    customers, distributors, wholesalers, retailers, or any other person in the course of doing business,  
24    and the successors and assigns of any of them, who may use, maintain, distribute or sell the  
25    Covered Products, whether, under Proposition 65 or otherwise, arising out of or resulting from, or  
26    related directly or indirectly to, in whole or in part, the Covered Products, including but not  
27    limited to any exposure to, or failure to warn with respect to, the Covered Products (referred to  
28    collectively in this paragraph as the “Claims”). In furtherance of the foregoing, as to alleged

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

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

9 4.3 MEJF understands and acknowledges that the significance and consequence of this  
10 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising  
11 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered  
12 Products, including but not limited to any exposure to, or failure to warn with respect to exposure  
13 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for  
14 those damages against Forney or the Released Entities. Furthermore, MEJF acknowledges that it  
15 intends these consequences for any such Claims as may exist as of the date of this release but  
16 which MEJF does not know exist, and which, if known, would materially affect their decision to  
17 enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of  
18 ignorance, oversight, error, negligence, or any other cause.

19 **5. ENFORCEMENT OF JUDGMENT**

20 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
21 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
22 San Francisco County, giving the notice required by law, enforce the terms and conditions  
23 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment  
24 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the  
25 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to  
26 comply in an open and good faith manner.

27 5.2 In any proceeding brought by either party to enforce this Consent Judgment, such  
28 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
violation of Proposition 65 or this Consent Judgment.

1 **6. MODIFICATION OF JUDGMENT**

2 6.1 This Consent Judgment may be modified only upon written agreement of the  
3 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
4 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

5 6.2 If, with respect to brass containing lead, the Attorney General of the State of  
6 California or Plaintiff permit any other reformulation standard by way of settlement or  
7 compromise with any other person in the course of doing business, or any other entity, or if  
8 another reformulation standard for brass is incorporated by way of final judgment as to any other  
9 person in the course of doing business, or any other entity, then Defendant is entitled to seek a  
10 modification to this Consent Judgment on the same terms as provided in those settlements,  
11 compromises or judgments.

12 **7. INJUNCTIVE RELIEF**

13 7.1 The requirements of this paragraph 7 shall apply only to Covered Products that are  
14 manufactured by Forney after the Effective Date.

15 7.2 As to any Covered Product that contains a component made from brass that  
16 contains lead as an intentionally added ingredient, where such brass comes into contact with the  
17 user, a warning that contains one of the following warning statements shall be provided:

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

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

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

26 (c) The warning statements required in paragraph 7.2 shall be affixed to or  
27 printed on the Covered Product itself or to the Covered Product’s packaging, labeling, or  
28 instruction booklet, if any. The warning shall be prominently affixed to or printed on the Covered

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

11 **8. TERMINATION AND RETENTION OF JURISDICTION**

12 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
13 terms this Consent Judgment.

14 **9. AUTHORITY TO STIPULATE**

15 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
16 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
17 the party represented and legally to bind that party.

18 **10. DUTIES LIMITED TO CALIFORNIA**

19 10.1 This Consent Judgment shall have no effect on Covered Products sold by Forney  
20 outside the State of California.

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

22 11.1 KELC shall serve a copy of this Consent Judgment, signed by both parties, on the  
23 California Attorney General on behalf of the parties so that the Attorney General may review this  
24 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)  
25 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
26 and in the absence of any written objection by the Attorney General to the terms of this Consent  
27 Judgment, the parties may then submit it to the Court for approval.

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1     **12.     ENTIRE AGREEMENT**

2             12.1    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 discussions,  
4 negotiations, commitments and understandings related hereto.  No representations, oral or  
5 otherwise, express or implied, other than those contained herein have been made by any party  
6 hereto.  No other agreements not specifically referred to herein, oral or otherwise, shall be  
7 deemed to exist or to bind any of the parties.

8     **13.     GOVERNING LAW**

9             13.1    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     **14.     EXECUTION AND COUNTERPARTS**

13             14.1    This Consent Judgment may be executed in counterparts and by means of  
14 facsimile, which taken together shall be deemed to constitute one document.

15     **15.     COURT APPROVAL**

16             15.1    If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of  
17 no force or effect, and cannot be used in any proceeding for any purpose.

18     **16.     NOTICES**

19             16.1    Any notices under this Consent Judgment shall be by personal delivery of First  
20 Class Mail.

21                     If to MEJF:                     William Verick, Esq.  
22   Klamath Environmental Law Center  
23   424 First Street  
24   Eureka, CA 95501

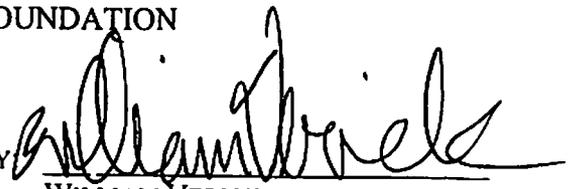
25                     If to Forney  
26                     Industries, Inc.:

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IT IS SO STIPULATED:

DATED: \_\_\_\_\_

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

BY:   
WILLIAM VERICK

DATED: FEBRUARY 13, 2008

FORNEY INDUSTRIES, INC.  
BY:   
ITS: PRESIDENT / CEO

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: MAY 01 2008

PATRICK J. MAHONEY

JUDGE OF THE SUPERIOR COURT