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William Verick (SBN 140972)  
KLAMATH ENVIRONMENTAL LAW CENTER  
Fredric Evenson (SBN 198059)  
LAW OFFICE OF FREDRIC EVENSON  
424 First Street  
Eureka, CA 95501  
Telephone: (707) 268-8900  
Facsimile: (707) 268-8901

DAVID WILLIAMS (SBN 144479)  
BRIAN ACREE (SBN 202505)  
370 Grand Avenue, Suite 5  
Oakland, CA 94610  
Telephone: (510) 271-0826  
Facsimile: (510) 271-0829

Attorneys For Plaintiff  
MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION,  
  
Plaintiff,  
  
v.  
  
NEWELL RUBBERMAID, INC. et al.,  
  
Defendants.

) Case No. CGC-07-463540  
)  
)  
) **CONSENT JUDGMENT**  
)  
)  
)

**ENDORSED  
FILED**  
*San Francisco County Superior Court*  
  
JAN 23 2008  
  
GORDON PARK-LI, Clerk  
BY: ERICKA LARNAUTI  
Deputy Clerk

**1. INTRODUCTION**

1.1 On May 18, 2007, the Mateel Environmental Justice Foundation ("Plaintiff MEJF") acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. CGC-07-463540, against defendant Thermadyne Industries, Inc., a wholly owned subsidiary of Thermadyne Holdings Corporation (collectively referred to as "Thermadyne" or "Defendant"). The Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq. (Proposition

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

8 1.2 Defendant is a business that employs more than ten persons, and manufactures,  
9 distributes, and sells welding and brazing torches, torch plumbing kits and torch accessories  
10 ("Torches"). Many Torches contain components manufactured from brass that contains lead  
11 and/or lead compounds. Pursuant to Health and Safety Code Section 25249.8, lead and lead  
12 compounds are chemicals known to the State of California to cause cancer and reproductive  
13 toxicity. Plaintiff MEJF alleges that Torches with components containing lead-containing brass  
14 that are sold by Thermadyne for use in California require a warning under Proposition 65,  
15 pursuant to Health and Safety Code Section 25249.6. Thermadyne denies that a warning is  
16 required. For purposes of this Consent Judgment, the parties stipulate that this Court has  
17 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
18 over Thermadyne as to the acts alleged in the Complaint, that venue is proper in the County of  
19 San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full  
20 settlement and resolution of the allegations contained in the Complaint and of all claims which  
21 were or could have been raised by any person or entity based in whole or in part, directly or  
22 indirectly, on the facts alleged therein or arising therefrom or related to.

23 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties  
24 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
25 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment  
26 shall not constitute an admission with respect to any material allegation of the Complaint, each  
27 and every allegation of which Thermadyne denies, nor may this Consent Judgment or compliance  
28

1 with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of  
2 Thermadyne.

3 1.4 For purposes of this Consent Judgment, the term "Covered Products" means  
4 Torches as described in paragraph 1.2 that contain one or more components manufactured from  
5 brass.

6 1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

7 **2. SETTLEMENT PAYMENT**

8 2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the  
9 Complaint concerning Covered Products, Thermadyne shall pay \$20,000 to the Klamath  
10 Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally,  
11 Thermadyne shall pay \$7,500 to the Ecological Rights Foundation and \$7,500 to Californians for  
12 Alternatives to Toxics for use toward reducing exposures to toxic chemicals and other pollutants,  
13 and toward increasing consumer, worker and community awareness of health hazards posed by  
14 lead and other toxic chemicals. The parties agree and acknowledge that the charitable  
15 contributions made pursuant to this section shall not be construed as a credit against the personal  
16 claims of absent third parties for restitution against the defendant. The above described payments  
17 shall be forwarded by Defendant so that they are received at least 5 days prior to the hearing date  
18 scheduled for approval of this Consent Judgment. If the Consent Judgment is not approved with  
19 120 days of the date scheduled for approval, the above described payments shall be returned and  
20 the provisions of this Consent judgment shall become null and void.

21 2.2 Thermadyne shall not be required to pay a civil penalty pursuant to Health and  
22 Safety Code Section 25249.7(b).

23 **3. ENTRY OF CONSENT JUDGMENT**

24 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.  
25 Upon entry of the Consent Judgment, Thermadyne and MEJF waive their respective rights to a  
26 hearing or trial on the allegations of the Complaint.

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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     Thermadyne of: (i) any violation of Proposition 65 (including but not limited to the claims made  
5     in the Complaint); and (ii) any other statutory or common law claim to the fullest extent that any  
6     of the foregoing described in (i) or (ii) were or could have been asserted by any person or entity  
7     against Thermadyne or its parents, subsidiaries or affiliates, and all of their suppliers, customers,  
8     distributors, wholesalers, retailers, or any other person in the course of doing business, and the  
9     successors and assigns of any of them, who may use, maintain, distribute or sell Covered  
10    Products (“Released Entities”), based on its or their exposure of persons to lead or lead  
11    compounds from Covered Products or their failure to provide a clear and reasonable warning of  
12    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 Thermadyne and  
17    the Released Entities, with the requirements of Proposition 65 with respect to Covered Products,  
18    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 Thermadyne and the  
22    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 Thermadyne or the Released Entities. Furthermore, MEJF acknowledges  
16 that it intends these consequences for any such Claims as may exist as of the date of this release  
17 but which MEJF does not know exist, and which, if known, would materially affect their decision  
18 to enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of  
19 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 Thermadyne 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. TERMINATION AND 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  
23 Thermadyne 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.

20 **16. NOTICES**

21 16.1 Any notices under this Consent Judgment shall be by personal delivery of First  
22 Class Mail.

23 If to MEJF: William Verick, Esq.  
24 Klamath Environmental Law Center  
25 424 First Street  
Eureka, CA 95501

26 If to Thermadyne  
27 Industries, Inc.:

28 With a copy to:

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Nicholas DeWitt  
DeWitt, Denney & Painter LLP  
515 South Flower Street, 17<sup>th</sup> Floor  
Los Angeles, CA 90071-2234

IT IS SO STIPULATED:

DATED: 12/5/07

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

BY:   
WILLIAM VERICK

DATED: 1/12/07

THERMADYNE INDUSTRIES, INC.

BY: 

ITS: John's Great Court 1

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JAN 23 2008

PATRICK J. MAHONEY

JUDGE OF THE SUPERIOR COURT

1 WILLIAM VERICK, CSB #140972  
Klamath Environmental Law Center  
2 FREDRIC EVENSON, CSB #198059  
Law Offices of Fredric Evenson  
3 424 First Street  
Eureka, CA 95501  
4 Telephone: (707) 268-8900  
Facsimile: (707) 268-8901  
5 wverick@igc.org  
ecorights@earthlink.net

6 DAVID H. WILLIAMS, CSB #144479  
7 BRIAN ACREE, CSB #202505  
370 Grand Avenue, Suite 5  
8 Oakland, CA 94610  
Telephone: (510) 271-0826  
9 Facsimile: (510) 271-0829  
davidhwilliams@earthlink.net  
10 brianacree@earthlink.net

11 Attorneys for Plaintiff

12 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN FRANCISCO

16  
17 MATEEL ENVIRONMENTAL JUSTICE  
18 FOUNDATION,

19 Plaintiff,

20 vs.

21 NEWELL RUBBERMAID, INC., et al.,

22 Defendants.  
23 \_\_\_\_\_/

CASE NO. 463540

~~proposed~~ ORDER APPROVING  
SETTLEMENT

Date: January 23, 2008  
Time: 9:30 a.m.  
Dept. No.: 302

24 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on  
25 noticed motion on January 23, 2008. The court finds that:

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

ENDORSED  
FILED

San Francisco County Superior Court

JAN 23 2008

GORDON PARK-LI, Clerk

BY: ERICKA LARNAUTI  
Deputy Clerk

- 1           2.     The payments in lieu of civil penalty specified in the Consent Judgment are  
2                     reasonable based on the criteria in Cal Health & Safety Code §25249.7(b)(2); and  
3           3.     The attorneys' rates and fees awarded under the Consent Judgment are reasonable  
4                     under California law.

5  
6     Based upon these findings, the settlement and Consent Judgment are approved.

7  
8     IT IS SO ORDERED.

9     Dated:     JAN 23 2008    

    PATRICK J. MAHONEY    

10                             Judge of the Superior Court  
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