

1 WILLIAM VERICK, CSB #140972
2 **KLAMATH ENVIRONMENTAL LAW**
3 **CENTER**
4 FREDRIC EVENSON, CSB #198059
5 424 First Street
Eureka, CA 95501
Telephone (707) 268 - 8900
Facsimile (707) 268 - 8901
wverick@igc.org

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

10 Attorneys For Plaintiff
11 MATEEL ENVIRONMENTAL JUSTICE
12 FOUNDATION

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

15 MATEEL ENVIRONMENTAL JUSTICE) Case No. CGC-08-
16 FOUNDATION,)
17 Plaintiff,) **CONSENT JUDGMENT**
18 v.)
19 CHAPIN, INTERNATIONAL,)
20 Defendant.)

21
22 **1. INTRODUCTION**

23 1.1 On August 12, 2008, the MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION ("Plaintiff MEJF") acting on behalf of itself and the general public, filed a
25 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court,
26 Case No. CGC-08-478535, against defendant CHAPIN INTERNATIONAL, INC. ("Chapin" or
27 "Defendant"). The Complaint alleges, among other things, that Defendant violated provisions of
28

**ENDORSED
FILED**
San Francisco County Superior Court

DEC - 4 2008

GORDON PARK-LI, Clerk
BY: VERA MU
Deputy Clerk

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 Chapin, the California Attorney General, all District
8 Attorneys, and all City Attorneys with populations exceeding 750,000.

9 1.2 Defendant is a business that employs more than ten persons, and manufactures,
10 distributes, and sells sprayers and spray nozzles. Certain spray nozzles and other sprayer
11 components are manufactured from brass that contains lead and/or lead compounds. Plaintiff
12 MEJF alleges that sprayer components containing lead-containing brass that are sold by Chapin
13 for use in California require a warning under Proposition 65, pursuant to Health and Safety Code
14 Section 25249.6. Chapin denies that a warning is required. For purposes of this Consent
15 Judgment, the parties stipulate that this Court has jurisdiction over the allegations of violations
16 contained in the Complaint and personal jurisdiction over Chapin as to the acts alleged in the
17 Complaint, that venue is proper in the County of San Francisco and that this Court has
18 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations
19 contained in the Complaint and of all claims which were or could have been raised by any person
20 or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising
21 therefrom or related to.

22 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
23 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
24 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
25 shall not constitute an admission with respect to any material allegation of the Complaint, each
26 and every allegation of which Chapin denies, nor may this Consent Judgment or compliance with
27 it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
28 Chapin.

1 1.4 For purposes of this Consent Judgment, the term "Covered Products" means spray
2 nozzles and sprayers that contain one or more components manufactured from brass.

3 1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

4 **2. SETTLEMENT PAYMENT**

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

18 2.2 Chapin shall not be required to pay a civil penalty pursuant to Health and Safety
19 Code Section 25249.7(b).

20 **3. ENTRY OF CONSENT JUDGMENT**

21 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.
22 Upon entry of the Consent Judgment, Chapin and MEJF waive their respective rights to a hearing
23 or trial on the allegations of the Complaint.

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

25 4.1 This Consent Judgment is a final and binding resolution between MEJF, acting on
26 behalf of itself and (as to those matters raised in the 60-Day Notice Letter) the general public, and
27 Chapin of: (i) any violation of Proposition 65 (including but not limited to the claims made in the
28 Complaint); and (ii) any other statutory or common law claim to the fullest extent that any of the

1 foregoing described in (i) or (ii) were or could have been asserted by any person or entity against
2 Chapin or its parents, subsidiaries or affiliates, and all of their suppliers, customers, distributors,
3 wholesalers, retailers, or any other person in the course of doing business, and the successors and
4 assigns of any of them, who may use, maintain, distribute or sell Covered Products ("Released
5 Entities"), based on its or their exposure of persons to lead or lead compounds from Covered
6 Products or their failure to provide a clear and reasonable warning of exposure to such
7 individuals; and (iii) as to alleged exposures to lead or lead compounds from Covered Products,
8 any other claim based in whole or in part on the facts alleged in the Complaint, whether based on
9 actions committed by the Released Entities or others. As to alleged exposures to lead or lead
10 compounds from Covered Products, compliance with the terms of this Consent Judgment resolves
11 any issue, now and in the future, concerning compliance by Chapin and the Released Entities,
12 with the requirements of Proposition 65 with respect to Covered Products, and any alleged
13 resulting exposure. Notwithstanding any other provision in Section 4, no releases on behalf of the
14 general public shall be construed to extend to claims concerning chemicals listed under
15 Proposition 65 other than lead and/or lead compounds or to claims not arising out of allegations
16 in the Notice Letter.

17 4.2 As to alleged exposures to lead or lead compounds from Covered Products, MEJF,
18 by and on behalf of itself and its respective agents, successors and assigns, waives any and all
19 rights to institute any form of legal action, and releases all claims against Chapin and the
20 Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their
21 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of
22 doing business, and the successors and assigns of any of them, who may use, maintain, distribute
23 or sell the Covered Products, whether, under Proposition 65 or otherwise, arising out of or
24 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
25 including but not limited to any exposure to, or failure to warn with respect to, the Covered
26 Products (referred to collectively in this paragraph as the "Claims"). In furtherance of the
27 foregoing, as to alleged exposures to Covered Products, MEJF hereby waives any and all rights
28 and benefits which it now has, or in the future may have, conferred upon it with respect to the

1 Claims by virtue of the provisions of section 1542 of the California Civil Code, which provides as
2 follows:

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

8 4.3 MEJF understands and acknowledges that the significance and consequence of this
9 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising
10 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
11 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
12 to, lead or lead compounds from Covered Products, MEJF will not be able to make any Claim for
13 those damages against Chapin or the Released Entities. Furthermore, MEJF acknowledges that it
14 intends these consequences for any such Claims as may exist as of the date of this release but
15 which MEJF does not know exist, and which, if known, would materially affect their decision to
16 enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of
17 ignorance, oversight, error, negligence, or any other cause.

18 **5. ENFORCEMENT OF JUDGMENT**

19 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
20 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
21 San Francisco County, giving the notice required by law, enforce the terms and conditions
22 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
23 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the
24 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
25 comply in an open and good faith manner.

26 5.2 In any proceeding brought by either party to enforce this Consent Judgment, such
27 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
28 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 **7. INJUNCTIVE RELIEF**

6 7.1 As to any Covered Product manufactured by Chapin after the Effective Date that
7 contains a component made from brass that contains lead as an intentionally added ingredient,
8 where such brass comes into contact with the user, a warning that contains one of the following
9 warning statements shall be provided:

10 **“WARNING:** This product contains chemicals, including lead, known to the State
11 of California to cause birth defects and other reproductive harm. *Wash hands
after handling”* or

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

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

16 7.2 The warning statements required in paragraph 7.1 shall be affixed to or printed on
17 the Covered Product itself or to the Covered Product’s packaging, labeling, or instruction booklet,
18 if any. The warning shall be prominently affixed to or printed on the Covered Product or
19 packaging, labeling, or instruction booklet, and displayed with such conspicuousness, as
20 compared with other words, statements, designs, or devices on the Covered Product, or its
21 packaging, labeling, or instruction booklet, as to render it likely to be read and understood by an
22 ordinary individual under customary conditions of purchase or use. For purposes of this
23 paragraph, a warning may be contained in the same section of the packaging, labeling, or
24 instruction booklet that contains other safety warnings, if any, concerning the use of the Covered
25 Product, or near its displayed price and/or UPC code. The type size of the warning must be
26 legible, but need not be any larger than any other warning provided for the Covered Product, and
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1 its relative size may take into account the nature, immediacy, and acuteness of the risks for which
2 other warnings are provided.

3 **8. RETENTION OF JURISDICTION**

4 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
5 terms this Consent Judgment.

6 **9. AUTHORITY TO STIPULATE**

7 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
9 the party represented and legally to bind that party.

10 **10. DUTIES LIMITED TO CALIFORNIA**

11 10.1 This Consent Judgment shall have no effect on Covered Products sold by Chapin
12 outside the State of California.

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

14 11.1 KELC shall serve a copy of this Consent Judgment, signed by both parties, on the
15 California Attorney General on behalf of the parties so that the Attorney General may review this
16 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
17 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
18 and in the absence of any written objection by the Attorney General to the terms of this Consent
19 Judgment, the parties may then submit it to the Court for approval.

20 **12. ENTIRE AGREEMENT**

21 12.1 This Consent Judgment contains the sole and entire agreement and understanding
22 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
23 negotiations, commitments and understandings related hereto. No representations, oral or
24 otherwise, express or implied, other than those contained herein have been made by any party
25 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
26 deemed to exist or to bind any of the parties.

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1 **13. GOVERNING LAW**

2 13.1 The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.

5 **14. EXECUTION AND COUNTERPARTS**

6 14.1 This Consent Judgment may be executed in counterparts and by means of
7 facsimile, which taken together shall be deemed to constitute one document.

8 **15. COURT APPROVAL**

9 15.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of
10 no force or effect, and cannot be used in any proceeding for any purpose.

11 **16. NOTICES**

12 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
13 Class Mail.

14 If to MEJF: William Verick, Esq.
15 Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

16 If to Chapin: James Grant
17 Vice President
18 Chapin Int'l, Inc.
700 Ellicott Street
19 P.O. Box 549
Batavia, NY 14021-0549

20 With a copy to:

21 Jeffrey B. Margulies
22 FULBRIGHT & JAWORSKI, L.L.P.
555 S. Flower Street, 41st Floor
23 Los Angeles, California 90071

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IT IS SO STIPULATED:

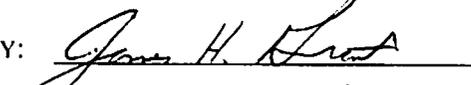
DATED: 10/8/08

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

BY: 
WILLIAM VERICK

DATED: 9/4/08

CHAPIN INTERNATIONAL, INC.

BY: 
ITS: VP Finance / Secretary

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: DEC 04 2008

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT