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11 MATEEL ENVIRONMENTAL JUSTICE
12 FOUNDATION

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

15 MATEEL ENVIRONMENTAL JUSTICE
16 FOUNDATION,

17 Plaintiff,

18 v.

18 PENNZOIL-QUAKER STATE COMPANY,

19 Defendants.

ENDORSED
FILED
San Francisco County Superior Court

MAR 26 2008

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

) Case No. CGC-07-463538

) CONSENT JUDGMENT

22 1. INTRODUCTION

23 1.1 On May 18, 2007, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
24 ("Plaintiff MEJF") acting on behalf of itself and the general public, filed a Complaint for civil
25 penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. CGC-07-
26 463538, against defendant Pennzoil-Quaker State Company ("PQS" or "Defendant"). The
27 Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking
28

1 Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq.
2 (Proposition 65) by failing to give clear and reasonable warnings to those residents of California
3 who handle and use products that are or that incorporate thermoset/thermoplastic coated wires
4 and cables, cords/cord sets, and/or plugs and connectors in which the coating material contains
5 lead that handling and use of these products causes those residents to be exposed to lead and lead
6 compounds, lead acetate, lead phosphate, and lead subacetate ("Lead"). Lead is known to the
7 State of California to cause cancer and/or birth defects or other reproductive harm. The
8 Complaint was based upon a 60-Day Notice letter, dated October 19, 2006, sent by MEJF to PQS,
9 the California Attorney General, all District Attorneys, and all City Attorneys with populations
10 exceeding 750,000.

11 1.2 Defendant is a business that employs more than ten persons, and distributes and
12 sells Auto Expressions branded consumer products that are or that incorporate
13 thermoset/thermoplastic coated wires and cables, cords/cord sets, and/or plugs and connectors
14 ("Covered Products"). Pursuant to Health and Safety Code Section 25249.8, Lead is a chemical
15 known to the State of California to cause cancer and reproductive toxicity. Plaintiff MEJF alleges
16 that Covered Products sold by PQS for use in California that contain Lead require a warning
17 under Proposition 65, pursuant to Health and Safety Code Section 25249.6. PQS denies that a
18 warning is required. For purposes of this Consent Judgment, the parties stipulate that this Court
19 has jurisdiction over the allegations of violations contained in the Complaint and personal
20 jurisdiction over PQS as to the acts alleged in the Complaint, that venue is proper in the County
21 of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full
22 settlement and resolution of the allegations contained in the Complaint and of all claims which
23 were or could have been raised by any person or entity based in whole or in part, directly or
24 indirectly, on the facts alleged therein or arising 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 PQS denies, nor may this Consent Judgment or compliance with it
2 be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of PQS.

3 1.4 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, PQS shall pay \$20,000 to the Klamath Environmental
7 Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally, Settling Defendants
8 shall pay \$7,500 to the Ecological Rights Foundation and \$7,500 to Californians for Alternatives
9 to Toxics for use toward reducing exposures to toxic chemicals and other pollutants, and toward
10 increasing consumer, worker and community awareness of health hazards posed by lead and other
11 toxic chemicals. The parties agree and acknowledge that the charitable contributions made
12 pursuant to this section shall not be construed as a credit against the personal claims of absent
13 third parties for restitution against the defendant. The above described payments shall be
14 forwarded by Defendant so that they are received at least 5 days prior to the hearing date
15 scheduled for approval of this Consent Judgment. If the Consent Judgment is not approved with
16 120 days of the date scheduled for approval, the above described payments shall be returned and
17 the provisions of this Consent judgment shall become null and void.

18 2.2 PQS 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, PQS and MEJF waive their respective rights to a hearing or
23 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 PQS 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 PQS 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 from Covered Products or their
6 failure to provide a clear and reasonable warning of exposure to such individuals; and (iii) as to
7 alleged exposures to Lead from Covered Products, any other claim based in whole or in part on
8 the facts alleged in the Complaint, whether based on actions committed by the Released Entities
9 or others. As to alleged exposures to Lead from Covered Products, compliance with the terms of
10 this Consent Judgment resolves any issue, now and in the future, concerning compliance by PQS
11 and the Released Entities, with the requirements of Proposition 65 with respect to Covered
12 Products, and any alleged resulting exposure.

13 4.2 As to alleged exposures to Lead from Covered Products, MEJF, by and on behalf
14 of itself and its respective agents, successors and assigns, waives any and all rights to institute any
15 form of legal action, and releases all claims against PQS and the Released Entities, and all of their
16 respective parents, subsidiaries or affiliates, and all of their suppliers, customers, distributors,
17 wholesalers, retailers, or any other person in the course of doing business, and the successors and
18 assigns of any of them, who may use, maintain, distribute or sell the Covered Products, whether,
19 under Proposition 65 or otherwise, arising out of or resulting from, or related directly or indirectly
20 to, in whole or in part, the Covered Products, including but not limited to any exposure to, or
21 failure to warn with respect to, the Covered Products (referred to collectively in this paragraph as
22 the "Claims"). In furtherance of the foregoing, as to alleged exposures to Covered Products,
23 MEJF hereby waives any and all rights and benefits which it now has, or in the future may have,
24 conferred upon it with respect to the Claims by virtue of the provisions of section 1542 of the
25 California Civil Code, which provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
28 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,

1 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
2 DEBTOR.

3 4.3 MEJF understands and acknowledges that the significance and consequence of this
4 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising
5 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
6 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
7 to, Lead from Covered Products, MEJF will not be able to make any claim for those damages
8 against PQS or the Released Entities. Furthermore, MEJF acknowledges that it intends these
9 consequences for any such Claims as may exist as of the date of this release but which MEJF
10 does not know exist, and which, if known, would materially affect their decision to enter into this
11 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
12 oversight, error, negligence, or any other cause.

13 **5. ENFORCEMENT OF JUDGMENT**

14 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
15 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
16 San Francisco County, giving the notice required by law, enforce the terms and conditions
17 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
18 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the
19 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
20 comply in an open and good faith manner.

21 5.2 In any proceeding brought by either party to enforce this Consent Judgment, such
22 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
23 violation of Proposition 65 or this Consent Judgment.

24 **6. MODIFICATION OF JUDGMENT**

25 6.1 This Consent Judgment may be modified only upon written agreement of the
26 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
27 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

28

1 6.2 If, with respect to Leaded Wire or Cable Products, the Attorney General of the
2 State of California or Plaintiff permit any other reformulation standard by way of settlement or
3 compromise with any other person in the course of doing business, or any other entity, or if
4 another reformulation standard for plastic is incorporated by way of final judgment as to any
5 other person in the course of doing business, or any other entity, then Defendant is entitled to seek
6 a modification to this Consent Judgment on the same terms as provided in those settlements,
7 compromises or judgments.

8 7. **INJUNCTIVE RELIEF**

9 7.1 The requirements of this paragraph 7 shall apply only to Covered Products that are
10 manufactured after the Effective Date.

11 7.2 Covered Products shall be deemed to comply with Proposition 65 and be exempt
12 from any Proposition 65 warning requirements if the plastic used in the production of Covered
13 Products meets the following criteria:

- 14 (a) The plastic shall have no lead as an intentionally added constituent; and
15 (b) A representative sample of the plastic used to manufacture the Covered
16 Products has been tested for lead content and shown lead content by weight of less than 0.02%, or
17 200 parts per million ("ppm"), using a test method of sufficient sensitivity to establish a limit of
18 quantification (as distinguished from detection) of less than 200 ppm. PQS may comply with the
19 requirements of this Paragraph 5.1 by relying on representations from its suppliers of the Covered
20 Products, so long as such reliance is in good faith.

21 7.3 Should any Covered Products require Proposition 65 warnings under Section 7.2
22 PQS shall provide either one of the warnings described below or any other Proposition 65
23 warning that has been reviewed and approved in writing by the California Attorney General for
24 use with Covered Products:

25 **"WARNING: This product contains chemicals, including lead, known to the State
26 of California to cause birth defects or other reproductive harm. Wash hands after
handling."**

27 or

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16. NOTICES

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

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

If to PQS: Pennzoil-Quaker State Company Attorney
910 Louisiana
Houston TX 77002

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

IT IS SO STIPULATED:

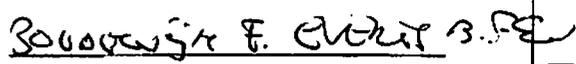
DATED: 2/6/08

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

BY: 
WILLIAM VERICK

DATED: 12/19/2007

PENNZOIL-QUAKER STATE COMPANY

BY: 
ITS: VP CAL CALG

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: MAR 26 2008

PATRICK J. MAHONEY, J.

JUDGE OF THE SUPERIOR COURT

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12
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16
17

18 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,
19 Plaintiff,
20 vs.
21 PENNZOIL-QUAKER STATE COMPANY
22 Defendant.
23 _____/

CASE NO. 463538

~~[proposed]~~ ORDER APPROVING
SETTLEMENT BETWEEN PLAINTIFF
AND PENNZOIL-QUAKER STATE
COMPANY

Date: March 26, 2008
Time: 9:30 a.m.
Dept. No.: 302

24
25 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
26 noticed motion on March 26, 2008. The court finds that:

- 27 1. The reformulation requirements of the Consent Judgment comply with the
28 requirements of Proposition 65;

ENDORSED
FILED
San Francisco County Superior Court

MAR 26 2008

GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

