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15 Attorneys for Plaintiff
16 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

APR 28 2008

GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN FRANCISCO

14 MATEEL ENVIRONMENTAL JUSTICE
15 FOUNDATION,
16 Plaintiff,
17 vs.
18 QUIKSILVER, INC.,
19 Defendant.

Case No. 462478
~~PROPOSED~~ CONSENT JUDGMENT

22 1. INTRODUCTION

23 1.0 On April 18, 2007, the MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION ("Plaintiff" or "MEJF") acting on behalf of itself and the general public,
25 filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco
26 Superior Court, Case No. 462478, against defendant, QUIKSILVER, INC. ("Defendant"
27 or "Quiksilver"), incorrectly identified in the Complaint as "Quicksilver". (MEJF and
28 Quiksilver are collectively referred to as "the Parties.") The Complaint alleges that

1 Quiksilver violated provisions of the Safe Drinking Water and Toxic Enforcement Act of
2 1986, Health and Safety Code sections 25249.5, *et seq.* (Proposition 65) by, among other
3 things, knowingly and intentionally exposing persons to products containing lead and/or
4 lead compounds, which are chemicals known to the State of California to cause cancer
5 and/or birth defects or other reproductive harm, without first providing a clear and
6 reasonable warning to such individuals. The Complaint was based upon a 60-Day Notice
7 letter, dated January 31, 2007, sent by MEJF to Quiksilver, the California Attorney
8 General, all District Attorneys, and all City Attorneys with populations exceeding
9 750,000. A copy of the 60-Day Notice letter is attached as Exhibit A to the Complaint in
10 this action.

11 1.1 Quiksilver filed a timely answer to the Complaint denying each and every
12 allegation set forth therein and asserting numerous affirmative defenses.

13 1.2 Quiksilver is a business that employs more than ten persons and
14 manufactures, distributes and/or markets within the State of California luggage, and other
15 products and accessories, such as roller bags, duffle bags, totes, wallets, coin purses,
16 purses, passport and certificate holders, cases, key chains, binders and organizers
17 allegedly made with lead-containing polyvinyl chloride (“PVC Materials”). Pursuant to
18 Proposition 65, lead and lead compounds are chemicals known to the State of California
19 to cause cancer and reproductive toxicity. Products containing lead and/or lead
20 compounds that are sold or distributed in the State of California may be, under specified
21 circumstances, subject to the Proposition 65 warning requirement set forth in Health and
22 Safety Code section 25249.6. Plaintiff alleges that luggage, and other products and
23 accessories, such as roller bags, duffle bags, totes, wallets, coin purses, purses, passport
24 and certificate holders, cases, key chains, binders and organizers made with lead-
25 containing PVC Materials (“PVC Accessories”) that are manufactured, distributed, sold
26 and/or marketed by Quiksilver for use in California, require a warning under Proposition
27 65. For purposes of this Consent Judgment, the term “Covered Products” shall be
28 defined as PVC Accessories that are: (i) distributed or sold within the State of California,

1 and (ii) manufactured, distributed, marketed and/or sold by Quiksilver, whether or not the
2 PVC Accessories bear Quiksilver labels.

3 1.3 For purposes of this Consent Judgment only, the Parties stipulate that this
4 Court has subject matter jurisdiction over the allegations of violations contained in the
5 Complaint and personal jurisdiction over Quiksilver as to the acts alleged in the
6 Complaint, that venue is proper in the County of San Francisco and that this Court has
7 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the
8 allegations contained in the Complaint and of all claims which were or could have been
9 raised by any person or entity based in whole or in part, directly or indirectly, on the facts
10 alleged therein or arising therefrom or related thereto.

11 1.4 This Consent Judgment resolves claims that are denied and disputed. The
12 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and
13 all claims between the parties for the purpose of avoiding prolonged litigation. The
14 Parties intend that this Consent Judgment provide, to the maximum extent permitted by
15 law, *res judicata* and *collateral estoppel* protection for Quiksilver against any and all
16 other claims based on the same or similar allegations under Proposition 65.

17 1.5 Quiksilver disputes that it has violated Proposition 65 as described in the
18 60-Day Notice Letter, the Complaint, or otherwise. This Consent Judgment shall not
19 constitute an admission with respect to any material allegation of the Complaint, each and
20 every allegation of which Quiksilver denies, nor may this Consent Judgment or
21 compliance with it be used as evidence of any wrongdoing, misconduct, culpability or
22 liability on the part of Quiksilver.

23 **2. SETTLEMENT PAYMENT**

24 2.0 In settlement of all of the claims that are alleged, or could have been
25 alleged, in the Complaint, Quiksilver shall pay \$20,000 to the Klamath Environmental
26 Law Center ("KELC") to cover Plaintiff's attorneys' fees and costs. Additionally,
27 Quiksilver shall pay \$10,000 to Californians for Alternatives to Toxics; and \$10,000 to
28 the Ecological Rights foundation for use toward reducing exposures to toxic chemicals

1 and other pollutants, and toward increasing consumer, worker and community awareness
2 of health hazards posed by lead and other toxic chemicals (collectively, the “**Settlement**
3 **Payments**”). The Settlement Payments shall be forwarded by Quiksilver to KELC so that
4 they are received at least 5 days prior to the hearing date scheduled for approval of this
5 Consent Judgment, and shall be held in trust by KELC until the Consent Judgment has
6 been approved and entered as a judgment by the Court and has become final and not
7 further appealable. Notwithstanding the foregoing, if the Attorney General does not
8 object to entry of the Consent Judgment, KELC may release the Settlement Payments
9 upon entry by the Court of the Consent Judgment. If the Consent Judgment is not entered
10 within 120 days of the date on which the motion for entry of the Consent Judgment is
11 scheduled to be heard by the Court, or if the Consent Judgment is entered but
12 subsequently vacated by the Court, the Settlement Payments shall be returned to
13 Quiksilver and the provisions of this Consent Judgment shall become null and void.

14 2.1 Quiksilver shall not be required to pay a civil penalty pursuant to Health and
15 Safety Code section 25249.7(b).

16 2.2. Except as specifically provided for in this Consent Judgment, each side shall
17 bear its own costs and attorney’s fees.

18 **3. ENTRY OF CONSENT JUDGMENT**

19 3.0 The Parties hereby request that the Court enter this Consent Judgment forty-
20 five (45) days after the filing of a motion for approval of the Consent Judgment in
21 accordance with Title 11, *California Code of Regulations*, Section 3003(a). Upon the
22 Court’s entry of a final judgment, MEJF and Quiksilver waive their respective rights to a
23 hearing or trial on the allegations in the Complaint.

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

25 4.0 This Consent Judgment, once entered by the Court, is a final and binding
26 resolution between MEJF, acting on behalf of itself and (as to those matters raised in the
27 Notice Letter) the general public, and Quiksilver of: (i) any violation of Proposition 65
28 (including but not limited to the claims made in the Complaint); and (ii) any other

1 statutory or common law claim to the fullest extent that any of the foregoing described in
2 (i) or (ii) were or could have been asserted by any person or entity against Quiksilver or
3 its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers,
4 retailers, or any other person in the course of doing business, and the successors and
5 assigns of any of them, who may use, maintain, distribute or sell Covered Products
6 (“Released Entities”), based on any Released Entity’s exposure of persons to Covered
7 Products or any Released Entity’s failure to provide a clear and reasonable warning of
8 exposure to such individuals; and (iii) as to alleged exposures to Covered Products, any
9 other claim based in whole or in part on the facts alleged in the Complaint, whether based
10 on actions or omissions by the Released Entities. As to alleged exposures to Covered
11 Products, compliance with the terms of this Consent Judgment resolves any issue, now
12 and in the future, concerning compliance by Quiksilver and the Released Entities, with the
13 requirements of Proposition 65 and the Unfair Competition Act with respect to Covered
14 Products, and any alleged resulting exposure.

15 4.1 As to alleged exposures to Covered Products and other claims in the
16 Complaint, MEJF, by and on behalf of itself, and its respective agents, successors,
17 attorneys and assigns, waives any and all rights to institute any form of legal action, and
18 releases all claims against Quiksilver and the Released Entities, and all of their respective
19 parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers,
20 retailers, or any other person in the course of doing business, and the successors and
21 assigns of any of them, who may use, maintain, distribute or sell the Covered Products,
22 whether, under Proposition 65, the Unfair Competition Act or any other statute, provision
23 of common law or any theory or issue, arising out of or resulting from, or related directly
24 or indirectly to, in whole or in part, the Covered Products, including but not limited to any
25 exposure to, or failure to warn with respect to, the Covered Products (referred to
26 collectively in this paragraph as the “Claims”). In furtherance of the foregoing, as to
27 alleged exposures to Covered Products, MEJF hereby waives any and all rights and
28 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
2 provides as follows:

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

8 MEJF understands and acknowledges that the significance and consequence of this waiver
9 of California Civil Code section 1542 is that even if it suffers future damages arising out
10 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
12 exposure to, the Covered Products, MEJF will not be able to make any claim for those
13 damages against Quiksilver or the Released Entities. Furthermore, MEJF acknowledges
14 that it intends these consequences for any such Claims as may exist as of the date of this
15 release but which MEJF does not know exist, and which, if known, would materially
16 affect its decision to enter into this Consent Judgment, regardless of whether its lack of
17 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

18 **5. ENFORCEMENT AND PRECLUSIVE EFFECT OF JUDGMENT**

19 5.0 The terms of this Consent Judgment shall be enforced exclusively by the
20 Parties hereto. The Parties may, by noticed motion or order to show cause before the
21 Superior Court of San Francisco County, giving the notice required by law, enforce the
22 terms and conditions contained herein. In any proceeding brought by either party to
23 enforce this Consent Judgment, such Party may seek whatever fines, costs, penalties or
24 remedies as may be provided by law for any violation of Proposition 65 or this Consent
25 Judgment. Additionally, if in such a proceeding the Court finds that Quiksilver failed to
26 comply with the reformulation requirements as specified in Section 7 of this Consent
27 Judgment, and notwithstanding any other provision of this Consent Judgment, then as to
28 Covered Products that did not comply with the reformulation requirements, Quiksilver
shall not benefit from any release from liability specified in any provision of this Consent
Judgment.

1 **6. MODIFICATION OF JUDGMENT**

2 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
4 motion of any party as provided by law and upon entry of a modified Consent Judgment
5 by the Court.

6 **7. INJUNCTIVE RELIEF**

7 7.0 On and after December 1, 2007, Quiksilver shall not manufacture, order or
8 receive and, apart from Covered Products manufactured, ordered or received prior to
9 December 1, 2007, Quiksilver shall not sell or distribute Covered Products, unless the
10 Covered Products meet the following criteria:

- 11 (a) The PVC Materials shall have no lead as an intentionally added
12 constituent;
- 13 (b) A representative sample of the bulk PVC Materials used to
14 manufacture the Covered Products shall have been tested for lead, and must
15 have shown lead content by weight of less than 0.02% (200X00 parts per
16 million "200 ppm"), using a test method of sufficient sensitivity to establish
17 a limit of quantification (as distinguished from detection) of less than 200
18 ppm.

19 7.1 Quiksilver may comply with the above requirements by relying on
20 information obtained from its suppliers of the Covered Products, and the PVC Materials
21 utilized in their manufacture, so long as such reliance is in good faith. Demonstration of
22 good faith reliance may include, but is not limited to e-mails or other written
23 correspondence from suppliers attesting to compliance with the provisions of this
24 Section 7.

25 7.2 In the event that MEJF settles another actual or potential claim concerning
26 the alleged failure of a business to provide adequate Proposition 65 warnings concerning
27 its manufacture, distribution or sale of PVC Accessories in California, and agrees to a
28 standard for reformulation that allows for lead content by weight of greater than 200 ppm

1 in the PVC Materials, Quiksilver's compliance with the less stringent standard will be
2 deemed to meet the requirements of Section 7.0(b) above and to comply with the
3 requirements of Proposition 6S and the Unfair Competition Act with respect to Covered
4 Products. MEJF shall notify Quiksilver of any and each such settlement by written notice
5 pursuant to Section 14, within 10 days of entry of such settlement or consent judgment.

6 **8. AUTHORITY TO STIPULATE**

7 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
9 behalf of the Party represented and legally to bind that Party.

10 **9. RETENTION OF JURISDICTION**

11 This Court shall retain jurisdiction of this matter to implement the Consent
12 Judgment.

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

14 MEJF 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
16 review this Consent Judgment. MEJF, in compliance with Title 11, *California Code of*
17 *Regulations*, section 3003(a), also shall file and serve notice of the motion for approval of
18 this Consent Judgment.

19 **11. ENTIRE AGREEMENT**

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

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1 **12. GOVERNING LAW**

2 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 **13. COURT APPROVAL**

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

8 **14. NOTICES**

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

11 If to MEJF: William Verick, Esq.
12 Klamath Environmental Law Center
13 424 First Street
Eureka, CA 95501

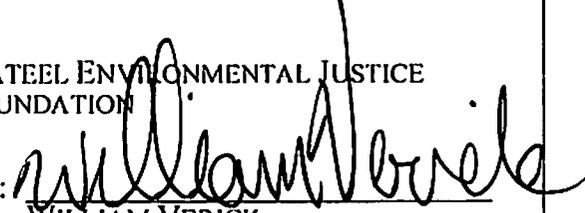
14 If to Quiksilver, Inc.: Sean Pence, Esq.
15 Quiksilver, Inc.
16 15202 Graham Street
Huntington Beach, CA 92649

17 With a copy to: Michael G. Yoder, Esq.
18 O'Melveny & Myers, LLP
19 610 Newport Center Dr., 17th Floor
Newport Beach, CA 92660

20 IT IS SO STIPULATED:

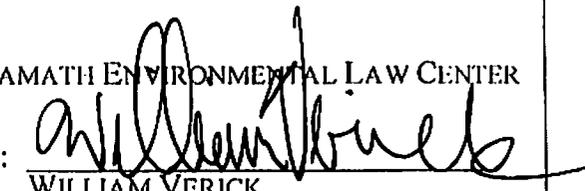
21 DATED: 3/4/08

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

22 BY: 
23 WILLIAM VERICK

24 DATED: 3/4/08

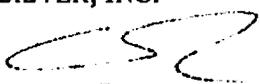
25 KLAMATH ENVIRONMENTAL LAW CENTER

26 BY: 
27 WILLIAM VERICK

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DATED:

QUIKSILVER, INC.

BY: 
ITS: VP

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: APR 28 2008

PATRICK J. MAHONEY

JUDGE OF THE SUPERIOR COURT