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9 Attorneys for Plaintiff  
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED  
FILED  
San Francisco County Superior Court

MAR 26 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  
FOUNDATION,

15 Plaintiff,

16 vs.

17 BELL FOUNDRY COMPANY,

18 Defendant.

Case No. 07-463818

~~PROPOSED~~ CONSENT JUDGMENT

21 1. INTRODUCTION

22 1.0 On May 30, 2007, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION  
23 ("Plaintiff" or "MEJF") acting on behalf of itself and the general public, filed a Complaint for civil  
24 penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. 463818,  
25 against defendant, BELL FOUNDRY COMPANY ("Defendant" or "Bell Foundry"), among  
26 others. (MEJF and Bell Foundry are collectively referred to as "the Parties.") The Complaint  
27 alleges that Bell Foundry violated provisions of the Safe Drinking Water and Toxic Enforcement  
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1 Act of 1986, Health and Safety Code sections 25249.5, *et seq.* (Proposition 65) by, among other  
2 things, knowingly and intentionally exposing persons to products containing lead and/or lead  
3 compounds, which are chemicals known to the State of California to cause cancer and/or birth  
4 defects or other reproductive harm, without first providing a clear and reasonable warning to such  
5 individuals. The Complaint was based upon a 60-Day Notice letter, dated March 15, 2007, sent  
6 by MEJF to Bell Foundry, the California Attorney General, all District Attorneys, and all City  
7 Attorneys with populations exceeding 750,000. A copy of the 60-Day Notice letter is attached as  
8 Exhibit A to the Complaint in this action.

9 1.1 Bell Foundry filed a timely answer to the Complaint denying each and every  
10 allegation set forth therein and asserting numerous affirmative defenses.

11 1.2 Defendant is a business that employs more than ten persons and allegedly  
12 distributes, sells and/or markets within the State of California exercise mats made with lead-  
13 containing polyvinyl chloride and/or neoprene ("**Leaded Materials**"). Pursuant to Proposition 65,  
14 lead and lead compounds are chemicals known to the State of California to cause cancer and  
15 reproductive toxicity. Products containing lead and/or lead compounds that are sold or distributed  
16 in the State of California may be, under specified circumstances, subject to the Proposition 65  
17 warning requirement set forth in Health and Safety Code section 25249.6. Plaintiff alleges that  
18 Leaded Materials that are manufactured, distributed, sold and/or marketed by Bell Foundry for use  
19 in California, require a warning under Proposition 65. For purposes of this Consent Judgment, the  
20 term "**Covered Products**" shall be defined as Leaded Materials that are: (i) distributed, sold,  
21 marketed or used within the State of California, and (ii) manufactured by any other entity acting  
22 on Bell Foundry's behalf, and distributed, marketed and/or sold by Bell Foundry or by any other  
23 entity that distributes, markets or sells Bell Foundry's Leaded Materials in California, or  
24 manufactured by any other entity for Bell Foundry, whether or not the Leaded Materials bear Bell  
25 Foundry labels.

26 1.3 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
27 subject matter jurisdiction over the allegations of violations contained in the Complaint and  
28 personal jurisdiction over Bell Foundry as to the acts alleged in the Complaint, that venue is

1 proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent  
2 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of  
3 all claims which were or could have been raised by any person or entity based in whole or in part,  
4 directly or indirectly, on the facts alleged therein or arising therefrom or related to.

5 1.4 Bell Foundry disputes that it has violated Proposition 65 as described in the 60-Day  
6 Notice Letter, the Complaint, or otherwise. This Consent Judgment shall not constitute an  
7 admission with respect to any material allegation of the Complaint, each and every allegation of  
8 which Bell Foundry denies, nor may this Consent Judgment or compliance with it be used as  
9 evidence of any wrongdoing, misconduct, culpability or liability on the part of Bell Foundry.

10 **2. SETTLEMENT PAYMENT**

11 2.0 In settlement of all of the claims that are alleged, or could have been alleged, in the  
12 Complaint, Bell Foundry shall pay \$20,000 to the Klamath Environmental Law Center ("KELC")  
13 to cover Plaintiff's attorneys' fees and costs. Additionally, Bell Foundry shall pay \$10,000 to  
14 Californians for Alternatives to Toxics; and \$10,000 to the Alameda County Lead Poisoning  
15 Prevention Program, for use toward reducing exposures to toxic chemicals and other pollutants,  
16 and toward increasing consumer, worker and community awareness of health hazards posed by  
17 lead and other toxic chemicals. The parties agree and acknowledge that the charitable  
18 contributions made pursuant to this section shall not be construed as a credit against the personal  
19 claims absent third parties for restitution against Defendant. Bell Foundry shall not be required to  
20 pay a civil penalty pursuant to Health and Safety Code section 25249.7(b). The above-described  
21 payments shall be forwarded by Defendant so that they are received at least 5 days prior to the  
22 hearing date scheduled for approval of this Consent Judgment. If the Consent Judgment is not  
23 approved with 120 days of the date scheduled for approval, the above-described payments shall be  
24 returned and the provisions of this Consent judgment shall become null and void.

25 **3. ENTRY OF CONSENT JUDGMENT**

26 3.0 The Parties hereby request that the Court enter this Consent Judgment forty-five  
27 (45) days after the filing of a motion for approval of the Consent Judgment in accordance with  
28 Title 11, *California Code of Regulations*, Section 3003(a). Upon the Court's entry of a final

1 judgment, MEJF and Bell Foundry waive their respective rights to a hearing or trial on the  
2 allegations in the Complaint.

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

4       4.0 This Consent Judgment, once entered by the Court, is a final and binding resolution  
5 between MEJF, acting on behalf of itself and its partners, servants, affiliates, devisees,  
6 representatives, agents, trustees, beneficiaries, employees, principals, members, managers,  
7 partners, directors, stockholders, officers, parents, subsidiaries, predecessors, successors, assigns,  
8 heirs and attorneys and all other entities and persons claiming rights by or through each of them  
9 and (as to those matters raised in the Notice Letter) the general public, on the one hand, and Bell  
10 Foundry and its partners, servants, affiliates, devisees, representatives, agents, trustees,  
11 beneficiaries, employees, principals, members, managers, partners, directors, stockholders,  
12 officers, parents, subsidiaries, predecessors, successors, assigns, heirs and attorneys and all other  
13 entities and persons claiming rights by or through each of them, on the other hand, of: (i) any  
14 violation of Proposition 65 or the Unfair Competition Act (including but not limited to the claims  
15 made in the Complaint); and (ii) any other statutory or common law claim in law or equity, to the  
16 fullest extent that any of the foregoing described in (i) or (ii) were or could have been asserted by  
17 any person or entity against Bell Foundry and its partners, servants, affiliates, devisees,  
18 representatives, agents, trustees, beneficiaries, employees, principals, members, managers,  
19 partners, directors, stockholders, officers, parents, subsidiaries, predecessors, successors, assigns,  
20 heirs and attorneys, and all of their customers, distributors, wholesalers, retailers, or any other  
21 person in the course of doing business, and the successors and assigns of any of them, who may  
22 use, maintain, distribute or sell Covered Products (collectively "Released Entities"), based on its  
23 or their exposure of persons to Covered Products or their failure to provide a clear and reasonable  
24 warning of exposure to such individuals; and (iii) as to alleged exposures to Covered Products,  
25 any other claim based in whole or in part on the facts alleged in the Complaint, whether based on  
26 actions committed by the Released Entities. As to alleged exposures to Covered Products,  
27 compliance with the terms of this Consent Judgment resolves any issue, now and in the future,  
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1 concerning compliance by Bell Foundry and the Released Entities, with the requirements of  
2 Proposition 65 with respect to Covered Products, and any alleged resulting exposure.

3       4.1     As to alleged exposures to Covered Products and other claims in the Complaint,  
4 MEJF, by and on behalf of itself, and its partners, servants, affiliates, devisees, representatives,  
5 agents, trustees, beneficiaries, employees, principals, members, managers, partners, directors,  
6 stockholders, officers, parents, subsidiaries, predecessors, successors, assigns, heirs and attorneys,  
7 waives any and all rights to institute any form of legal, equitable or administrative action, and  
8 releases all claims against the Released Entities, who may use, manufacture, market, maintain,  
9 distribute or sell the Covered Products, whether, under Proposition 65, the Unfair Competition Act  
10 or any other statute, provision of common law or any theory or issue, arising out of or resulting  
11 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but  
12 not limited to any exposure to, or failure to warn with respect to, the Covered Products (referred to  
13 collectively in this paragraph as the "Claims"). In furtherance of the foregoing, as to alleged  
14 exposures to Covered Products, MEJF hereby waives any and all rights and benefits which it now  
15 has, or in the future may have, conferred upon it with respect to the Claims by virtue of the  
16 provisions of section 1542 of the California Civil Code, which provides as follows:

17           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
18           THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
19           OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
              WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY  
              AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

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

4 5.0 The terms of this Consent Judgment shall be enforced exclusively by the Parties  
5 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
6 San Francisco County, giving the notice required by law, enforce the terms and conditions  
7 contained herein. In any proceeding brought by either party to enforce this Consent Judgment,  
8 such Party may seek whatever fines, costs, penalties or remedies as may be provided by law for  
9 any violation of Proposition 65 or this Consent Judgment. Additionally, if in such a proceeding  
10 the Court finds that Bell Foundry failed to comply with the reformulation requirements as  
11 specified in Section 7 of this Consent Judgment, and notwithstanding any other provision of this  
12 Consent Judgment, then as to such Covered Products, Bell Foundry shall not benefit from any  
13 release from liability specified in any provision of this Consent Judgment.

14 **6. MODIFICATION OF JUDGMENT**

15 6.0 This Consent Judgment may be modified only upon written agreement of the  
16 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
17 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

18 **7. INJUNCTIVE RELIEF**

19 7.0 On and after August 1, 2007, the Covered Products sold by Bell Foundry for resale  
20 or use in California shall meet the following criteria:

- 21 (a) The Covered Products shall have no lead as an intentionally added constituent;  
22 (b) A representative bulk sample of the Covered Products shall have been tested for  
23 lead, and must have shown lead content by weight of less than 0.02% (200 parts per  
24 million "200 ppm"), using a test method of sufficient sensitivity to establish a limit  
25 of quantification (as distinguished from detection) of less than 200 ppm.

26 7.1 Bell Foundry may comply with the above requirements by relying on information  
27 obtained from its suppliers of the Covered Products, so long as such reliance is in good faith.  
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1 Demonstration of good faith reliance may include, but is not limited to e-mails or other written  
2 correspondence from suppliers attesting to compliance with the provisions of this Section 7.0.

3       7.2     In the event that MEJF settles another actual or potential claim concerning the  
4 alleged failure of a business to provide adequate Proposition 65 warnings concerning its  
5 manufacture, distribution or sale of exercise mats in California, and agrees to a standard for  
6 reformulation that allows for lead content by weight of greater than 200 ppm in the PVC  
7 Materials, Bell Foundry's compliance with the less stringent standard will be deemed to meet the  
8 requirements of Sections 7.0(b) above. MEJF shall notify Bell Foundry of any and each such  
9 settlement or judgment by written notice pursuant to Section 15, within 10 days of entry of such  
10 settlement or consent judgment.

11 **8.     AUTHORITY TO STIPULATE**

12       8.0     Each signatory to this Consent Judgment certifies that he or she is fully authorized  
13 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
14 the party represented and legally to bind that party. The parties, and each of them, further  
15 represent and warrant that they are the owners of, and have not sold, assigned, conveyed, or  
16 otherwise transferred, prior to the execution of this agreement, any claim, demand, cause of action,  
17 obligation, damage or liability released in or related to this agreement.

18 **9.     RETENTION OF JURISDICTION**

19       9.0     This Court shall retain jurisdiction of this matter to implement the Consent  
20 Judgment.

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

22       10.0    MEJF 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. MEJF, in compliance with Title 11, *California Code of Regulations*, section  
25 3003(a), also shall file and serve notice of the motion for approval of this Consent Judgment.

26 **11.    ENTIRE AGREEMENT**

27       This Consent Judgment contains the sole and entire agreement and understanding of the  
28 Parties with respect to the entire subject matter hereof and any and all prior discussions,

1 negotiations, commitments and understandings related hereto. No representations, oral or  
2 otherwise, express or implied, other than those contained herein have been made by either Party  
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
4 to exist or to bind any of the Parties.

5 **12. GOVERNING LAW**

6 12.0 The validity, construction and performance of this Consent Judgment shall be  
7 governed by the laws of the State of California, without reference to any conflicts of law  
8 provisions of California law.

9 **13. COURT APPROVAL**

10 13.0 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of  
11 no force or effect, and cannot be used in any proceeding for any purpose.

12 **14. NOTICES**

13 14.0 Any notices under this Consent Judgment shall be by personal delivery of First  
14 Class Mail.

15 14.1

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

19 If to Bell Foundry Company: Michael D. Stevens, Esq.  
20 Parker, Milliken  
555 S. Flower St., 30<sup>th</sup> Floor  
21 Los Angeles, CA 90071

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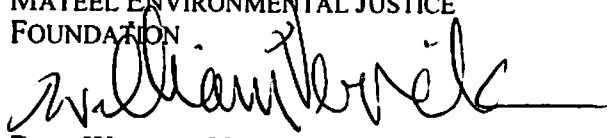


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IT IS SO STIPULATED:

DATED: 2/5/08

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION



BY: WILLIAM VERICK

DATED:

BELL FOUNDRY COMPANY

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

IT IS SO ORDERED, ADJUDGED AND DECREED:

MAR 26 2008

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

PATRICK J. MAHONEY, J.

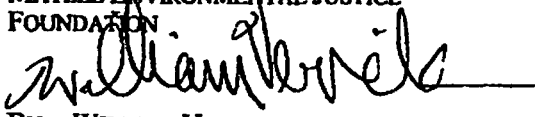
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IT IS SO STIPULATED:

DATED:

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION



BY: WILLIAM VERICK

DATED:



BELL FOUNDRY COMPANY

BY: CESAR CAPPELLINI

ITS: CEO

IT IS SO ORDERED, ADJUDGED AND DECREED:

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

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JUDGE OF THE SUPERIOR COURT

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Attorneys for Plaintiff  
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION,  
  
Plaintiff,  
  
vs.  
  
BELL FOUNDRY COMPANY  
  
Defendant.

CASE NO. 463818  
  
~~Proposed~~ ORDER APPROVING  
SETTLEMENT BETWEEN PLAINTIFF  
AND BELL FOUNDRY COMPANY  
  
Date: March 26, 2008  
Time: 9:30 a.m.  
Dept. No.: 302

ENDORSED  
FILED  
San Francisco County Superior Court

MAR 26 2008

GORDON PARK-LI, Clerk  
BY: \_\_\_\_\_  
Deputy Clerk

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

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

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

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

IT IS SO ORDERED.

Dated:       MAR 26 2008      

      PATRICK J. MAHONEY      

Judge of the Superior Court