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11 ENVIRONMENTAL JUSTICE FOUNDATION

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

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,

17 Plaintiff,

18 vs.

19 PRO SPECIALTIES GROUP, INC.,

20 Defendant.

Case No. CGC 07-466145

CONSENT JUDGMENT

**ENDORSED
FILED**
San Francisco County Superior Court

APR 02 2008

GORDON PARK-LI, Clerk
BY: GINA GONZALES
Deputy Clerk

ENDORSED
FILED

San Francisco County Superior Court

APR 3 2008

GORDON PARK-LI, Clerk

BY: GINA GONZALES

Deputy Clerk

1 I. INTRODUCTION

2 1.1 On or about August 14, 2007, MATEEL ENVIRONMENTAL JUSTICE
3 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a
4 complaint for civil penalties and injunctive relief in the above captioned matter in San
5 Francisco County Superior Court, against Pro Specialties Group, Inc., ("Pro Specialties"
6 or "Settling Defendant"). The Complaint alleges, among other things, that Settling
7 Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of
8 1986, Health and Safety Code Section 25249.5, et seq. ("Proposition 65"). In particular,
9 Mateel alleges that Settling Defendant has knowingly and intentionally exposed persons
10 to products which use leaded PVC wires or cords ("Covered Products") which contain
11 lead and/or lead compounds, which are chemicals known to the State of California to
12 cause cancer and birth defects or other reproductive harm, without first providing a clear
13 and reasonable warning to such individuals.

14 1.2 On or about March 22, 2007, a 60 Day Notice Letter ("Notice Letter") was
15 sent by Mateel to Settling Defendant, the California Attorney General, all California
16 District Attorneys, and all City Attorneys of each California city with a population
17 exceeding 750,000.

18 1.3 Settling Defendant is a business that employs ten or more persons and
19 manufactures, distributes, supplies and/or otherwise markets Covered Products within the
20 State of California, which are alleged to contain lead and/or lead compounds. Lead and
21 lead compounds are chemicals known to the State of California to cause cancer, and lead
22 is a chemical known to the State of California to cause reproductive toxicity pursuant to
23 Health and Safety Code Section 25249.9. Under specified circumstances, products
24 containing lead and/or lead compounds that are sold or distributed in the State of
25 California are subject to the Proposition 65 warning requirement set forth in Health and
26 Safety Code Section 25249.6. Plaintiff Mateel alleges that the leaded PVC wire devices
27 ("Covered Products") manufactured, distributed, sold and/or marketed by Settling
28 Defendant for use in California require a warning under Proposition 65.

1 1.4 For purposes of this Consent Judgment, the parties stipulate that this Court
2 has jurisdiction over the allegations of violations contained in the Complaint and personal
3 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is
4 proper in the County of San Francisco and that this Court has jurisdiction to enter this
5 Consent Judgment as a full settlement and resolution of the allegations contained in the
6 Complaint and of all claims that were or could have been raised by Mateel, or as to those
7 matters included in the 60 Day Notice, raised by a member of the general public.

8 1.5 This Consent Judgment resolves claims that are denied and disputed. The
9 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
10 all claims between the parties for the purpose of avoiding prolonged litigation. This
11 Consent Judgment shall not constitute an admission with respect to any material allegation
12 of the Complaint, each and every allegation of which Settling Defendant denies, nor may
13 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
14 misconduct, culpability or liability on the part of Settling Defendant.

15 **2. SETTLEMENT PAYMENT**

16 2.1 Within ten (10) calendar days of entry of this Consent Judgment Settling
17 Defendant shall pay \$18,000 to the Environment Protection and Information Center for
18 work informing the California Consumers about the hazards of and exposures to toxic
19 chemicals and for work to reduce exposures to and pollution from toxic chemicals. The
20 recipient is a California non-profit environmental organization that advocate for workers'
21 and consumers' safety and for awareness and reduction of toxic exposures.

22 2.2 Within ten (10) calendar days of entry of this Consent Judgment by the
23 Court, Settling Defendant shall pay a civil penalty totaling \$2,000 (Two Thousand
24 Dollars), comprising a payment of \$1,500 (One Thousand Five Hundred Dollars) to the
25 Office of the Attorney General and, in accordance with applicable statutes, \$500 (Five
26 Hundred Dollars) to plaintiff Mateel Environmental Justice Foundation.

1 2.3 Within ten (10) calendar days of entry of this Consent Judgment, Settling
2 Defendant shall pay \$20,000 to the Klamath Environmental Law Center ("KELC") to
3 cover a portion of Mateel's attorneys' fees and costs.

4 2.4 All payments shall be made by check, payable to the above specified
5 recipient and mailed, or sent by other overnight delivery, to William Verick, Klamath
6 Environmental Justice Foundation, 424 First Street, Eureka, CA 95501, to be distributed
7 within a commercially reasonable time by Mr. Verick to the ultimate recipients.

8 **3. ENTRY OF CONSENT JUDGMENT**

9 3.1 The parties hereby request that the Court promptly enter this Consent
10 Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive
11 their respective rights to a hearing or trial on the allegations of the Complaint.

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

13 4.1 This Consent Judgment is a final and binding resolution between Mateel,
14 acting on behalf of itself and, as to those matters raised in the 60 Day Notice Letter, the
15 general public, and Settling Defendant, of any violation of Proposition 65, or the
16 regulations promulgated thereunder, to the fullest extent that it could have been asserted
17 by Mateel against the Settling Defendant based upon, arising out of, or relating to Settling
18 Defendant's compliance with Proposition 65, or regulations promulgated thereunder, with
19 respect to the Covered Products, whether based on actions committed by Settling
20 Defendant, or by any other entity within the chain of distribution of the Covered Products,
21 including, but not limited to, manufacturers, wholesale or retail sellers or distributors and
22 any other person in the course of doing business that manufactured, sold, or distributed the
23 Covered Products. As to alleged exposures to chemicals listed in the 60 Day Notice from
24 Covered Products, compliance with the terms of this Consent Judgment resolves any
25 issue, now and in the future, concerning compliance by Settling Defendant and its parents,
26 subsidiaries or affiliates, predecessors, officers, directors, employees, and all
27 manufacturers, customers, distributors, wholesalers, retailers or any other person in the
28 course of doing business involving the Covered Products, and the successors and assigns

1 of any of these who may manufacture, use, maintain, distribute, market or sell Covered
2 Products, with the requirements of Proposition 65.

3 4.2 As to alleged exposures to chemicals identified in the 60 Day Notice Letter
4 from Covered Products, Mateel, acting on behalf of itself and, as to the matters in the 60
5 Day Notice Letter, on behalf of the general public, and its agents, successors and assigns,
6 waives all rights to institute any form of legal action, and releases all claims which were
7 or could have been brought against Settling Defendant and its parents, subsidiaries or
8 affiliates, predecessors, officers, directors, employees, and all customers, manufacturers,
9 distributors, wholesalers, retailers or any other person in the course of doing business
10 involving the Covered Products, and the successors and assigns of any of them, who may
11 manufacture, use, maintain, distribute or sell the Covered Products. This release of
12 claims by the general public is not understood to extend beyond the claims included in the
13 60 Day Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself
14 and the general public, hereby waives any and all rights and benefits which it now has, or
15 in the future may have, conferred upon it with respect to the Covered Products by virtue
16 of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

23 Mateel understands and acknowledges that the significance and consequence of this
24 waiver of California Civil Code Section 1542 is that even if Mateel or any member of the
25 general public suffers future damages arising out of or resulting from, or related directly
26 or indirectly to, in whole or in part, the Covered Products, it will not be able to make any
27 claim for those damages against the Settling Defendant, its parents, subsidiaries or
28 affiliates, predecessors, officers, directors, employees, and all customers, manufacturers,
distributors, wholesalers, retailers or any other person in the course of doing business
involving the Covered Products, and the successors and assigns of any of them, who may

1 manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel
2 acknowledges that it intends these consequences for any such claims which may exist as
3 of the date of this release but which Mateel does not know exist, and which, if known,
4 would materially affect its decision to enter into this Consent Judgment, regardless of
5 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or
6 any other cause.

7 **5. ENFORCEMENT OF JUDGMENT**

8 The terms of this Consent Judgment shall be enforced exclusively by the parties
9 hereto. The parties may, by noticed motion or order to show cause before the Superior
10 Court of San Francisco County, giving the notice required by law, enforce the terms and
11 conditions contained herein.

12 **6. MODIFICATION OF JUDGMENT**

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

17 **7. INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNINGS**

18 7.1 For all Covered Products manufactured for sale in California 90 days after
19 entry of this Consent Judgment, which have not met the reformulation set forth in section
20 7.2, Settling Defendant shall provide a Proposition 65 Warning for Covered Products as
21 described below, or according to any warning agreed to by the California Attorney
22 General:

23 **PROP 65 WARNING: This product contains lead and lead compounds,**
24 **known to the State of California to cause [cancer, and] birth defects or**
other reproductive harm. *Wash your hands after handling this product.*

25 or

26 **PROP 65 WARNING: Handling the cord on this product exposes you to lead,**
27 **a chemical known to the State of California to cause [cancer, and] birth**
defects and other reproductive harm. *Wash hands after use.*

1 The phrase "PROP 65" may be excluded at the Defendant's discretion. If included, the
2 phrase "PROP 65" shall be in capitals. The word "WARNING" shall be in capitals. The
3 words "*Wash hands after handling this product*" or "*Wash hands after use,*" shall be
4 italicized or underlined. Inclusion of the bracketed words "cancer, and" in the above
5 warning shall be at Settling Defendant's option. The foregoing does not preclude Settling
6 Defendant from adding a warning for additional Proposition 65 listed chemicals unless the
7 Attorney General takes the position that such a warning would be misleading or an over-
8 warning. Such warning shall be prominently affixed to or printed on each Covered
9 Product, its label, or package and contained in the same section of the label or package
10 that contains other safety warnings, if any, concerning the use of the Covered Product or
11 near its displayed price and/or UPC code, and with such conspicuousness, as compared
12 with other words, statements, designs, or devices on the Covered Product, its label,
13 package or display as to render it likely to be read and understood by an ordinary
14 individual.

15 7.2 No warning shall be required for Covered Products which have been
16 reformulated so that both (a) the surface contact layer of the external wires or cords of the
17 Covered Products shall have no lead as an intentionally added constituent; and (b) the
18 surface contact layer of the wires or cords of the Covered Products shall have lead content
19 by weight of no more than 0.03% (300 parts per million, or "300" ppm).

20 8. AUTHORITY TO STIPULATE

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

24 9. RETENTION OF JURISDICTION

25 This Court shall retain jurisdiction of this matter to implement the Consent
26 Judgment.

1 **10. ENTIRE AGREEMENT**

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

8 **11. GOVERNING LAW**

9 The validity, construction and performance of this Consent Judgment shall be
10 governed by the laws of the State of California, without reference to any conflicts of law
11 provisions of California law.

12 **12. FEES AND EXPENSES**

13 The parties acknowledge and agree that, except as set provided in Section 2.1 of
14 this Consent Judgment, each party shall bear its own costs, expenses, consultant and
15 expert fees, and attorneys fees arising out of and/or in connection with the litigation.

16 **13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)**

17 Mateel agrees to comply with the reporting form and approval requirements
18 referenced in Health & Safety Code Section 25249.7(f) and as implemented by various
19 regulations.

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14. COURT APPROVAL

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

IT IS SO STIPULATED:

Dated: MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

William Verick
CEO Mateel Environmental Justice Foundation,
Klamath Environmental Law Center

Dated: PRO SPECIALTIES GROUP, INC.,

By:
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____
JUDGE OF THE SUPERIOR COURT

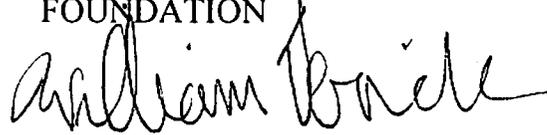
1 **14. COURT APPROVAL**

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

4 **IT IS SO STIPULATED:**

5
6 Dated:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



7
8
9 William Verick
CEO Mateel Environmental Justice Foundation,
10 Klamath Environmental Law Center

11 Dated:

3/14/08

PRO SPECIALTIES GROUP, INC.,



12
13
14 By: THOMAS E. BARRY
Its: CFC

15
16 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

17
18 Dated:

APR 02 2008

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT