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1 WILLIAM VERICK, SBN 140972
2 FREDRIC EVENSON, SBN 198059
3 KLAMATH ENVIRONMENTAL LAW CENTER
4 424 First Street
5 Eureka, CA 95501
6 Telephone: (707) 268-8900
7 Facsimile: (707) 268-8901
8 E-mail: wverick@igc.org;
9 ecorights@earthlink.net

6 DAVID WILLIAMS, SBN 144479
7 BRIAN ACREE, SBN 202505
8 PUBLIC INTEREST LAWYERS GROUP
9 2070 Allston Way, Suite 300
10 P.O. Box 12157
11 Berkeley, CA 94712-3157
12 Telephone: (510) 647-1900
13 Facsimile: (510) 647-1905
14 E-mail: davidhwilliams@earthlink.net;
15 brianacree@earthlink.net

11 Attorneys for Plaintiff
12 MATEEL ENVIRONMENTAL JUSTICE
13 FOUNDATION

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN FRANCISCO**

17 MATEEL ENVIRONMENTAL JUSTICE
18 FOUNDATION,

19 Plaintiff,

20 v.

21 HICKORY HARDWARE, INC.,

22 Defendant.

Case No. CGC 07-463543

~~PROPOSED~~ CONSENT JUDGMENT

(JUR)

23 1. **INTRODUCTION**

24 1.1 On May 18, 2007, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
25 ("Mateel"), acting on behalf of itself and the general public, filed a Complaint for civil penalties
26 and injunctive relief ("Complaint") in San Francisco County Superior Court, Case No.CGC-0-
27 463543, against Defendant Hickory Hardware ("Hickory" or "Defendant"). The Complaint
28 alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and

ENDORSED
FILED
San Francisco County Superior Court

OCT 30 2007

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

1 Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition
2 65”). In particular, Mateel alleges that Hickory has knowingly and intentionally exposed persons
3 to padlocks made of brass containing lead and/or lead compounds (hereinafter “leaded brass”),
4 which are chemicals known to the State of California to cause cancer and birth defects or other
5 reproductive harm, without first providing a clear and reasonable warning to such individuals.

6 1.2 On July 29, 2006, a 60-Day Notice letter (“Notice Letter”) was sent by Mateel to
7 Hickory, the California Attorney General, all California District Attorneys, and all City Attorneys
8 of every California city with populations exceeding 750,000.

9 1.3 Hickory is a business that employs ten or more persons and manufactures,
10 distributes, and/or markets locks, including padlocks, within the State of California. Some of
11 those products are alleged to contain lead and/or lead compounds. Lead and lead compounds are
12 chemicals known to the State of California to cause cancer, and lead is a chemical known to the
13 State of California to cause reproductive toxicity pursuant to Health and Safety Code Section
14 25249.9. Under specified circumstances, products containing lead and/or lead compounds that
15 are sold or distributed in the State of California are subject to the Proposition 65 warning
16 requirement set forth in Health and Safety Code Section 25249.6. Plaintiff Mateel alleges that
17 leaded brass padlocks manufactured, distributed, sold and/or marketed by Hickory for use in
18 California require a warning under Proposition 65.

19 1.4 For purposes of this Consent Judgment, the term “Covered Products” shall be
20 defined as locks containing lead and/or lead compounds, such as leaded brass padlocks, to the
21 extent such products are distributed and sold within the state of California, that are manufactured,
22 distributed, marketed and/or sold by Hickory, regardless of whether they bear Hickory labels.

23 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court has
24 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
25 over Hickory as to the acts alleged in the Complaint, that venue is proper in the County of San
26 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
27 and resolution of the allegations contained in the Complaint and of all claims that were or could
28

1 have been raised by any person or entity based in whole or in part, directly or indirectly, on the
2 facts alleged therein or arising therefrom or related thereto.

3 1.6 This Consent Judgment resolves claims that are denied and disputed. The parties
4 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
5 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
6 shall not constitute an admission with respect to any material allegation of the Complaint, each
7 and every allegation of which Hickory denies, nor may this Consent Judgment or compliance
8 with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
9 Hickory or any other Defendant.

10 2. **SETTLEMENT PAYMENT**

11 2.1 In settlement of all of the claims referred to in this Consent Judgment against the
12 Settling Defendant, within thirty (30) business days of notice entry of this Consent Judgment,
13 Hickory shall pay \$15,000 to the Klamath Environmental Law Center ("KELC") to cover
14 Mateel's attorneys' fees and costs.

15 2.2 Within thirty (30) business days of notice of entry of this Consent Judgment,
16 Hickory shall pay \$10,000 to the Ecological Rights Foundation, a California non-profit
17 environmental organization that advocates for workers' and consumers' safety, and for awareness
18 and reduction of toxic exposures.

19 3. **ENTRY OF CONSENT JUDGMENT**

20 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.
21 Upon entry of the Consent Judgment, Hickory and Mateel waive their respective rights to a
22 hearing or trial on the allegations of the Complaint.

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

24 4.1 This Consent Judgment is a final and binding resolution between Mateel, acting on
25 behalf of itself and the general public, and Hickory, of: (i) any violation of Proposition 65 with
26 respect to the Covered Products, and (ii) any other statutory or common law claim, to the fullest
27 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any
28 person or entity against Hickory based upon, arising out of or relating to Hickory's compliance

1 with Proposition 65, or regulations promulgated thereunder, with respect to the Covered Products,
2 and any other claim based in whole or part on the facts alleged in the Complaint, whether based
3 on actions committed by Hickory, or by any other Defendant or entity within the chain of
4 distribution, including, but not limited to, manufacturers, wholesale or retail sellers or distributors
5 and any other person in the course of doing business. As to alleged exposures to Covered
6 Products, compliance with the terms of this Consent Judgment resolves any issue, now and in the
7 future, concerning compliance by Hickory and its parents, subsidiaries or affiliates, predecessors,
8 officers, directors, employees, and all of their manufacturers, customers, distributors, wholesalers,
9 retailers or any other person in the course of doing business, and the successors and assigns of
10 any of these who may manufacture, use, maintain, distribute, market or sell Covered Products,
11 with the requirements of Proposition 65.

12 4.2 As to alleged exposures to Covered Products, Mateel, acting on behalf of itself and
13 the general public, and its agents, successors and assigns, waives all rights to institute any form of
14 legal action, and releases all claims against Hickory and its parents, subsidiaries or affiliates,
15 predecessors, officers, directors, employees, and all of its customers, manufacturers, distributors,
16 wholesalers, retailers or any other person in the course of doing business, and the successors and
17 assigns of any of them, who may manufacture, use, maintain, distribute or sell the Covered
18 Products, whether under Proposition 65 or otherwise, arising out of or resulting from, or related
19 directly or indirectly to, in whole or in part, the Covered Products and claims identified in
20 Mateel's Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself, hereby
21 waives any and all rights and benefits which it now has, or in the future may have, conferred upon
22 it with respect to the Covered Products by virtue of the provisions of Section 1542 of the
23 California Civil Code, which provides as follows:

24 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
25 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
26 **EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE**
27 **RELEASE, WHICH IF KNOWN BY HIM MUST HAVE**
 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
 DEBTOR."

28 Mateel understands and acknowledges that the significance and consequence of this waiver of

1 California Civil Code Section 1542 is that even if suffers future damages arising out of or
2 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, it
3 will not be able to make any claim for those damages against Hickory, its parents, subsidiaries or
4 affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers,
5 distributors, wholesalers, retailers or any other person in the course of doing business, and the
6 successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the
7 Covered Products. Furthermore, Mateel acknowledges that it intends these consequences for any
8 such claims which may exist as of the date of this release but which Mateel does not know exist,
9 and which, if known, would materially affect its decision to enter into this Consent Judgment,
10 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
11 negligence, or any other cause.

12 **5. ENFORCEMENT OF JUDGMENT**

13 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the parties
14 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
15 San Francisco County, giving the notice required by law, enforce the terms and conditions
16 contained herein.

17 **6. MODIFICATION OF JUDGMENT**

18 Except as provided for in Paragraph 7.2(c), this Consent Judgment may be modified only
19 upon written agreement of the parties and upon entry of a modified Consent Judgment by the
20 Court thereon, or upon motion of any party as provided by law and upon entry of a modified
21 Consent Judgment by the Court.

22 **7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

23 **7.1** As to any Covered Products for which the normally intended function and manner
24 of use of the product involves the gripping or holding of the product by gripping or holding a
25 component made from leaded brass where such brass comes into contact with the user, a warning
26 as described in paragraph 7.2 below shall be provided. The warning requirements set forth in
27 paragraph 7.2 shall apply only to: (1) Covered Products that Hickory ships for distribution after
28 270 days after entry of this Consent Judgment (“the Effective Date”); and (2) which

1 aforementioned Covered Products are products manufactured, distributed, marketed, sold or
2 shipped for sale or use inside the State of California.

3 7.2 Hickory shall provide Proposition 65 warnings as follows:

4 (a) Defendant Hickory shall provide either of the following warning statements:

5 **WARNING:** This product contains lead, a chemical known to the
6 State of California to cause cancer and birth defects or other
7 reproductive harm. Do not place your hands in your mouth after
8 handling the product. Do not place the product in your mouth.
9 *Wash your hands after touching this product.*

10 or

11 **WARNING:** This product contains one or more chemicals known
12 to the State of California to cause cancer and birth defects or other
13 reproductive harm. *Wash hands after handling.*

14 The word "WARNING" shall be in bold. The words "Wash hands after handling" shall
15 be in bold and italicized.

16 Hickory shall provide such warning with the unit package of the Covered Products. Such
17 warning shall be prominently affixed to or printed on each Covered Product's label or package.
18 The warning shall be at least the same size as the largest of any other safety warnings, if any, on
19 the product container. If printed on the label itself, the warning shall be contained in the same
20 section that states other safety warnings, if any, concerning the use of the product.

21 (b) The requirements for product labeling, set forth in subparagraph (a) above are
22 imposed pursuant to the terms of this Consent Judgment. The parties recognize that product
23 labeling is not the exclusive method of providing a warning under Proposition 65 and its
24 implementing regulations.

25 (c) If Proposition 65 warnings for lead or lead compounds should no longer be
26 required, Hickory shall have no further warning obligations pursuant to this Consent Judgment.
27 In the event that Hickory ceases to implement or modifies the warnings required under this
28 Consent Judgment (because of a change on the law or otherwise), Hickory shall provide written
29 notice to Mateel (through KELC) of its intent to do so, and of the basis for its intent, no less than
30 thirty (30) days in advance. Mateel shall notify Hickory in writing of any objection within thirty
31 (30) days of its receipt of such notice, or such objection by Mateel shall be waived.

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8. AUTHORITY TO STIPULATE

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

9. RETENTION OF JURISDICTION

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

10. ENTIRE AGREEMENT

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

11. GOVERNING LAW

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

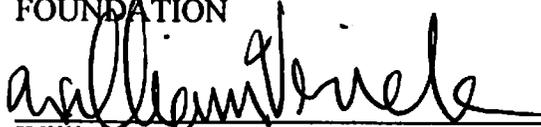
12. COURT APPROVAL

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

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DATED:

Aug 16, 07

HICKORY HARDWARE, INC.



John Westendorf
President

IT IS SO ORDERED, ADJUDGED AND DECREED:

PETER J. BUSCH

DATED:

OCT 30 2007

JUDGE OF THE SUPERIOR COURT

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

5 DAVID H. WILLIAMS, CSB #144479
6 BRIAN ACREE, CSB #202505
370 Grand Avenue, Suite 5
7 Oakland, CA 94610
Telephone: (510) 271-0826
8 Facsimile: (510) 271-0829
E-mail: dhwill7@gmail.com

9 Attorneys for Plaintiff
10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

14 MATEEL ENVIRONMENTAL JUSTICE
15 FOUNDATION,

CASE NO. 463543

16 Plaintiff,

~~PROPOSED~~ ORDER APPROVING
CONSENT JUDGMENT

17 vs.

18 HICKORY HARDWARE, INC.,

Date: October 30, 2007
Time: 9:30 a.m.
Dept. No.: 301

19 Defendant.
20 _____/

21 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
22 noticed motion on October 30, 2007 The court finds that:

- 23 1. The warnings and reformulation the Consent Judgment requires comply with the
24 requirements of Proposition 65.

ENDORSED
FILED
San Francisco County Superior Court
OCT 30 2007
GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

1 2. The payments in lieu of civil penalties specified in the Consent Judgment are
2 reasonable and conform to the criteria of Health & Safety Code § 25249.7(b)(2).

3 3. The attorneys fees awarded under the Consent Judgment are reasonable as are the
4 rates awarded the attorneys.

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

6 IT IS SO ORDERED.

PETER J. BUSCH

7 Dated: OCT 30 2007

Judge of the Superior Court