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12 FOUNDATION

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN FRANCISCO

16 MATEEL ENVIRONMENTAL
17 JUSTICE FOUNDATION,,

18 Plaintiff,

19 v.

20 THE FAUCET QUEENS, INC., et al.,

21 Defendants.

Case No. CGC 08-471406

~~[PROPOSED]~~ CONSENT JUDGMENT

22 1. INTRODUCTION

23 1.1 On January 25, 2008, the MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION ("Mateel"), acting on behalf of itself and the general public, filed a
25 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco County
26 Superior Court, Case No. CGC-0-463543, against Defendant Winner International, LLC
27 ("Winner" or "Defendant"). The Complaint alleges, among other things, that Defendant
28

NB1:705484.5

FILED
San Francisco County Superior Court

AUG 05 2008

GORDON PARK-LI, Clerk
BY: *[Signature]* Deputy Clerk

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

8 **1.2** On July 24, 2007, a 60-Day Notice letter ("Notice Letter") was sent by
9 Mateel to Winner, the California Attorney General, all California District Attorneys, and
10 all City Attorneys of every California city with populations exceeding 750,000.

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

22 **1.4** For purposes of this Consent Judgment, the term "Covered Products" shall
23 be defined as locks containing lead and/or lead compounds, such as leaded brass padlocks,
24 to the extent such products are distributed and sold within the state of California, that are
25 manufactured, distributed, marketed and/or sold by Winner, regardless of whether they
26 bear Winner labels.

27 **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court
28 has jurisdiction over the allegations of violations contained in the Complaint and personal

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

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

14 **2. SETTLEMENT PAYMENT**

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

19 **2.2** Within ten (10) business days of notice of entry of this Consent Judgment,
20 Winner shall pay \$5,000 to the Ecological Rights Foundation, a California non-profit
21 environmental organization that advocates for workers' and consumers' safety, and for
22 awareness and reduction of toxic exposures.

23 **3. ENTRY OF CONSENT JUDGMENT**

24 **3.1** The parties hereby request that the Court promptly enter this Consent
25 Judgment. Upon entry of the Consent Judgment, Winner and Mateel waive their
26 respective rights to a hearing or trial on the allegations of the Complaint.

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

2 **4.1** This Consent Judgment is a final and binding resolution between Mateel,
3 acting on behalf of itself and, as to those matters raised in the Notice Letter, acting on
4 behalf of the general public, and Winner, of: (i) any violation of Proposition 65 with
5 respect to the Covered Products, and (ii) any other statutory or common law claim, to the
6 fullest extent that any of the foregoing described in (i) or (ii) were or could have been
7 asserted by any person or entity against Winner based upon, arising out of or relating to
8 Winner's compliance with Proposition 65, or regulations promulgated thereunder, with
9 respect to the Covered Products, and any other claim based in whole or part on the facts
10 alleged in the Complaint, whether based on actions committed by Winner, or by any other
11 Defendant or entity within the chain of distribution, including, but not limited to,
12 manufacturers, wholesale or retail sellers or distributors and any other person in the course
13 of doing business. As to those exposures to Covered Products that were alleged in the
14 Notice Letter, compliance with the terms of this Consent Judgment resolves any issue,
15 now and in the future, concerning compliance by Winner and its parents, subsidiaries or
16 affiliates, predecessors, officers, directors, employees, and all of their manufacturers,
17 customers, distributors, wholesalers, retailers or any other person in the course of doing
18 business, and the successors and assigns of any of these who may manufacture, use,
19 maintain, distribute, market or sell Covered Products, with the requirements of
20 Proposition 65.

21 **4.2** As to those exposures to Covered Products that were alleged in the Notice
22 Letter, Mateel, acting on behalf of itself and the general public, and its agents, successors
23 and assigns, waives all rights to institute any form of legal action, and releases all claims
24 against Winner and its parents, subsidiaries or affiliates, predecessors, officers, directors,
25 employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or
26 any other person in the course of doing business, and the successors and assigns of any of
27 them, who may manufacture, use, maintain, distribute or sell the Covered Products,
28 whether under Proposition 65 or otherwise, arising out of or resulting from, or related

1 directly or indirectly to, in whole or in part, the claims that pertain to Covered Products
2 that were identified in Mateel's Notice Letter. In furtherance of the foregoing, Mateel,
3 acting on behalf of itself, hereby waives any and all rights and benefits which it now has,
4 or in the future may have, conferred upon it with respect to the Covered Products by
5 virtue of the provisions of Section 1542 of the California Civil Code, which provides as
6 follows:

7 "A GENERAL RELEASE DOES NOT EXTEND TO
8 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
9 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
10 EXECUTING THE RELEASE, WHICH IF KNOWN BY
11 HIM MUST HAVE MATERIALLY AFFECTED HIS
12 SETTLEMENT WITH THE DEBTOR."

13 Mateel understands and acknowledges that the significance and consequence of this
14 waiver of California Civil Code Section 1542 is that even if it suffers future damages
15 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
16 Covered Products, it will not be able to make any claim for those damages against
17 Winner, its parents, subsidiaries or affiliates, predecessors, officers, directors, employees,
18 and all of its customers, manufacturers, distributors, wholesalers, retailers or any other
19 person in the course of doing business, and the successors and assigns of any of them,
20 who may manufacture, use, maintain, distribute or sell the Covered Products.

21 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
22 which may exist as of the date of this release but which Mateel does not know exist, and
23 which, if known, would materially affect its decision to enter into this Consent Judgment,
24 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
25 negligence, or any other cause.

26 **5. ENFORCEMENT OF JUDGMENT**

27 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
28 parties hereto. The parties may, by noticed motion or order to show cause before the

1 Superior Court of San Francisco County, giving the notice required by law, enforce the
2 terms and conditions contained herein.

3 **6. MODIFICATION OF JUDGMENT**

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

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

9 **7.1** As to any Covered Products for which the normally intended function and
10 manner of use of the product involves the gripping or holding of the product by gripping
11 or holding a component made from leaded brass where such brass comes into contact with
12 the user, a warning as described in paragraph 7.2 below shall be provided. The warning
13 requirements set forth in paragraph 7.2 shall apply only to: (1) Covered Products that
14 Winner ships for distribution after 270 days after entry of this Consent Judgment ("the
15 Effective Date"); and (2) products manufactured, distributed, marketed, sold or shipped
16 for sale or use inside the State of California.

17 **7.2** Winner shall provide Proposition 65 warnings as follows:

18 (a) Defendant Winner shall provide either of the following warning
19 statements:

20 **WARNING:** This product contains lead, a chemical known to the State of
21 California to cause cancer and birth defects or other reproductive harm. Do
22 not place your hands in your mouth after handling the product. Do not
23 place the product in your mouth. *Wash your hands after touching this*
24 *product.*

25 or

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

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

3 Winner shall provide such warning with the unit package of the
4 Covered Products. Such warning shall be prominently affixed to or printed
5 on each Covered Product's label or package. The warning shall be at least
6 the same size as the largest of any other safety warnings, if any, on the
7 product container. If printed on the label itself, the warning shall be
8 contained in the same section that states other safety warnings, if any,
9 concerning the use of the product.

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

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

23 **8. AUTHORITY TO STIPULATE**

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

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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.

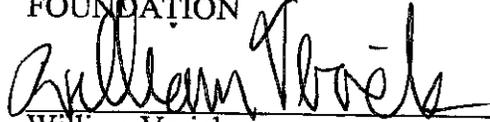
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IT IS SO STIPULATED:

DATED:

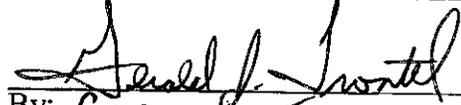
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED:

WINNER INTERNATIONAL LLC.



By: GERALD J. TROUTEL
Its: PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

Aug 5, 2008



JUDGE OF THE SUPERIOR COURT
PATRICK J. MAHONEY