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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.

MASTERCRAFT INTERNATIONAL  
USA, INC.,

Defendants.

Case No. No. CGC-07-468994

~~PROPOSED~~ CONSENT JUDGMENT

ENDORSED  
FILED  
San Francisco County Superior Court

JAN 08 2009

GORDON PARK-LI, Clerk  
BY MARJORIE SCHWARTZ-SCOTT  
Deputy Clerk

1       **1.     INTRODUCTION**

2           1.1     On November 8, 2007, the MATEEL ENVIRONMENTAL JUSTICE  
3 FOUNDATION ("Plaintiff" or "MEJF") acting on behalf of itself and the general public, filed a  
4 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court,  
5 Case No. CGC-07-468994, against defendant Mastercraft International USA, Inc. ("Defendant").  
6 The Complaint alleges, among other things, that Defendant violated provisions of the Safe  
7 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5,  
8 et seq. (Proposition 65) by failing to give clear and reasonable warnings to those residents of  
9 California who handle and use stained glass lamps that utilize lead solder, lead came and other  
10 leaded parts, (hereinafter "Leaded Stained Glass Lamps"), that handling and use of these products  
11 causes those residents to be exposed to lead and/or lead compounds. The Complaint was based  
12 upon a 60-Day Notice letter, dated July 24, 2007, sent by MEJF to Defendant, the California  
13 Attorney General, all District Attorneys, and all City Attorneys with populations exceeding  
14 750,000 ("Notice Letter").

15           1.2     The Complaint further alleges that Defendant is a business that employs more than  
16 ten persons, and manufactures, markets or sells Leaded Stained Glass Lamps that allegedly  
17 contain lead and/or lead compounds. Pursuant to Health and Safety Code Section 25249.8, lead  
18 and lead compounds are known to the State of California to cause cancer and reproductive  
19 toxicity. Plaintiff MEJF alleges that Leaded Stained Glass Lamps that are marketed or sold by  
20 Defendant for use in California requires a Proposition 65 warning pursuant to Health and Safety  
21 Code Section 25249.6. Defendant denies that a warning is required. For purposes of this Consent  
22 Judgment, the parties stipulate that this Court has jurisdiction over the allegations of violations  
23 contained in the Complaint and personal jurisdiction over Defendant as to the acts alleged in the  
24 Complaint, that venue is proper in the County of San Francisco, and that this Court has  
25 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations  
26 contained in the Complaint and of all claims which were or could have been raised by any person  
27 or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising  
28 there from or related to.

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

1.4 For purposes of this Consent Judgment, the term "Covered Products" means Leaded Stained Glass Lamps manufactured, marketed or offered for sale by Defendant.

1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

**2. SETTLEMENT PAYMENT**

2.1 Defendant shall pay \$32,500 to the Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees and costs. Additionally, Defendant shall pay \$15,000 to the Ecological Rights Foundation, and \$2,500 to Californians for Alternatives to Toxics, for use toward reducing exposures to toxic chemicals and other pollutants, and toward increasing consumer, worker and community awareness of health hazards posed by lead and other toxic chemicals. The above described payments shall be forwarded by Defendant so that they are received at least 5 days prior to the hearing date scheduled for approval of this Consent Judgment. If the Consent Judgment is not approved within 120 days of the date scheduled for approval, the above described payments shall be returned and the provisions of this Consent judgment shall become null and void.

2.2 Defendant shall not be required to pay a civil penalty pursuant to Health and Safety Code Section 25249.7(b).

**3. ENTRY OF CONSENT JUDGMENT**

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

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

2             4.1     This Consent Judgment is a final and binding resolution, as to Covered Products,  
3 between MEJF, acting on behalf of itself and (as to those matters raised in the Notice Letter) the  
4 general public, and Defendant of: (i) any violation of Proposition 65 (including but not limited to  
5 the claims made in the Complaint); and (ii) any other statutory or common law claim to the fullest  
6 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any  
7 person or entity against Defendant or its parents, subsidiaries or affiliates, and all of their  
8 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of  
9 doing business, and the successors and assigns of any of them, who may use, maintain, distribute  
10 or sell Covered Products ("Released Entities"), based on its or their exposure of persons to lead or  
11 lead compounds from Covered Products or their failure to provide a clear and reasonable warning  
12 of exposure to such individuals; and (iii) as to alleged exposures to lead or lead compounds from  
13 Covered Products, any other claim based in whole or in part on the facts alleged in the Complaint,  
14 whether based on actions committed by the Released Entities or others. As to alleged exposures  
15 to lead or lead compounds from Covered Products, compliance with the terms of this Consent  
16 Judgment resolves any issue, now and in the future, concerning compliance by Defendant and the  
17 Released Entities, with the requirements of Proposition 65 with respect to Covered Products, and  
18 any alleged resulting exposure. Notwithstanding any other provision in Section 4, no releases on  
19 behalf of the general public shall be construed to extend to claims concerning chemicals listed  
20 under Proposition 65 other than lead and/or lead compounds or to claims not arising out of  
21 allegations in the Notice Letter.

22             4.2     As to alleged exposures to lead or lead compounds from Covered Products,  
23 MEJF, by and on behalf of itself and its respective agents, successors and assigns, waives any and  
24 all rights to institute any form of legal action, and releases all claims against Defendant and the  
25 Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their  
26 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of doing  
27 business, and the successors and assigns of any of them, who may use, maintain, distribute or sell the  
28 Covered Products, whether, under Proposition 65 or otherwise, arising out of or resulting from, or

1 related directly or indirectly to, in whole or in part, the Covered Products, including but not  
2 limited to any exposure to, or failure to warn with respect to, the Covered Products that was or  
3 could have been alleged by Plaintiff against any of the Released Entities based on the facts  
4 alleged in the Complaint, or facts similar to those alleged (referred to collectively in this  
5 paragraph as the "Claims"). In furtherance of the foregoing, as to alleged exposures to lead and  
6 lead compounds from Covered Products, MEJF hereby waives any and all rights and benefits  
7 which it now has, or in the future may have, conferred upon it with respect to the Claims by virtue  
8 of the provisions of section 1542 of the California Civil Code, which provides as follows:

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

13           4.3    MEJF understands and acknowledges that the significance and consequence of  
14 this waiver of California Civil Code section 1542 is that even if MEJF 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, including but not limited to any exposure to, or failure to warn with respect to  
17 exposure to, lead or lead compounds from Covered Products, MEJF will not be able to make any  
18 claim for those damages against Defendant or the Released Entities; provided however, Plaintiff  
19 cannot and expressly does not release any claims for personal injury that could be brought by any  
20 other individual or organization. Furthermore, MEJF acknowledges that it intends these  
21 consequences for any such Claims as may exist as of the date of this release but which MEJF  
22 does not know exist, and which, if known, would materially affect their decision to enter into this  
23 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,  
24 oversight, error, negligence, or any other cause.

## 25    5.    **ENFORCEMENT OF JUDGMENT**

26           5.1    The terms of this Consent Judgment shall be enforced exclusively by the parties  
27 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of

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

3 **6. MODIFICATION OF JUDGMENT**

4 6.1 This Consent Judgment may be modified only upon written agreement of the  
5 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
6 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

7 **7. CLEAR AND REASONABLE WARNINGS**

8 7.1 The requirements of this Section 7 shall apply only to Covered Products that are  
9 offered for sale in California by Defendant after the Effective Date. Defendant shall provide a  
10 warning for all Covered Products that do not meet the reformulation standard set forth in Section  
11 8 below, and that are offered for sale in California.

12 7.2. The warning shall state:

13 **“WARNING: This product contains chemicals, including lead, known to the State of**  
14 **California to cause birth defects and other reproductive harm. *Wash hands after handling*”**  
15 or;

16 **WARNING: Handling this product will expose you to lead, a chemical known to the State of**  
17 **California to cause birth defects and other reproductive harm. *Wash hands after handling.*”**

18 The word “WARNING” shall be in bold text, and the phrase “Wash hands after handling”  
19 shall be in bold italic text.

20 7.3 The warning statements shall be affixed to or printed on the Covered Product itself or  
21 to the Covered Product’s packaging. The warning shall be prominently affixed to or printed on  
22 the Covered Product or packaging, and displayed with such conspicuousness, as compared with  
23 other words, statements, designs, or devices on the Covered Product or its packaging, as to render  
24 it likely to be read and understood by an ordinary individual under customary conditions of  
25 purchase or use.

26 **8. REFORMULATION STANDARD**

27 8.1 (a) The materials used to manufacture the Covered Products shall have no lead as  
28 an intentionally added constituent and; (b) A representative sample of the materials used to  
manufacture the Covered Products shall have been tested for lead, and must have shown lead  
content by weight of less than 0.03% (300 parts per million "300 ppm"), using a test method of

1 sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less  
2 than 300 ppm.

3 **9. RETENTION OF JURISDICTION**

4 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
5 terms this Consent Judgment.

6 **10. AUTHORITY TO STIPULATE**

7 10.1 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 behalf of  
9 the party represented and legally to bind that party.

10 **11. DUTIES LIMITED TO CALIFORNIA**

11 11.1 This Consent Judgment shall have no effect on Covered Products sold by  
12 Defendant outside the State of California.

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

14 12.1 KELC shall serve a copy of this Consent Judgment, signed by all parties, on the  
15 California Attorney General on behalf of the parties so that the Attorney General may review this  
16 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)  
17 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
18 and in the absence of any written objection by the Attorney General to the terms of this Consent  
19 Judgment, the parties may then submit it to the Court for approval.

20 **13. ENTIRE AGREEMENT**

21 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
22 of the parties with respect to the entire subject matter hereof and any and all prior discussions,  
23 negotiations, commitments and understandings related hereto. No representations, oral or  
24 otherwise, express or implied, other than those contained herein have been made by any party  
25 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
26 to exist or to bind any of the parties.

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1 14. GOVERNING LAW

2 14.1 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 15. EXECUTION AND COUNTERPARTS

6 15.1 This Consent Judgment maybe executed in counterparts and by means of  
7 facsimile, which taken together shall be deemed to constitute one document.

8 16. COURT APPROVAL

9 16.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be  
10 of no force or effect, and cannot be used in any proceeding for any purpose.

11 17. NOTICES

12 17.1 Any notices under this Consent Judgment shall be by personal delivery of First  
13 Class Mail.

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

17 If to Mastecraft: Thomas M. Downey  
18 Burnham Brown  
19 P.O. Box 119  
Oakland, CA 94604

20 IT IS SO STIPULATED:

21  
22 Dated: Nov. 18, 2008

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

23  
24 By:   
25 WILLIAM VERICK  
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Dated: 11/12/08

MASTERCRAFT INTERNATIONAL

By: Jerry Stuckland  
Its: President

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JAN 08 2009

**PATRICK J. MAHONEY**

JUDGE OF THE SUPERIOR COURT

**PATRICK J. MAHONEY**