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19 FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

SEP 30 2008

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

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF SAN FRANCISCO

22 MATEEL ENVIRONMENTAL
23 JUSTICE FOUNDATION,,

24 Plaintiff,

25 v.

26 BLACK & DECKER (U.S.), INC., et
27 al.,

28 Defendant.

Case No. 475481

CONSENT JUDGMENT AS TO
DEFENDANT BLACK & DECKER
(U.S.), INC.

1. INTRODUCTION

1.1 On January 10, 2008, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. 475481, against Defendant Black & Decker (U.S.), Inc. ("Black & Decker" or "Defendant"). The Complaint alleges, among other things, that Defendant

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 Black & Decker has knowingly and intentionally exposed persons to
4 couplings and fittings that are made of brass that contains lead and/or lead compounds
5 (hereinafter “leaded brass”), without first providing a clear and reasonable warning to
6 such individuals. Lead and lead compounds are chemicals known to the State of
7 California to cause cancer and birth defects or other reproductive harm.

8 1.2 On October 17, 2007, Mateel sent a 60-Day Notice letter (“Notice Letter”)
9 to Black & Decker, 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 Black & Decker is a business that employs ten or more persons and
12 manufactures, distributes, and/or markets leaded brass air hose couplers and fittings,
13 within the State of California. Some of those products are alleged to contain lead and/or
14 lead compounds. Lead and lead compounds are chemicals known to the State of
15 California to cause cancer, and lead is a chemical known to the State of California to
16 cause reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under
17 specified circumstances, products containing lead and/or lead compounds that are sold or
18 distributed in the State of California are subject to the Proposition 65 warning requirement
19 set forth in Health and Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded
20 brass air hose couplings and fittings manufactured, distributed, sold and/or marketed by
21 Black & Decker for use in California require a warning under Proposition 65.

22 1.4 For purposes of this Consent Judgment, the term “Covered Products” shall
23 be defined as accessories with leaded brass connectors and couplings for use associated
24 with power tools such as air compressors, pressure washers, paint sprayers, and other such
25 tools (excluding any construction power tools subject to the terms of the *People v. Ace*
26 *Hardware, et al.* Consent Judgment (San Francisco Case No. 995893), to the extent such
27 products are distributed and sold within the state of California, and that are manufactured,
28

1 distributed, marketed and/or sold by Black & Decker, regardless of whether they bear
2 Black & Decker labels.

3 **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court
4 has jurisdiction over the allegations of violations contained in the Complaint and personal
5 jurisdiction over Black & Decker as to the acts alleged in the Complaint, that venue is
6 proper in the County of San Francisco and that this Court has jurisdiction to enter this
7 Consent Judgment as a full settlement and resolution of the allegations contained in the
8 Complaint and of all claims that were or could have been raised by any person or entity
9 based in whole or in part, directly or indirectly, on the facts alleged therein or arising
10 therefrom or related thereto.

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

18 **2. SETTLEMENT PAYMENT**

19 **2.1** In settlement of all of the claims referred to in this Consent Judgment
20 against the Settling Defendant, within ten (10) days of entry of this Consent Judgment,
21 Black & Decker shall pay \$ 15,000 to the Klamath Environmental Law Center (“KELC”)
22 to cover Mateel’s attorneys’ fees and costs.

23 **2.2** Within ten (10) business days of notice of entry of this Consent Judgment,
24 Black & Decker shall pay \$10,000 to Beginnings, Inc., a California non-profit tax-
25 exempt organization for work Beginnings, Inc. will perform to reduce the exposure of
26 elementary school children to toxic chemicals and which will be used to teach them how
27 to avoid exposures to toxic chemicals in the future.

1 **3. ENTRY OF CONSENT JUDGMENT**

2 **3.1** The parties hereby request that the Court promptly enter this Consent
3 Judgment. Upon entry of the Consent Judgment, Black & Decker and Mateel waive their
4 respective rights to a hearing or trial on the allegations of the Complaint.

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

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

25 **4.2** As to those alleged exposures to Covered Products raised in the Notice
26 Letter, Mateel, acting on behalf of itself and the general public, and Mateel's agents,
27 successors and assigns, waive all rights to institute any form of legal action, and release
28 all claims against Black & Decker and its parents, subsidiaries or affiliates, predecessors,

1 officers, directors, employees, and all of its customers, manufacturers, distributors,
2 wholesalers, retailers or any other person in the course of doing business, and the
3 successors and assigns of any of them, who may manufacture, use, maintain, distribute or
4 sell the Covered Products, whether under Proposition 65 or otherwise, arising out of or
5 resulting from, or related directly or indirectly to, in whole or in part, the Covered
6 Products and claims identified in Mateel's Notice Letter. In furtherance of the foregoing,
7 Mateel, acting on behalf of itself hereby waives any and all rights and benefits which it
8 now has, or in the future may have, conferred upon it with respect to the Covered Products
9 by virtue of the provisions of Section 1542 of the California Civil Code, which provides
10 as follows:

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

17 Mateel understands and acknowledges that the significance and consequence of this
18 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
19 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
20 Covered Products, it will not be able to make any claim for those damages against Black
21 & Decker, its parents, subsidiaries or affiliates, predecessors, officers, directors,
22 employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or
23 any other person in the course of doing business, and the successors and assigns of any of
24 them, who may manufacture, use, maintain, distribute or sell the Covered Products.
25 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
26 which may exist as of the date of this release but which Mateel does not know exist, and
27 which, if known, would materially affect its decision to enter into this Consent Judgment,
28 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,

1 negligence, or any other cause.

2 **5. ENFORCEMENT OF JUDGMENT**

3 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
4 parties hereto. The parties may, by noticed motion or order to show cause before the
5 Superior Court of San Francisco County, giving the notice required by law, enforce the
6 terms and conditions contained herein.

7 **6. MODIFICATION OF JUDGMENT**

8 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
9 modified only upon written agreement of the parties and upon entry of a modified Consent
10 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
11 entry of a modified Consent Judgment by the Court.

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

13 **7.1** Covered Products shall be deemed to comply with Proposition 65 and be
14 exempt from any Proposition 65 warning requirements if the brass that is part of the
15 Covered Products meets the following criteria: (a) the brass alloy from which the brass
16 fittings are made shall have no lead as an intentionally added constituent; and (b) the brass
17 alloy from which the brass fittings are made shall have a lead content by weight of no
18 more than 0.03% (300 parts per million, or "300 ppm"). Black & Decker may comply
19 with the above requirements by relying on information obtained from its suppliers
20 regarding the content of the brass alloy from which the brass fittings are made, provided
21 such reliance is in good faith. Obtaining test results showing that the lead content is no
22 more than 0.03%, using a method of sufficient sensitivity to establish a limit of
23 quantification (as distinguished from detection) of less than 300 ppm shall be deemed to
24 establish good faith reliance.

25 **7.2** Covered Products that do not meet the warning exemption standard set forth
26 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
27 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply
28 only to: (1) Covered Products that Black & Decker ships for distribution after 270 days

1 after entry of this Consent Judgment (“the Effective Date”); and (2) products
2 manufactured, distributed, marketed, sold or shipped for sale or use inside the State of
3 California.

4 7.3 Black & Decker shall provide Proposition 65 warnings as follows:

5 (a) Defendant Black & Decker shall provide either of the following
6 warning statements:

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

11 or

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

15 The word “WARNING” shall be in bold. The words “Wash hands
16 after handling” shall be in bold and italicized.

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

24 (b) The requirements for product labeling, set forth in subparagraph (a)
25 above are imposed pursuant to the terms of this Consent Judgment. The
26 parties recognize that product labeling is not the exclusive method of
27 providing a warning under Proposition 65 and its implementing regulations.
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(c) If Proposition 65 warnings for lead or lead compounds should no longer be required, Black & Decker shall have no further warning obligations pursuant to this Consent Judgment. In the event that Black & Decker ceases to implement or modifies the warnings required under this Consent Judgment (because of a change in the law or otherwise), Black & Decker shall provide written notice to Mateel (through KELC) of its intent to do so, and of the basis for its intent, no less than thirty (30) days in advance. Mateel shall notify Black & Decker in writing of any objection within thirty (30) days of its receipt of such notice, or such objection by Mateel shall be waived.

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.

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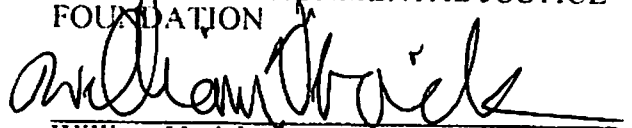
12. COURT APPROVAL

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

DATED: *Aug. 7, 2008*

BLACK & DECKER (U.S.), Inc.


By: Linda H. Biagioni
Its: Vice President

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: **SEP 30 2008**

PETER J. BUSON

JUDGE OF THE SUPERIOR COURT

PETER J. BUSON