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10 Attorneys for Plaintiff MATEEL  
11 ENVIRONMENTAL JUSTICE FOUNDATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 CITY AND COUNTY OF SAN FRANCISCO  
14 UNLIMITED JURISDICTION

16 MATEEL ENVIRONMENTAL JUSTICE  
17 FOUNDATION,

18 Plaintiff,

19 v.

20 THE VOLLRATH COMPANY; and  
21 TOMLINSON INDUSTRIES,

22 Defendants.

Case No. CGC-08-476369

CONSENT JUDGMENT

24 **1. INTRODUCTION**

25 1.1 On or about March 12, 2008, plaintiff Mateel Environmental Justice  
26 Foundation ("MEJF"), provided a 60-day Notice of Violation to the California Attorney  
27 General, the District Attorneys of each county in California, the City Attorneys of every  
28 California city with a population greater than 750,000, and defendant The Vollrath

ENDORSED  
FILED  
San Francisco County Superior Court

DEC 07 2009

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

1 Company, LLC (“Vollrath”), alleging that Vollrath, through its sales in California of  
2 cooking vessels and coffee urns with brass spigots or faucets that contain lead, was in  
3 violation of California Health and Safety Code § 25249.5 et seq., (“Proposition 65”) by  
4 knowingly and intentionally exposing persons to lead, a product known to the State of  
5 California to cause cancer and/or birth defects or other reproductive harm, without first  
6 providing a clear and reasonable warning.

7 1.2 On or about August 13, 2009, MEJF provided a 60-day Notice of Violation to  
8 the California Attorney General, the District Attorneys of each county in California, the  
9 City Attorneys of every California city with a population greater than 750,000, and  
10 Tomlinson Industries (“Tomlinson”), alleging that Tomlinson, through its sales in  
11 California of brass spigots or faucets that contain lead, and are used with cooking vessels  
12 and coffee urns, was in violation of Proposition 65 by knowingly and intentionally exposing  
13 persons to lead, a product known to the State of California to cause cancer and/or birth  
14 defects or other reproductive harm, without first providing a clear and reasonable warning.

15 1.3 On or about June 16, 2008, MEJF, acting in the public interest pursuant to  
16 Health and Safety Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive  
17 Relief in this action in San Francisco County Superior Court, Case No. CGC-08-476369  
18 against Vollrath based on the allegations contained in the March 12, 2008 Notice Letter.  
19 MEJF alleges in the Complaint that Vollrath is a business that employs more than ten  
20 persons and manufactures, distributes and/or markets within the State of California cooking  
21 vessels and coffee urns with brass faucets or spigots that contain lead. Pursuant to  
22 Proposition 65, lead and lead compounds are chemicals known to the State of California to  
23 cause cancer and reproductive toxicity. MEJF further alleges that cooking vessels and  
24 coffee urns with brass faucets or spigots that are manufactured, distributed, sold and/or  
25 marketed by Vollrath for use in California, require a warning under Proposition 65.

26 1.4 On November 5, 2009, MEJF, acting in the public interest pursuant to Health and  
27 Safety Code § 25249.7(d), amended the Complaint to add Tomlinson based on the allegations  
28 contained in the August 13, 2009 Notice Letter.

1           1.5     For purposes of this Consent Judgment only, the Parties stipulate that this  
2 Court has jurisdiction over the allegations of violations contained in the 60 Day Notice  
3 Letters and Complaint and personal jurisdiction over Settling Defendants as to the acts  
4 alleged in the Complaint, that venue is proper in the County of San Francisco and that this  
5 Court has jurisdiction to enter this Consent Judgment as a full and final settlement and  
6 resolution of the allegations contained in the Complaint and of all claims which were or  
7 could have been raised based on the facts alleged therein or arising therefrom.

8           1.6     The Parties enter into this Consent Judgment pursuant to a full and final  
9 settlement of disputed claims between the parties for the purpose of avoiding prolonged  
10 litigation. This Consent Judgment and compliance with it shall not constitute an admission  
11 with respect to any allegation made in the 60 Day Notice Letters or the Complaint, each and  
12 every allegation of which Settling Defendants deny, nor may this Consent Judgment or  
13 compliance with it be used as an admission or evidence of any fact, wrongdoing,  
14 misconduct, culpability or liability on the part of a Settling Defendant.

15     **2.     DEFINITIONS.**

16           2.1     The term "Covered Product" means a faucet, spigot or shank associated with  
17 a faucet or spigot ("Shank"), made, in whole or in part, from brass or other copper alloy  
18 which contains lead manufactured, marketed or sold by Tomlinson, and designed to be used  
19 in a coffee urn or similar vessel designed for dispensing coffee, tea or water; or a faucet,  
20 spigot or Shank used on a stock pot; or a faucet, spigot or Shank used in a Vollrath cooking  
21 vessel or coffee dispensing vessel. The term "Covered Product" also includes products  
22 manufactured, marketed or sold by Vollrath which are used to dispense coffee, tea, or water  
23 or are used to prepare, store or serve soup stocks or cold beverages and which contain an  
24 external spigot, faucet or valve to dispense liquid that is made, in whole or in part, from  
25 brass or other copper alloy which contains lead.

26           2.2     The term "Effective Date" means the date of entry of this Consent Judgment.

27           2.3     The term "Settling Defendants" means Vollrath and Tomlinson collectively  
28 and the term "Settling Defendant" means Vollrath or Tomlinson individually.

1       **3.       INJUNCTIVE RELIEF**

2               3.1       At any time more than 120 days after the Effective Date, each Settling Defendant  
3 agrees that it will not knowingly ship for sale Covered Products for use in California unless the  
4 Covered Product meets the Reformulation Standard of paragraph 3.3.1, or both the Reformulation  
5 Standard of paragraph 3.3.2 and the Warning specification of paragraph 3.4.

6               3.2       Testing Protocol

7                       3.2.1. For each product line or manufacturing specification of a Covered Product,  
8 3 units of the Covered Product shall be selected to be tested. The Covered Products which will be  
9 tested shall be randomly selected using any generally accepted random sampling method such as  
10 International Standards Organization 2589-1 (1989).

11                      3.2.2. The Exposure Solution shall be a national brand of commercially available  
12 ground coffee, brewed according to the coffee company's directions and using commercially  
13 available bottled water. The same coffee, bottled water and the same method of brewing the  
14 coffee shall be used for every test that uses coffee as an Exposure Solution and that is performed  
15 pursuant to this Consent Judgment. Notwithstanding the above, in the event the Covered Product  
16 is a spigot used in a Vollrath cooking vessel or a Vollrath product used to dispense cold  
17 beverages, the Exposure Solution shall be 4 percent acetic acid.

18                      3.2.3. Prior to its use in any test of a Covered Product, the Exposure Solution  
19 shall be analyzed for lead, using the method of analysis (with a detection limit of 0.05  
20 micrograms of lead per liter of solution) used in the test of the Covered Product under paragraph  
21 3.2.7. The analysis shall be conducted using a sample of the size set forth in paragraph 3.2.5 and  
22 by dispensing the Exposure Solution into a container of the type set forth in such paragraph. The  
23 result shall be the Sample Blank Level.

24                      3.2.4. The Covered Product to be tested will be washed in potable water  
25 containing dishwashing detergent, rinsed and dried and will be sanitized before use with a  
26 commercial sanitizing solution per the manufacturer's instructions. If the Covered Product  
27 is an unattached faucet, the Covered Product will be attached to a "test vessel" designed to  
28 accept the Covered Product in a manner similar to a retail version of vessel that

1 incorporates the Covered Product and which has also been washed and sanitized. The test  
2 vessel shall have a lid that will reduce evaporation of the Exposure Solution during  
3 subsequent steps, shall be of a size to contain a minimum of 3 liters of Exposure Solution,  
4 and manufactured from a material (such as 300 series stainless steel) that will not leach lead  
5 into the Exposure Solution during the testing. Notwithstanding the foregoing, any lead that  
6 does leach from the test vessel shall be added to any lead in the Sample Blank Level and  
7 considered to be a part thereof. If the Covered Product includes a vessel, which contains  
8 an external spigot, the vessel it shall be filled to a minimum of 3 liters or its full capacity,  
9 whichever is less.

10 3.2.5. The Covered Product, or if the Covered Product is an unattached  
11 faucet, the test vessel with the Covered Product faucet attached shall be filled with the 3  
12 liters of Exposure Solution. Approximately 250 milliliters of the Exposure Solution shall  
13 be dispensed by opening the valve of the faucet and then closing the valve, and discarded.  
14 The Exposure Solution shall be held in the test vessel or Covered Product for a period of 4  
15 hours, during which time no Exposure Solution is to be dispensed and no ingredients or  
16 contaminants or other Exposure Solution are to be added. If the Covered Product may be  
17 used for holding warm liquids, the Exposure Solution shall be maintained at a temperature  
18 between 185 and 195 degrees Fahrenheit. After the 4 hours, 266 milliliters (9 ounces) are  
19 to be dispensed (drawn) through the faucet by opening the valve. The sample is to be  
20 dispensed into a clean PTFE, polyethylene or HDPE container with an air-tight lid  
21 containing an appropriate preservative, if any.

22 3.2.6. An additional sample of 266 milliliters (9 ounces) is to be dispensed after  
23 1/2 hour and a third is to be dispensed after an additional 1/2 hour.

24 3.2.7. Each Exposure Solution sample shall be analyzed for lead using a method  
25 of analysis which has a detection limit of 0.05 micrograms per liter (0.05 ug/L) or less. The  
26 concentration level for the unit of the Covered Product shall be the level of lead that results from  
27 the analysis of the sample, minus the Sample Blank Level.

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1           3.2.8. A total of 3 units of the Covered Products shall be tested, unless the mean  
2 concentration for any single tested unit of a Covered Product is more than 2 times greater or less  
3 than the mean of the other two units of the Covered Product, in which case, a fourth unit shall be  
4 tested.

5           3.2.9. The average concentration level of lead in the samples dispensed and  
6 analyzed shall be calculated. The result shall be the Lead Concentration Level for the Covered  
7 Product. This level shall apply to all Covered Products which are manufactured to the same  
8 specifications using the same materials as those tested.

9           3.2.10. Settling Defendants may rely upon the representations from its suppliers  
10 that these test standards have been met to the extent such reliance is in good faith.

11           3.3 Reformulation Standards.

12           3.3.1 Any Covered Product for which the Lead Concentration Level  
13 (outcome of test protocol of 3.2) is less than or equal to 2 micrograms per liter may be  
14 shipped for sale in California with no warnings.

15           3.3.2 Any Covered Product for which the Lead Concentration Level  
16 (outcome of test protocol of 3.2) is greater than 2 micrograms per liter but less than 20  
17 micrograms per liter may be shipped for sale in California if the warnings of 3.4 are  
18 provided.

19           3.3.3 Covered Products for which the Lead Concentration Level (outcome of test  
20 protocol of 3.2) is greater than 20 micrograms per liter may not be shipped for sale in California.

21           3.4 Warnings

22           3.4.1 Any warning provided pursuant to 3.3.2 above, shall meet the following  
23 specifications.

24           3.4.2 If the customer is a purchaser of the Covered Product, the warning will be  
25 affixed to the packaging or labeling of each unit of the Covered Product.

26           3.4.3 As an alternative, with regard solely to a Settling Defendant's Commercial  
27 Vessels (defined as all Covered Products that are primarily marketed to commercial enterprises  
28

1 that sell beverages at retail), if the customer is a purchaser of the Covered Product, the following  
2 warning may be provided:

3 a) in letters to be sent by the Settling Defendant to all of the Settling  
4 Defendant's distributors and the Defendant's direct customers identifying the specific products  
5 for which the warning is issued; or

6 b) if the Covered Product is accompanied by an owner's or user's manual,  
7 then in the owner's or user's manual accompanying the Covered Products.

8 3.4.4 The warning shall state:

9 **WARNING:** Consuming food or beverages that have been served from this  
10 vessel will expose you to lead, a chemical known to the State of California to  
11 cause birth defects and other reproductive harm.

12 The text of this warning must be in 12 point type or larger. The word "WARNING" must be in  
13 capitalized and be in bold. The warning must either be on the front or top of the packaging of the  
14 Covered Product, unless the alternative methods as mentioned above are chosen by Defendant for  
15 the Commercial Vessels.

16 3.4.5 In the event the Covered Product is sold as a single item (such as a  
17 replacement part), the label shall be no smaller than 1/2 inch tall x 1-1/2 inch wide and shall  
18 extend to within one-half inch of the edge of the Covered Product.

19 3.4.6 For any entity that sells coffee, tea or other food product dispensed from a  
20 Covered Product that meets the standard of paragraph 3.3.2, if that entity provides a warning to  
21 the consumer purchasing the beverage that is substantially similar to that specified in paragraph  
22 3.4.4, (identifying the chemical as lead a chemical known to cause birth defects) that entity shall  
23 be deemed to be in compliance with the warning requirements of Health and Safety Code Section  
24 25249.6 et seq.

25 4. **ENFORCEMENT OF JUDGMENT**

26 4.1. The terms of this Consent Judgment shall be enforced exclusively by the  
27 Parties hereto.

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1 **5. MONETARY RELIEF**

2 5.1. Settling Defendants shall pay a total of \$220,000 in full and complete  
3 settlement of all monetary claims by MEJF, as follows:

4 5.2 Payment shall be made to Klamath Environmental Law Center ("KELC"), and  
5 sent to the attention of William Verick, Klamath Environmental Law Center, 424 First  
6 Street, Eureka, California 95501, so as to arrive on or before 5 days before any hearing of  
7 any motion for approval of the settlement. If the payments have not been so received,  
8 MEJF may continue or withdraw any motion to approve this agreement, and this Consent  
9 Judgment shall be deemed of no effect. If within 120 days, this Consent Judgment has not  
10 been approved by the Court, these payments will be returned.

11 5.3 Upon approval by the Court of this Consent Judgment, the payments shall  
12 subsequently and within a commercially reasonable time be allocated by KELC as follows:

13 5.3.1 The sum of \$10,000 shall be paid in civil penalties, payable as follows:  
14 75% of the penalty shall be made payable to the Office of Environmental Health Hazard  
15 Assessment, with the remaining 25% payable to Mateel Environmental Justice Foundation in  
16 accordance with California Health and Safety Code § 25192.

17 5.3.2 The sum of \$100,000 shall be paid as a charitable contribution as  
18 follows: \$50,000 to Ecological Rights Foundation, and \$50,000 to Californians For  
19 Alternatives to Toxics. These payments shall be used for reducing exposures to toxic  
20 chemicals and other pollutants, and for increasing consumer, worker and community  
21 awareness of health hazards posed by lead and other toxic chemicals. The Parties agree and  
22 acknowledge that the charitable contributions made pursuant to this Section shall not be  
23 construed as a credit against the personal claims of absent third parties for restitution  
24 against the defendant.

25 5.3.3 The sum of \$110,000, shall be retained by Klamath Environmental  
26 Law Center, as payment in part for the attorneys fees and costs incurred in this action.



1     **6. CLAIMS COVERED AND RELEASE**

2           6.1     As to lead exposures alleged to be caused by Covered Products sold by  
3     Settling Defendants prior to the Effective Date, this Consent Judgment is a final and binding  
4     resolution between MEJF, acting on behalf of itself and as to those matters raised in the 60  
5     Day Notice Letters in the public interest, and Settling Defendants and their parents,  
6     subsidiaries, and affiliates as well as their customers, distributors, wholesalers, retailers, or  
7     any other person in the course of doing business, and the successors and assigns of any of  
8     them, who may have used, maintained, distributed or sold or use, maintain, distribute or sell  
9     Covered Products or other products that include as components Covered Products  
10    ("Releasees") of: (i) as to lead exposures from Covered Products, any violation of  
11    Proposition 65 (including but not limited to the claims made in the Complaints and the  
12    Notices); and (ii) any other claim that could have been asserted by MEJF in the public  
13    interest against the Releasees, based on exposure of persons to lead from Covered Products  
14    or failure to provide a clear and reasonable warning of such exposure, whether based on  
15    actions committed by the Releasees or others. Further, as part of entry of this Judgment, the  
16    Court finds that compliance with the terms of this Consent Judgment meet the warning  
17    requirements of Proposition 65.

18           6.1.1. This Consent Judgment contemplates that faucets and spigots will be sold  
19    by themselves to be installed onto coffee urns and vessels designed to dispense coffee, tea or hot  
20    water by third party manufacturers and that these vessels will then be sold to end users such as  
21    restaurants and institutions which will use them to sell beverages to the public. Collectively these  
22    third party manufacturers and end users shall be referred to as "Downstream Entities." To the  
23    extent any Downstream Entity fails to convey to its customers a warning required by paragraph  
24    3.3.2 that is substantially similar, to that specified in paragraph 3.4 (identifying the chemical as  
25    lead a chemical known to cause birth defects), or sells any Covered Product (sold to such  
26    Downstream Entities by Tomlinson at any time more than 120 days after the Effective Date) in  
27    California that is subject to the prohibition of paragraph 3.3.3, then that Downstream Entity shall  
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1 not benefit from any release or other protection that would otherwise be provided pursuant to this  
2 Consent Judgment.

3 6.2 In furtherance of the Parties' intention that this Consent Judgment shall be  
4 effective as a full and final accord, satisfaction, and release as to the Releasees of and from  
5 any and all matters released hereunder, MEJF acknowledges familiarity and understanding  
6 of California Civil Code § 1542, which provides as follows:

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

12 To the extent that Section 1542 or any similar law or statute may otherwise apply to this  
13 Consent Judgment, MEJF hereby waives and relinquishes as to all matters released  
14 hereunder all rights and benefits it has, or may have, under Section 1542 or the laws of any  
15 other jurisdiction to the same or similar effect. MEJF further acknowledges that,  
16 subsequent to the execution of this Consent Judgment, it may discover Claims that were  
17 unsuspected at the time this Consent Judgment was executed, and which might have  
18 materially affected its decision to execute this Consent Judgment, but nevertheless MEJF  
19 releases the Releasees from any and all such Claims, whether known or unknown, suspected  
20 or unsuspected, at the time of the execution of this Consent Judgment.

21 6.3 The provisions of this Section 6 shall not apply to or affect any claims that  
22 may be brought by MEJF or a Settling Defendant against a Supplier that is not a Settling  
23 Defendant, unless such Supplier is a Defendant Releasee.

## 24 7. APPLICATION OF JUDGMENT

25 7.1 The obligations of this Consent Judgment shall apply to and be binding upon  
26 all plaintiffs acting in the public interest pursuant to Health and Safety Code § 25249.7, and  
27 Settling Defendants, and their successors or assigns. The terms contained in this Consent  
28 Judgment shall be submitted to the California Attorney General's office prior to the entry of  
this Consent Judgment by the Court.

1           7.2    This Consent Judgment shall have no effect on Covered Products sold or  
2 offered for sale by Settling Defendants outside the State of California.

3    **8.    MODIFICATION OF JUDGMENT**

4           8.1    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  
6 motion of any party as provided by law and upon entry of a modified Consent Judgment by  
7 the Court.

8           8.2    If the Attorney General of the State of California or Plaintiff permit any sale  
9 with warnings, or alternative reformulation standard and/or test protocol for lead in  
10 products similar to the Covered Products by way of settlement or compromise with any  
11 other person in the course of doing business, or any other entity, or if a warning scheme or  
12 reformulation standard and/or test protocol for lead in Covered Products is incorporated by  
13 Plaintiff in any final judgment as to any other person in the course of doing business, or any  
14 other entity, then Settling Defendants shall be entitled to apply any such warning scheme,  
15 reformulation standard and/or test protocol to Covered Products.

16          8.4    Settling Defendants shall be entitled to a modification to this Consent  
17 Judgment to establish a reformulation standard and/or test protocol for lead content in  
18 Covered Products consistent with any "safe use determination" regarding lead content in  
19 Covered Products issued by the California Environmental Protection Agency Office of  
20 Environmental Health Hazard Assessment, pursuant to 27 Cal. Code Regs. § 25204 or any  
21 successor regulation.

22    **9.    COURT APPROVAL**

23          9.1    If the Court does not approve this Consent Judgment, it shall be of no force or  
24 effect, and cannot be used in any proceeding for any purpose.

25    **10. RETENTION OF JURISDICTION**

26          10.1. This Court shall retain jurisdiction of this matter to implement this Consent  
27 Judgment.

28

1 **11. GOVERNING LAW**

2 11.1 The laws of the State of California shall govern the validity, construction and  
3 performance of this Consent Judgment.

4 **12. NOTICES**

5 12.1 When any Party is entitled to receive any notice under this Consent Judgment,  
6 the notice or report shall be sent by U.S. mail or overnight courier service to the following  
7 persons:

8  
9 If to MEJF: William Verick, Esq.  
10 Klamath Environmental Law Center  
424 First Street  
Eureka, CA 95501

11 If to Vollrath: Steve Heun  
12 Chief Financial Officer  
Steven Gedman  
13 Vice President, Supply Chain & Logistics  
The Vollrath Company, LLC  
14 1236 N. 18th Street  
15 Sheyboygan, WI 53081

16 With a copy to:  
17 Michael E. Delehunt  
Foley & Lardner LLP  
18 One Maritime Plaza, 6<sup>th</sup> Floor  
San Francisco, CA 94111

19 If to Tomlinson: Louis J. Castro  
20 Tomlinson Industries  
13700 Broadway Avenue  
21 Cleveland, OH 44125

22 With a copy to:  
23 John F. Cermak, Jr.  
Baker & Hostetler LLP  
24 12100 Wilshire Blvd., Suite 1500  
25 Los Angeles, CA 90025  
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1           12.2 Any Party may modify the person and address to whom notice is to be sent by  
2 sending each other Party notice in accordance with this Section.

3 **13. AUTHORITY TO STIPULATE**

4           13.1 Each signatory to this Consent Judgment certifies that he or she is fully  
5 authorized by the party he or she represents to enter into this Consent Judgment and to  
6 execute it on behalf of the party represented and legally to bind that party.

7 **14. ENTIRE AGREEMENT**

8           14.1 This Consent Judgment contains the sole and entire, agreement and  
9 understanding of the parties with respect to the entire subject matter hereof, and any and all  
10 prior discussions, negotiations, commitments and understandings related hereto. No  
11 representations, oral or otherwise, express or implied, other than those contained herein  
12 have been made by any party hereto. No other agreements not specifically referred to  
13 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

14 **15. EXECUTION IN COUNTERPARTS**

15           15.1 This Consent Judgment may be executed in counterparts and/or by facsimile  
16 or portable document format (pdf), which taken together shall be deemed to constitute one  
17 original document.

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IT IS SO STIPULATED:

Dated: \_\_, 2009

**MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION**

By \_\_\_\_\_


Dated: \_\_, 2009

**THE VOLLRATH COMPANY, LLC**

By \_\_\_\_\_

Dated: November 20, 2009

**TOMLINSON INDUSTRIES**

  
By: Louis J. Castro  
Executive Vice President

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date:

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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IT IS SO STIPULATED:

Dated: 12/5, 2009

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

By *William J. Bueh*

Dated: 12/2, 2009

THE VOLLRATH COMPANY, LLC

By *Steve R. Yem*

Dated:     , 2009

TOMLINSON INDUSTRIES

By \_\_\_\_\_

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date:

**DEC 07 2009**

**PAUL H. ALVARADO**

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT