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12 Attorneys for Plaintiff Mateel Environmental
13 Justice Foundation

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

16 MATEEL ENVIRONMENTAL JUSTICE
17 FOUNDATION,

18 Plaintiff,

19 vs.

20 L.D. KICHLER COMPANY,

21 Defendant.
22

Case No.: CGC-08-480590

[PROPOSED] CONSENT JUDGMENT

23 **1. INTRODUCTION**

24 1.1 On November 8, 2007, the MATEEL ENVIRONMENTAL JUSTICE
25 FOUNDATION ("Plaintiff" or "MEJF") acting on behalf of itself and the general public, filed a
26 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court.
27 Case No. CGC-08-480590, against defendant L.D. Kichler Company ("Defendant"). The
28

ENDORSED
FILED
San Francisco County Superior Court

JAN 22 2010

GORDON PARKER, Clerk
BY: ERICKA LARNAUTI
Deputy Clerk

1 Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking
2 Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq.
3 (Proposition 65) by failing to give clear and reasonable warnings to those residents of California
4 who handle and use stained glass lamps that utilize lead solder, lead came and other leaded parts,
5 (hereinafter "Leaded Stained Glass Lamps"), that handling and use of these products causes those
6 residents to be exposed to lead and/or lead compounds. The Complaint was based upon a 60-Day
7 Notice letter, dated March 12, 2008, sent by MEJF to Defendant, the California Attorney General,
8 all District Attorneys, and all City Attorneys with populations exceeding 750,000 ("Notice
9 Letter").

10 1.2 The Complaint further alleges that Defendant is a business that employs more than
11 ten persons, and manufactures, markets or sells Leaded Stained Glass Lamps that allegedly
12 contain lead and/or lead compounds. Pursuant to Health and Safety Code Section 25249.8, lead
13 and lead compounds are known to the State of California to cause cancer and reproductive
14 toxicity. Plaintiff MEJF alleges that Leaded Stained Glass Lamps that are marketed or sold by
15 Defendant for use in California requires a Proposition 65 warning pursuant to Health and Safety
16 Code Section 25249.6. Defendant denies that a warning is required. For purposes of this Consent
17 Judgment, the parties stipulate that this Court has jurisdiction over the allegations of violations
18 contained in the Complaint and personal jurisdiction over Defendant as to the acts alleged in the
19 Complaint, that venue is proper in the County of San Francisco, and that this Court has
20 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations
21 contained in the Complaint and of all claims which were or could have been raised by any person
22 or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising
23 there from or related to.

24 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
25 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
26 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
27 not constitute an admission with respect to any material allegation of the Complaint, each and
28 every allegation of which Defendant denies, nor may this Consent Judgment or compliance with

1 it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
2 Defendant.

3 1.4 For purposes of this Consent Judgment, the term "Covered Products" means
4 stained glass lamps that utilize lead solder, lead came and other leaded parts manufactured,
5 marketed or offered for sale by Defendant.

6 1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

7 **2. SETTLEMENT PAYMENT**

8 2.1 Defendant shall pay \$25,000 to the Klamath Environmental Law Center ("KELC")
9 to cover Plaintiff's attorneys' fees and costs. Additionally, Defendant shall pay \$3,750 to the
10 Ecological Rights Foundation, and \$3,750 to Californians for Alternatives to Toxics, for use
11 toward reducing exposures to toxic chemicals and other pollutants, and toward increasing
12 consumer, worker and community awareness of health hazards posed by lead and other toxic
13 chemicals. The above described payments shall be forwarded by Defendant so that they are
14 received at least 5 days prior to the hearing date scheduled for approval of this Consent Judgment.
15 If the Consent Judgment is not approved within 120 days of the date scheduled for approval, the
16 above described payments shall be returned and the provisions of this Consent judgment shall
17 become null and void.

18 2.2 Defendant shall not be required to pay a civil penalty pursuant to Health and
19 Safety Code Section 25249.7(b).

20 **3. ENTRY OF CONSENT JUDGMENT**

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

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

25 4.1 This Consent Judgment is a final and binding resolution, as to Covered Products,
26 between MEJF, acting on behalf of itself, its parents, subsidiaries, affiliates, officers, directors,
27 employees and agents and (as to those matters raised in the Notice Letter) the general public, and
28 Defendant of: (i) any violation of Proposition 65 (including but not limited to the claims made in

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

18 4.2 As to alleged exposures to lead or lead compounds from Covered Products, MEJF,
19 by and on behalf of itself and its respective agents, successors and assigns, waives any and all
20 rights to institute any form of legal action, and releases all claims against Defendant and the
21 Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their
22 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of
23 doing business, and the successors and assigns of any of them, who may use, maintain, distribute
24 or sell the Covered Products, whether, under Proposition 65 or otherwise, arising out of or
25 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
26 including but not limited to any exposure to, or failure to warn with respect to, the Covered
27 Products that was or could have been alleged by Plaintiff against any of the Released Entities
28 based on the facts alleged in the Complaint, or facts similar to those alleged (referred to

1 collectively in this paragraph as the "Claims"). In furtherance of the foregoing, as to alleged
2 exposures to lead and lead compounds from Covered Products, MEJF hereby waives any and all
3 rights and benefits which it now has, or in the future may have, conferred upon it with respect to
4 the Claims by virtue of the provisions of section 1542 of the California Civil Code, which
5 provides as follows:

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

12 4.3 MEJF understands and acknowledges that the significance and consequence of this
13 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising
14 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
15 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
16 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for
17 those damages against Defendant or the Released Entities; provided however, Plaintiff cannot and
18 expressly does not release any claims for personal injury that could be brought by any other
19 individual or organization. Furthermore, MEJF acknowledges that it intends these consequences
20 for any such Claims as may exist as of the date of this release but which MEJF does not know
21 exist, and which, if known, would materially affect their decision to enter into this Consent
22 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,
23 error, negligence, or any other cause.

24 5. ENFORCEMENT OF JUDGMENT

25 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
26 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
27 San Francisco County, giving the notice required by law, enforce the terms and conditions
28 contained herein.

6. MODIFICATION OF JUDGMENT

6.1 This Consent Judgment may be modified only upon written agreement of the

1 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
2 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

3 **7. CLEAR AND REASONABLE WARNINGS**

4 7.1 The requirements of this Section 7 shall apply only to Covered Products that are
5 offered for sale in California by Defendant after the Effective Date. Defendant shall provide a
6 warning for all Covered Products that do not meet the reformulation standard set forth in
7 Section 8 below, and that are offered for sale in California.

8 7.2 The warning shall state:

9 “**WARNING:** This product contains chemicals, including lead, known to
10 the State of California to cause birth defects and other reproductive harm.

11 *Wash hands after handling*” or;

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

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

17 7.3 The warning statements shall be affixed to or printed on the instructions which
18 accompany the Covered Product on a going-forward basis, as the instructions for specific
19 products are changed or revised by Defendant from time to time in the normal course of its
20 business. The warning shall be prominently affixed to or printed on the instructions and displayed
21 with such conspicuousness, as compared with other words, statements, designs, or devices on the
22 instructions, as to render it likely to be read and understood by an ordinary individual under
23 customary conditions of purchase or use.

24 **8. REFORMULATION STANDARD**

25 A representative sample of the materials used to manufacture the Covered Products shall
26 have been tested for lead, and must have shown lead content by weight of less than 0.06% (600
27 parts per million “600 ppm”), using a test method of sufficient sensitivity to establish a limit of
28 quantification (as distinguished from detection) of less than 600 ppm.

1 **9. RETENTION OF JURISDICTION**

2 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
3 terms this Consent Judgment.

4 **10. AUTHORITY TO STIPULATE**

5 10.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
6 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
7 the party represented and legally to bind that party.

8 **11. DUTIES LIMITED TO CALIFORNIA**

9 11.1 This Consent Judgment shall have no effect on Covered Products sold by
10 Defendant outside the State of California.

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

12 12.1 KELC shall serve a copy of this Consent Judgment, signed by all parties, on the
13 California Attorney General on behalf of the parties so that the Attorney General may review this
14 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
15 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
16 and in the absence of any written objection by the Attorney General to the terms of this Consent
17 Judgment, the parties may then submit it to the Court for approval.

18 **13. ENTIRE AGREEMENT**

19 13.1 This Consent Judgment contains the sole and entire agreement and understanding
20 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
21 negotiations, commitments and understandings related hereto. No representations, oral or
22 otherwise, express or implied, other than those contained herein have been made by any party
23 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
24 to exist or to bind any of the parties.

25 **14. GOVERNING LAW**

26 14.1 The validity, construction and performance of this Consent Judgment shall be
27 governed by the laws of the State of California, without reference to any conflicts of law
28 provisions of California law.

1 **15. EXECUTION AND COUNTERPARTS**

2 15.1 This Consent Judgment maybe executed in counterparts and by means of
3 facsimile, which taken together shall be deemed to constitute one document.

4 **16. COURT APPROVAL**

5 16.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of
6 no force or effect, and cannot be used in any proceeding for any purpose.

7 **17. NOTICES**

8 17.1 Any notices under this Consent Judgment shall be by personal delivery of First
9 Class Mail.

10 If to MEJF: William Verick, Esq.
11 Klamath Environmental Law Center
12 424 First Street
Eureka, CA 95501

13 If to L.D. Kichler Co.: Michael L. Wachtell
14 Michael B. Fisher
15 Buchalter Nemer
16 1000 Wilshire Blvd.
Los Angeles, CA 90017-2457

17 IT IS SO STIPULATED:

18 Dated: _____

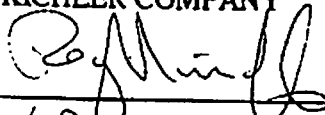
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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21 By: _____
WILLIAM VERICK

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Dated: 1/19/2010

L.D. KICHLER COMPANY

By: 

Its: V.P.O.

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JAN 22 2010

PAUL H. ALVARADO
JUDGE OF THE SUPERIOR COURT