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9 MATEEL ENVIRONMENTAL JUSTICE  
10 FOUNDATION

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF SAN FRANCISCO**

13 MATEEL ENVIRONMENTAL  
14 JUSTICE FOUNDATION,

15 Plaintiff,

16 v.

17 AMERICAN LOCK COMPANY;  
18 CONAIR CORPORATION; J&B  
19 IMPORTERS, INC. DBA ROYCE  
UNION; PELICAN PRODUCTS, INC.;  
TRIDENT DIVING EQUIPMENT

20 Defendants.

Case No. CGC 09-484287

**CONSENT JUDGMENT AS TO  
DEFENDANT PELICAN PRODUCTS,  
INC.**

21 **1. INTRODUCTION**

22 1.1. On June 26, 2009, the MATEEL ENVIRONMENTAL JUSTICE  
23 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a  
24 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco County  
25 Superior Court, Case No.CGC-09-484287, against Defendants American Lock Company;  
26 Conair Corporation; J&B Importers, Inc. dba Royce Union; Pelican Products, Inc.; Trident  
27 Diving Equipment (collectively, "Defendants"). The Complaint alleges, among other things,  
28

ENDORSED  
FILED  
San Francisco County Superior Court

SEP 17 2009

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

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

8 1.2. On September 17, 2008, a 60-Day Notice letter (“Notice Letter”) was sent by  
9 Mateel to Pelican Products, Inc., the California Attorney General, all California District  
10 Attorneys, and all City Attorneys of every California city with populations exceeding  
11 750,000.

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

22 1.4. For purposes of this Consent Judgment, the term “Covered Products” shall be  
23 defined as brass padlocks containing lead and/or lead compounds, such as 1506 PeliLock  
24 UPC Code 019428020118, to the extent such products are distributed and sold within the  
25 state of California, that are manufactured, distributed, marketed and/or sold by Pelican  
26 Products, Inc., regardless of whether they bear Pelican Products, Inc. labels.

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

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

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

16       **2.       SETTLEMENT PAYMENT**

17       **2.1.** In settlement of all of the claims referred to in this Consent Judgment against  
18 Pelican Products, Inc., Pelican Products, Inc. shall, 5 days or more prior to the hearing date  
19 scheduled for the motion to approve this consent judgment, pay via check an amount in  
20 monetary relief totaling \$20,000 (twenty thousand dollars), which shall be made payable as  
21 follows: (i) \$15,000 ( Fifteen thousand dollars) which shall be made payable via check to the  
22 Klamath Environmental Law Center (“KELC”) for attorneys fees and costs incurred by  
23 KELC on behalf of Plaintiff in investigating this matter and negotiating this Consent  
24 Judgment on behalf of itself and the general public, (ii) \$5,000 (Five thousand dollars) which  
25 shall be made payable via check to the Ecological Rights Foundation. The payments  
26 described above shall be delivered to William Verick, 424 First Street, Eureka, CA 95501. If  
27 payment has not been received as provided in this paragraph, Plaintiff may withdraw any  
28 motion to approve and enter the agreement and the agreement shall become null and void.

1 Plaintiff shall not deposit or cash these checks until the Court has approved and entered the  
2 Consent Judgment. If this Consent Judgment has not been approved and entered by the Court  
3 within 120 days of the execution of the agreement by the parties, the checks described above  
4 shall be promptly returned to the Pelican Products, Inc., and the terms of this agreement shall  
5 be null and void.

6       **2.2.** MEJF and KELC represent and warrant that the organization identified in  
7 Paragraph 2.1(ii) above is a tax exempt, section 501(c)(3) non-profit organization and that  
8 funds distributed to this organization pursuant to this Consent Judgment may only be spent to  
9 reduce harm from toxic chemicals, or to increase consumer, worker and community  
10 awareness of health hazards posed by lead and other toxic chemicals. Except as specifically  
11 provided in this Consent Judgment, each side shall bear its own costs and attorney's fees.

12       **3.       ENTRY OF CONSENT JUDGMENT**

13       **3.1.** The parties hereby request that the Court promptly enter this Consent  
14 Judgment. Upon entry of the Consent Judgment, Pelican Products, Inc. and Mateel waive  
15 their respective rights to a hearing or trial on the allegations of the Complaint.

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

17       **4.1.** This Consent Judgment is a final and binding resolution between Mateel,  
18 acting on behalf of itself and, with respect to matters raised in the 60 Day Notice Letter, the  
19 general public, and Pelican Products, Inc., of: (i) any violation of Proposition 65 with respect  
20 to the Covered Products, and (ii) any other statutory or common law claim that could have  
21 been asserted by any person or entity against Pelican Products, Inc. based upon, arising out  
22 of or relating to Pelican Products, Inc.'s compliance with Proposition 65, or regulations  
23 promulgated thereunder, with respect to the Covered Products. As to alleged exposures to  
24 Covered Products, compliance with the terms of this Consent Judgment resolves any issue,  
25 now and in the future, concerning compliance by Pelican Products, Inc. and its parents,  
26 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their  
27 manufacturers, customers, distributors, wholesalers, retailers or any other person in the  
28 course of doing business, and the successors and assigns of any of these who may

1 manufacture, use, maintain, distribute, market or sell Covered Products, with the  
2 requirements of Proposition 65.

3 4.2. As to alleged exposures to Covered Products that predate the Effective Date of  
4 this Consent Judgment, Mateel, and its agents, successors and assigns, waive all rights to  
5 institute any form of legal action, and release all claims against Pelican Products, Inc. and its  
6 parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its  
7 customers, manufacturers, distributors, wholesalers, retailers or any other person in the  
8 course of doing business, and the successors and assigns of any of them, who may  
9 manufacture, use, maintain, distribute or sell the Covered Products, whether under  
10 Proposition 65 or otherwise, arising out of or resulting from, or related directly or indirectly  
11 to, in whole or in part, the Covered Products and claims identified in Mateel's Notice Letter.  
12 In furtherance of the foregoing, Mateel, acting on behalf of itself and the general public,  
13 hereby waives any and all rights and benefits which it now has, or in the future may have,  
14 conferred upon it with respect to the Covered Products by virtue of the provisions of Section  
15 1542 of the California Civil Code, which provides as follows:

16 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
17 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT  
18 TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING  
19 THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
20 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
21 DEBTOR."

22 Mateel understands and acknowledges that the significance and consequence of this waiver  
23 of California Civil Code Section 1542 is that even if Mateel or any member of the general  
24 public has purchased any of the covered Products or used them in any way, or suffers future  
25 damages arising out of or resulting from, or related directly or indirectly to, in whole or in  
26 part, the Covered Products, it will not be able to make any claim for penalties under Prop. 65  
27 or any other claims against Pelican Products, Inc., its parents, subsidiaries or affiliates,  
28 predecessors, officers, directors, employees, and all of its customers, manufacturers,

1 distributors, wholesalers, retailers or any other person in the course of doing business, and  
2 the successors and assigns of any of them, who may manufacture, use, maintain, distribute or  
3 sell the Covered Products. Furthermore, Mateel acknowledges that it intends these  
4 consequences for any such claims which may exist as of the date of this release but which  
5 Mateel does not know exist, and which, if known, would materially affect its decision to  
6 enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of  
7 ignorance, oversight, error, negligence, or any other cause.

8           **5. ENFORCEMENT OF JUDGMENT**

9           **5.1.** The terms of this Consent Judgment shall be enforced exclusively by the  
10 parties hereto. The parties may, by noticed motion or order to show cause before the Superior  
11 Court of San Francisco County, giving the notice required by law, enforce the terms and  
12 conditions contained herein.

13           **6. MODIFICATION OF JUDGMENT**

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

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

19           **7.1.** As to any Covered Products for which the normally intended function and  
20 manner of use of the product involves the gripping or holding of the product by gripping or  
21 holding a component made from leaded brass where such brass comes into contact with the  
22 user, a warning as described in paragraph 7.2 below shall be provided. The warning  
23 requirements set forth in paragraph 7.2 shall apply only to Covered Products that Pelican  
24 Products, Inc. ships for distribution after 90 days after entry of this Consent Judgment (“the  
25 Effective Date”).

26           **7.2.** Pelican Products, Inc. shall provide Proposition 65 warnings as follows:

- 27           (a) Defendant Pelican Products, Inc. shall provide either of the following  
28 warning statements:

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

5                           or

6           **WARNING:** This product contains chemicals, including lead, that are known  
7 to the State of California to cause cancer and birth defects or other  
8 reproductive harm. *Wash hands after handling.*

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

11                          Pelican Products, Inc. shall provide such warning with the unit package  
12 of the Covered Products. Such warning shall be prominently affixed to or  
13 printed on each Covered Product’s label or package.

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

19           (c)    If Proposition 65 warnings for lead or lead compounds should no longer  
20 be required, Pelican Products, Inc. shall have no further warning  
21 obligations pursuant to this Consent Judgment.

22           **8.    AUTHORITY TO STIPULATE**

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

26           **9.    RETENTION OF JURISDICTION**

27                          This Court shall retain jurisdiction of this matter to implement the Consent  
28 Judgment.

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**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.

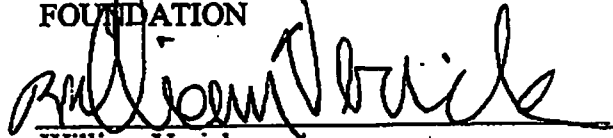
**12. COURT APPROVAL**

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.

**IT IS SO STIPULATED:**

DATED:


MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION



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

DATED:

PELICAN PRODUCTS, INC.

  
By: John K. Padian  
Its: Chief Operating Officer

IT IS SO ORDERED, ADJUDGED AND DECREED:

PETER J. BUSCH

DATED:

SEP 17 2009

JUDGE OF THE SUPERIOR COURT