

ENDORSED
FILED
San Francisco County Superior Court

NOV 30 2009

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SAN FRANCISCO**

19 MATEEL ENVIRONMENTAL
20 JUSTICE FOUNDATION,

21 Plaintiff,

22 v.

23 AMERICAN LOCK COMPANY;
24 CONAIR CORPORATION; J&B
25 IMPORTERS, INC. DBA ROYCE
26 UNION; PELICAN PRODUCTS, INC.;
27 TRIDENT DIVING EQUIPMENT

28 Defendants.

Case No. CGC 09-484287

**CONSENT JUDGMENT AS TO
DEFENDANT CONAIR
CORPORATION, INC.**

1. **INTRODUCTION**

1.1. On June 26, 2009, 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 County Superior Court, Case No. CGC-09-484287, against Defendants American Lock Company; Conair Corporation; J&B Importers, Inc. dba Royce Union; Pelican Products, Inc.; Trident Diving Equipment (collectively, "Defendants"). The Complaint alleges, among other things,

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 Conair Corporation has knowingly and intentionally exposed persons to
4 padlocks made of brass containing lead and/or lead compounds (hereinafter “leaded brass”),
5 which are chemicals known to the State of California to cause cancer and birth defects or
6 other reproductive harm, without first providing a clear and reasonable warning to such
7 individuals.

8 1.2. On September 17, 2008, a 60-Day Notice letter (“Notice Letter”) was sent by
9 Mateel to Conair Corporation, 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. Conair Corporation 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 Conair
21 Corporation 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 all models and types of brass padlocks, including combination locks, containing
24 lead and/or lead compounds to the extent such products are distributed and sold within the
25 state of California, that are manufactured, distributed, marketed and/or sold by Conair
26 Corporation, regardless of whether they bear Conair Corporation 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 Conair Corporation 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 Conair
8 Corporation. The parties enter into this Consent Judgment pursuant to a full and final
9 settlement of any and all claims between the parties for the purpose of avoiding prolonged
10 litigation. This Consent Judgment shall not constitute an admission with respect to any
11 material allegation of the Notice Letter or the Complaint, each and every allegation of which
12 Conair Corporation denies, nor may this Consent Judgment or compliance with it be used as
13 evidence of any wrongdoing, misconduct, culpability or liability on the part of Conair
14 Corporation or its customers, distributors, wholesalers or retailers, or any other Defendant.

15 **2. SETTLEMENT PAYMENT**

16 **2.1.** In settlement of all of the claims referred to in this Consent Judgment against
17 Conair Corporation, Conair Corporation shall pay, 5 days or more prior to the hearing date
18 scheduled for the motion to approve this consent judgment, an amount in monetary relief
19 totaling \$35,000 (forty thousand dollars), which shall be made payable as follows: (i)
20 \$20,000 (Twenty thousand dollars) which shall be made payable to the Klamath
21 Environmental Law Center (“KELC”) for attorneys fees and costs incurred by KELC on
22 behalf of Plaintiff in investigating this matter and negotiating this Consent Judgment on
23 behalf of itself and the general public, (ii) \$7,500 (Seven thousand five hundred dollars)
24 which shall be made payable to the Ecological Rights Foundation, (iii) \$7,500 (Seven
25 thousand five hundred) which shall be made payable to Californians for Alternatives to
26 Toxics. The payments described above shall be delivered to William Verick, 424 First Street,
27 Eureka, CA 95501. If payment has not been received as provided in this paragraph, Plaintiff
28 may withdraw any motion to approve and enter the agreement and the agreement shall

1 become null and void. If this Consent Judgment has not been approved and entered by the
2 Court within 120 days of the execution of the agreement by the parties, the payments
3 described above shall be promptly returned to the Conair Corporation, and the terms of this
4 agreement shall be null and void.

5 **2.2.** MEJF and KELC represent and warrant that the organizations identified in
6 Paragraph 2.1(ii) above are tax exempt, section 501(c)(3) non-profit organizations and that
7 funds distributed to these organizations pursuant to this Consent Judgment may only be spent
8 to reduce harm from toxic chemicals, or to increase consumer, worker and community
9 awareness of health hazards posed by lead and other toxic chemicals. Except as specifically
10 provided in this Consent Judgment, each side shall bear its own costs and attorney's fees.

11 **3. ENTRY OF CONSENT JUDGMENT**

12 **3.1.** The parties hereby request that the Court promptly enter this Consent
13 Judgment. Upon entry of the Consent Judgment, Conair Corporation and Mateel waive their
14 respective rights to a hearing or trial on the allegations of the Complaint.

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

16 **4.1.** This Consent Judgment is a final and binding resolution between Mateel,
17 acting on behalf of itself and, with respect to matters raised in the 60 Day Notice Letter, the
18 general public, and Conair Corporation, of: (i) any violation of Proposition 65 with respect to
19 the Covered Products, and (ii) any other statutory or common law claim that could have been
20 asserted by any person or entity against Conair Corporation based upon, arising out of or
21 relating to Conair Corporation's compliance with Proposition 65, or regulations promulgated
22 thereunder, with respect to the Covered Products. As to alleged exposures to Covered
23 Products, compliance with the terms of this Consent Judgment resolves any issue, now and
24 in the future, concerning compliance by Conair Corporation and its parents, subsidiaries or
25 affiliates, predecessors, officers, directors, employees, and all of their manufacturers,
26 customers, distributors, wholesalers, retailers or any other person in the course of doing
27 business, and the successors and assigns of any of these who may manufacture, use,
28 maintain, distribute, market or sell Covered Products, with the requirements of Proposition

1 65.

2 4.2. As to alleged exposures to Covered Products manufactured by Conair prior to
3 January 1, 2009, Mateel, and its agents, successors and assigns, waive all rights to institute
4 any form of legal action, and release all claims against Conair Corporation and its parents,
5 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its
6 customers, manufacturers, distributors, wholesalers, retailers or any other person in the
7 course of doing business, and the successors and assigns of any of them, who may
8 manufacture, use, maintain, distribute or sell the Covered Products, whether under
9 Proposition 65 or otherwise, arising out of or resulting from, or related directly or indirectly
10 to, in whole or in part, the Covered Products and claims identified in Mateel's Notice Letter.
11 In furtherance of the foregoing, Mateel, acting on behalf of itself and the general public,
12 hereby waives any and all rights and benefits which it now has, or in the future may have,
13 conferred upon it with respect to the Covered Products by virtue of the provisions of Section
14 1542 of the California Civil Code, which provides as follows:

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

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

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

7 **5. ENFORCEMENT OF JUDGMENT**

8 5.1. The terms of this Consent Judgment shall be enforced exclusively by the
9 parties hereto. The parties may, by noticed motion or order to show cause before the Superior
10 Court of San Francisco County, giving the notice required by law, enforce the terms and
11 conditions contained herein.

12 **6. MODIFICATION OF JUDGMENT**

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

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

18 7.1. As to any Covered Products for which the normally intended function and
19 manner of use of the product involves the gripping or holding of the product by gripping or
20 holding a component made from leaded brass where such brass comes into contact with the
21 user, a warning as described in paragraph 7.2 below shall be provided. The warning
22 requirements set forth in paragraph 7.2 shall apply only to Covered Products that Conair
23 Corporation ships for distribution after 270 days after entry of this Consent Judgment.

24 7.2. Conair Corporation shall provide Proposition 65 warnings as follows:

25 (a) Defendant Conair Corporation shall provide either of the following
26 warning statements:

27 **WARNING:** This product contains lead, a chemical known to the State of
28 California to cause cancer and birth defects or other reproductive harm. Do not

1 place your hands in your mouth after handling the product. Do not place the
2 product in your mouth. *Wash your hands after touching this product.*

3 or

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

7 The word "WARNING" shall be in bold. The words "Wash hands after
8 handling" shall be in bold and italicized.

9 Conair Corporation shall provide such warning with the unit package of
10 the Covered Products. Such warning shall be prominently affixed to or printed
11 on each Covered Product's label or package.

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

17 (c) If Proposition 65 warnings for lead or lead compounds should no longer
18 be required, Conair Corporation shall have no further warning
19 obligations pursuant to this Consent Judgment.

20 **7.3 Interim Warnings.** Between the date of entry of this judgment and the 270th day
21 following entry of this judgment, Conair Corporation shall provide either the following warning
22 or any of the warning specified in paragraph 7.2:

23 (a) **"WARNING:** This product contains one or more chemicals known to
24 the state of California to cause cancer and birth defects or other reproductive
25 harm. *Wash hands after handling.*

26 The word "WARNING" shall be in bold. The words "Wash hands after
27 handling" shall be in bold and italicized.

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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

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

DATED:

CONAIR CORPORATION

Richard A. Margulies
By: *Richard A. Margulies*
Its:

Senior Vice President & General Counsel

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: NOV 30 2009

PAUL H. ALVARADO

JUDGE OF THE SUPERIOR COURT

PAUL H. ALVARADO