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17 MATEEL ENVIRONMENTAL JUSTICE
18 FOUNDATION

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

21 MATEEL ENVIRONMENTAL
22 JUSTICE FOUNDATION,,

23 Plaintiff,

24 v.

25 WEEMS INDUSTRIES, INC.,

26 Defendant.

Case No. CGC-09-485694

CONSENT JUDGMENT AS TO
DEFENDANT WEEMS INDUSTRIES,
INC.

27 1. INTRODUCTION

28 1.1 On March 4, 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
Superior Court, Case No. 485694, against Defendant Weems Industries, Inc., dba Legacy
Company ("Weems" or "Defendant"). The Complaint alleges, among other things, that
Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of

ENDORSED
FILED
San Francisco County Superior Court

JUL 29 2009

GORDON PARK-LI, Clerk
BY: _____ Deputy Clerk

1 1986, Health and Safety Code Sections 25249.5, *et seq.* ("Proposition 65"). In particular,
2 Mateel alleges that Weems has knowingly and intentionally exposed persons to couplings
3 and fittings that are made of brass that contains lead and/or lead compounds (hereinafter
4 "leaded brass"), without first providing a clear and reasonable warning to such
5 individuals. Lead and lead compounds are chemicals known to the State of California to
6 cause cancer and birth defects or other reproductive harm.

7 1.2 On September 17, 2008, Mateel sent a 60-Day Notice letter ("Notice
8 Letter") to Weems, the California Attorney General, all California District Attorneys, and
9 all City Attorneys of every California city with populations exceeding 750,000.

10 1.3 Weems is a business that employs ten or more persons and manufactures,
11 distributes, and/or markets leaded brass air hose couplers and fittings, within the State of
12 California. Some of those products are alleged to contain lead and/or lead compounds.
13 Lead and lead compounds are chemicals known to the State of California to cause cancer,
14 and lead is a chemical known to the State of California to cause reproductive toxicity
15 pursuant to Health and Safety Code Section 25249.9. Under specified circumstances,
16 products containing lead and/or lead compounds that are sold or distributed in the State of
17 California are subject to the Proposition 65 warning requirement set forth in Health and
18 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass air hose
19 couplings and fittings manufactured, distributed, sold and/or marketed by Weems for use
20 in California require a warning under Proposition 65.

21 1.4 For purposes of this Consent Judgment, the term "Covered Products" shall
22 be defined as leaded brass connectors, couplings and other fittings, to the extent such
23 products are distributed and sold within the state of California, and that are manufactured,
24 distributed, marketed and/or sold by Weems, regardless of whether they bear Weems, or
25 Legacy labels.

26 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court
27 has jurisdiction over the allegations of violations contained in the Complaint and personal
28 *jurisdiction over Weems as to the acts alleged in the Complaint, that venue is proper in the*

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

6 1.6 This Consent Judgment resolves claims that are denied and disputed. The
7 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
8 all claims between the parties for the purpose of avoiding prolonged litigation. This
9 Consent Judgment shall not constitute an admission with respect to any material allegation
10 of the Complaint, each and every allegation of which Weems denies, nor may this
11 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
12 misconduct, culpability or liability on the part of Weems.

13 2. SETTLEMENT PAYMENT

14 2.1 In settlement of all of the claims that are alleged, or could have been
15 alleged, in the Complaint concerning Covered Products, Weems shall pay \$22,000 to the
16 Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees.
17 Additionally, Weems shall pay \$8,000 to the Ecological Rights Foundation for use toward
18 reducing exposures to toxic chemicals and other pollutants, and toward increasing
19 consumer, worker and community awareness of health hazards posed by lead and other
20 toxic chemicals. The parties agree and acknowledge that the charitable contributions
21 made pursuant to this section shall not be construed as a credit against the personal claims
22 of absent third parties for restitution against the defendant. The above described payments
23 shall be forwarded by Defendant so that they are received at least 5 days prior to the
24 hearing date scheduled for approval of this Consent Judgment. If the Consent Judgment is
25 not approved within 120 days of the date scheduled for approval, the above described
26 payments shall be returned and the provisions of this Consent judgment shall become null
27 and void.

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

24 4.2 As to those alleged exposures to Covered Products raised in the Notice
25 Letter, Mateel, acting on behalf of itself and the general public, and Mateel's agents,
26 successors and assigns, waive all rights to institute any form of legal action, and release
27 all claims against Weems and its parents, subsidiaries or affiliates, predecessors, officers,
28 directors, employees, and all of its customers, manufacturers, distributors, wholesalers

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

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

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

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5. ENFORCEMENT OF JUDGMENT

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

6. MODIFICATION OF JUDGMENT

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

7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING

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

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

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

3 7.3 Weems shall provide Proposition 65 warnings as follows:

4 (a) Defendant Weems shall provide either of the following warning
5 statements:

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

10 or

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

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

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

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

27 (c) If Proposition 65 warnings for lead or lead compounds should no
28 longer be required, Weems shall have no further warning obligations

1 pursuant to this Consent Judgment. In the event that Weems ceases to
2 implement or modifies the warnings required under this Consent Judgment
3 (because of a change in the law or otherwise), Weems shall provide written
4 notice to Mateel (through KELC) of its intent to do so, and of the basis for
5 its intent, no less than thirty (30) days in advance. Mateel shall notify
6 Weems in writing of any objection within thirty (30) days of its receipt of
7 such notice, or such objection by Mateel shall be waived.

8 **8. AUTHORITY TO STIPULATE**

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

12 **9. RETENTION OF JURISDICTION**

13 This Court shall retain jurisdiction of this matter to implement the Consent
14 Judgment.

15 **10. ENTIRE AGREEMENT**

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

22 **11. GOVERNING LAW**

23 The validity, construction and performance of this Consent Judgment shall
24 be governed by the laws of the State of California, without reference to any conflicts of
25 law provisions of California law.

26 **12. COURT APPROVAL**

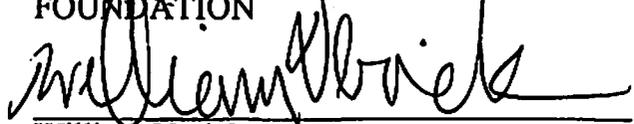
27 If this Consent Judgment is not approved by the Court, it shall be of no force
28 or effect, and cannot be used in any proceeding for any purpose.

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IT IS SO STIPULATED:

DATED: 6/10/09

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED: WEEMS INDUSTRIES, INC.

By:
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

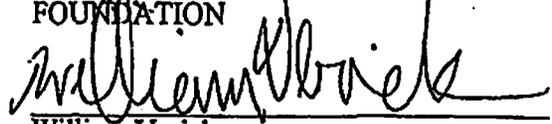
DATED: _____
JUDGE OF THE SUPERIOR COURT

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IT IS SO STIPULATED:

DATED:

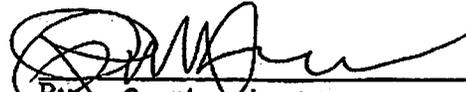
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED:

WEEMS INDUSTRIES, INC.



By: R. Mark Weems
Its: President

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JUL 29 2009

CHARLOTTE WALTER WOOLARD
JUDGE OF THE SUPERIOR COURT