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19 FOUNDATION

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

22 MATEEL ENVIRONMENTAL
23 JUSTICE FOUNDATION,,
24
25 Plaintiff,
26
27 v.
28 CROSLEY RADIO CORPORATION
and MODERN MARKETING
CONCEPTS, INC.
Defendants.

Case No. 488987

CONSENT JUDGMENT

1. INTRODUCTION

1.1 On June 3, 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. 488927, against Defendant Modern Marketing Concepts, Inc. ("Defendant"). The Complaint alleges, among other things, that Defendant violated

1 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
2 Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In particular, Mateel alleges
3 that Defendant has knowingly and intentionally exposed persons to products that contain
4 cords made of PVC or other thermoplastic materials that contain lead (hereinafter PVC
5 cords”), without first providing a clear and reasonable warning to such individuals. Lead
6 and lead compounds are chemicals known to the State of California to cause cancer and
7 birth defects or other reproductive harm.

8 **1.2** On November 13, 2008, Mateel sent a 60-Day Notice letter (“Notice
9 Letter”) to Defendant, the California Attorney General, all California District Attorneys,
10 and all City Attorneys of every California city with populations exceeding 750,000.

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

22 **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall
23 be defined as telephones that utilize or incorporate PVC cords that contain lead, to the
24 extent particular units of such products are distributed and sold within the state of
25 California that are manufactured, distributed, marketed and/or sold by Defendant,
26 regardless of whether they bear Defendant labels. Such products include, but are not
27 limited to, the “Princess” and “Dreyfuss” lines of telephones that are sold by Defendant,
28 including all models and colors of such products.

1 **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court
2 has jurisdiction over the allegations of violations contained in the Complaint and personal
3 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in
4 the County of San Francisco and that this Court has jurisdiction to enter this Consent
5 Judgment as a full settlement and resolution of the allegations contained in the Complaint
6 and of all claims that were or could have been raised by any person or entity based in
7 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
8 related thereto.

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

16 **2. SETTLEMENT PAYMENT**

17 **2.1** 2.1 In settlement of all of the claims referred to in this Consent Judgment
18 against Defendant., Defendant. shall pay, 5 days or more prior to the hearing date
19 scheduled for the motion to approve this consent judgment, an amount in monetary relief
20 totaling \$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 Californian's Against Toxics, and \$7,500 (seven thousand
25 five hundred dollars) which shall be made payable to the Ecological Rights Foundation.
26 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,
28 Plaintiff may withdraw any motion to approve and enter the agreement and the agreement

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

5 **2.2** MEJF and KELC represent and warrant that each of the organization
6 identified in Paragraph 2.1(ii) above is a tax exempt, section 501(c)(3) non-profit
7 organization and that funds distributed to this organization pursuant to this Consent
8 Judgment may only be spent to reduce harm from toxic chemicals, or to increase
9 consumer, worker and community awareness of health hazards posed by lead and other
10 toxic chemicals. Except as specifically provided in this Consent Judgment, each side shall
11 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, Defendant and Mateel waive their
15 respective rights to a hearing or trial on the allegations of the Complaint. The date this
16 Consent Judgment is entered by the court shall be considered the "Effective Date".

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

18 **4.1** As to lead exposures caused by Covered Products, this Consent Judgment is
19 a final and binding resolution between Mateel, as to those matters raised in the Notice
20 Letter, and Defendant, of: (i) any violation of Proposition 65 with respect to the Covered
21 Products, and (ii) any other statutory or common law claim, to the fullest extent that any
22 of the foregoing described in (i) or (ii) were or could have been asserted by Mateel
23 against Defendant based upon those matters raised in the Notice Letter and arising out of
24 or relating to Defendant's compliance with Proposition 65, or regulations promulgated
25 thereunder, with respect to the Covered Products, and any other claim based in whole or
26 part on the facts alleged in the Complaint, whether based on actions committed by
27 Defendant or any entity within Defendant's chain of distribution, including, but not
28 limited to, manufacturers, wholesale or retail sellers or distributors and any other person

1 in the course of doing business. As to those matters raised in the Notice Letter,
2 compliance with the terms of this Consent Judgment resolves any issue, now and in the
3 future, concerning compliance by Defendant and its parents, subsidiaries or affiliates,
4 predecessors, officers, directors, employees, and all of their manufacturers, customers,
5 distributors, wholesalers, retailers or any other person in the course of doing business, and
6 the successors and assigns of any of these who may manufacture, use, maintain, distribute,
7 market or sell Covered Products, with the requirements of Proposition 65.

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

21 “A GENERAL RELEASE DOES NOT EXTEND TO
22 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
23 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
24 EXECUTING THE RELEASE, WHICH IF KNOWN BY
25 HIM MUST HAVE MATERIALLY AFFECTED HIS
26 SETTLEMENT WITH THE DEBTOR.”

27 Mateel understands and acknowledges that the significance and consequence of this
28 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages

1 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
2 Covered Products, it will not be able to make any claim for those damages against
3 Defendant, its parents, subsidiaries or affiliates, predecessors, officers, directors,
4 employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or
5 any other person in the course of doing business, and the successors and assigns of any of
6 them, who may manufacture, use, maintain, distribute or sell the Covered Products.
7 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
8 which may exist as of the date of this release but which Mateel does not know exist, and
9 which, if known, would materially affect its decision to enter into this Consent Judgment,
10 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
11 negligence, or any other cause.

12 **5. ENFORCEMENT OF JUDGMENT**

13 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
14 parties hereto. The parties may, by noticed motion or order to show cause before the
15 Superior Court of San Francisco County, giving the notice required by law, enforce the
16 terms and conditions contained herein.

17 **6. MODIFICATION OF JUDGMENT**

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

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

23 **7.1** For all Covered Products manufactured for sale in California 90 days after
24 entry of this Consent Judgment, which have not met the reformulation set forth in section
25 7.2, Settling Defendant shall provide a Proposition 65 Warning for Covered Products as
26 described below:

27 **PROP 65 WARNING: This product contains lead and lead compounds,**
28 **known to the State of California to cause [cancer, and] birth defects or**

1 other reproductive harm. *Wash your hands after handling this product.*

2 or

3 PROP 65 WARNING: Handling the cord on this product exposes you to lead,
4 a chemical known to the State of California to cause [cancer, and] birth
5 defects and other reproductive harm. *Wash hands after use.*

6 The phrase "PROP 65" may be excluded at the Defendant's discretion. If included, the
7 phrase "PROP 65" shall be in capitals. The word "WARNING" shall be in capitals. The
8 words "*Wash hands after handling this product*" or "*Wash hands after use,*" shall be
9 italicized or underlined. Inclusion of the bracketed words "cancer, and" in the above
10 warning shall be at Settling Defendant's option. The foregoing does not preclude Settling
11 Defendant from adding a warning for additional Proposition 65 listed chemicals unless the
12 Attorney General takes the position that such a warning would be misleading or an over-
13 warning. Such warning shall be prominently affixed to or printed on each Covered
14 Product, its label, or package and contained in the same section of the label or package
15 that contains other safety warnings, if any, concerning the use of the Covered Product or
16 near its displayed price and/or UPC code, and with such conspicuousness, as compared
17 with other words, statements, designs, or devices on the Covered Product, its label,
18 package or display as to render it likely to be read and understood by an ordinary
19 individual.

20 7.2 No warning shall be required for Covered Products which have been
21 reformulated so that both (a) the surface contact layer of the external wires or cords of the
22 Covered Products shall have no lead as an intentionally added constituent; and (b) the
23 surface contact layer of the wires or cords of the Covered Products shall have lead content
24 by weight of no more than 0.03% (300 parts per million, or "300" ppm). Defendant may
25 rely on test results provided by its suppliers showing that a product meets this standard
26 provided that such reliance is in good faith.

27 7.3 Interim Warnings. Plaintiff acknowledges that Defendant has started
28 placing warnings with the following language on Covered Products:

1
2 “WARNING. This product contains chemicals known to the State of
3 California to cause cancer and birth defects or other reproductive
4 harm”

5 Defendant may continue to use this warning language, or the language provided in
6 paragraph 7.1, until the date when the requirements of paragraph 7.1 are triggered. Such
7 warnings shall be prominently affixed to or printed on each Covered Product, its label, or
8 package and contained in the same section of the label or package that contains other
9 safety warnings, if any, concerning the use of the Covered Product or near its displayed
10 price and/or UPC code, and with such conspicuousness, as compared with other words,
11 statements, designs, or devices on the Covered Product, its label, package or display as to
12 render it likely to be read and understood by an ordinary individual.

13 7.4 If after the Effective Date, Defendant ships Covered Products to a retailer or
14 distributor outside of California that neither provide the warnings specified in this
15 paragraph nor meet the Reformulation Standard specified in paragraphs 7.1 through 7.3 of
16 this Consent Judgment (“Non-Conforming Covered Products”), and if the retailer or
17 distributor then offers those Non-Conforming Covered Products for sale in California,
18 then as to those Non-Conforming Covered Products, that retailer or distributor, and their
19 customers, are not released pursuant to Sections 4.1 and 4.2 above.

20 **8. AUTHORITY TO STIPULATE**

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

24 **9. RETENTION OF JURISDICTION**

25 This Court shall retain jurisdiction of this matter to implement the Consent
26 Judgment.

27 **10. ENTIRE AGREEMENT**

28 This Consent Judgment contains the sole and entire agreement and

1 understanding of the parties with respect to the entire subject matter hereof, and any and
2 all prior discussions, negotiations, commitments and understandings related hereto. No
3 representations, oral or otherwise, express or implied, other than those contained herein
4 have been made by any party hereto. No other agreements not specifically referred to
5 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

6 **11. GOVERNING LAW**

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

10 **12. COURT APPROVAL**

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

13 **IT IS SO STIPULATED:**

14 DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

15
16
17
18
19 DATED:

MODERN MARKETING CONCEPTS,
INC.

By:
Its:

20
21
22
23 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

24
25 DATED:

JUDGE OF THE SUPERIOR COURT

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2 all prior discussions, negotiations, commitments and understandings related hereto. No
3 representations, oral or otherwise, express or implied, other than those contained herein
4 have been made by any party hereto. No other agreements not specifically referred to
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12 or effect, and cannot be used in any proceeding for any purpose.

13 **IT IS SO STIPULATED:**

14 DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

16 William Verick
17 CEO Mateel Environmental Justice
18 Foundation,
Klamath Environmental Law Center

19 DATED:

20 MODERN MARKETING CONCEPTS,
21 INC.

22 By: James P. LeMastus
Its: President

23 IT IS SO ORDERED, ADJUDGED AND DECREED:

24 DATED:

25 Jan 22, 2010

26 JUDGE OF THE SUPERIOR COURT

27 A. JAMES ROBERTSON, II

28 Case #: 488987
Mateel v. Crosby

NB1:705484.5