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12 FOUNDATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO

15 MATEEL ENVIRONMENTAL JUSTICE )  
16 FOUNDATION, )  
17 Plaintiff, )  
18 v. )  
19 COOPER INDUSTRIES, et al., )  
20 Defendants.

Case No. CGC-09-485713  
CONSENT JUDGMENT AS TO  
COOPER TOOLS, INC.

ENDORSED  
FILED  
San Francisco County Superior Court  
JUN 08 2010  
CLERK OF THE COURT  
By: MARJORIE SCHWARTZ SCOTT  
Deputy Clerk

22  
23 **1. INTRODUCTION**

24 1.1 On March 4, 2009, the Mateel Environmental Justice Foundation (“Plaintiff  
25 MEJF”) acting on behalf of itself and the general public, filed a Complaint for civil penalties and  
26 injunctive relief (“Complaint”) in San Francisco Superior Court, Case No. CGC-09-485713,  
27 against defendant Cooper Tools, Inc., (referred to as “Cooper Tools” or “Defendant”). The  
28 Complaint alleges, among other things, that Cooper Tools violated provisions of the Safe

1 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5,  
2 et seq. (Proposition 65) by failing to give clear and reasonable warnings to those residents of  
3 California who handle and use galvanized chains and fittings, that handling and use of these  
4 products causes those residents to be exposed to lead and/or lead compounds. Lead is known to  
5 the State of California to cause cancer and/or birth defects or other reproductive harm. The  
6 Complaint was based upon a 60-Day Notice letter, dated November 13, 2008, sent by MEJF to  
7 Cooper Tools, the California Attorney General, all District Attorneys, and all City Attorneys with  
8 populations exceeding 750,000.

9 1.2 Cooper Tools is a business that employs more than ten persons, and manufactures,  
10 distributes, and sells galvanized chains which utilizes a galvanized coating that contains lead  
11 (hereinafter "Galvanized Chain"). Pursuant to Health and Safety Code Section 25249.8, lead and  
12 lead compounds are chemicals known to the State of California to cause cancer and reproductive  
13 toxicity. Plaintiff MEJF alleges that Galvanized Chain that is sold by Cooper Tools for use in  
14 California requires a warning under Proposition 65, pursuant to Health and Safety Code Section  
15 25249.6. Cooper Tools denies that a warning is required. For purposes of this Consent Judgment,  
16 the parties stipulate that this Court has jurisdiction over the allegations of violations contained in  
17 the Complaint and personal jurisdiction over Cooper Tools as to the acts alleged in the  
18 Complaint, that venue is proper in the County of San Francisco and that this Court has  
19 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations  
20 contained in the Complaint and of all claims which were or could have been raised by any person  
21 or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising  
22 therefrom or related to.

23 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties  
24 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
25 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment  
26 shall not constitute an admission with respect to any material allegation of the Complaint, each  
27 and every allegation of which Cooper Tools denies, nor may this Consent Judgment or  
28

1 compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on  
2 the part of Cooper Tools.

3 1.4 For purposes of this Consent Judgment, the term "Covered Products" means  
4 Galvanized Chain that is manufactured or marketed by Cooper Tools for consumer use in the  
5 State of California.

6 1.5 The term "Effective Date" means the date that this Consent Judgment is entered by  
7 the Court.

8 **2. SETTLEMENT PAYMENT**

9 2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the  
10 Complaint concerning Covered Products, Cooper Tools shall pay \$27,500 to the Klamath  
11 Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally, Cooper  
12 Tools shall pay \$47,500 to the Ecological Rights Foundation for use toward reducing exposures  
13 to toxic chemicals and other pollutants, and toward increasing consumer, worker and community  
14 awareness of health hazards posed by lead and other toxic chemicals. The parties agree and  
15 acknowledge that the charitable contributions made pursuant to this section shall not be construed  
16 as a credit against the personal claims of absent third parties for restitution against the Cooper  
17 Tools. The above described payments shall be forwarded by Cooper Tools so that they are  
18 received at least 5 days prior to the hearing date scheduled for approval of this Consent  
19 Judgment. If the Consent Judgment is not approved within 120 days of the date scheduled for  
20 approval, the above described payments shall be returned and the provisions of this Consent  
21 judgment shall become null and void.

22 2.2 Cooper Tools shall not be required to pay a civil penalty pursuant to Health and  
23 Safety Code Section 25249.7(b).

24 **3. ENTRY OF CONSENT JUDGMENT**

25 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.  
26 Upon entry of the Consent Judgment, Cooper Tools and MEJF waive their respective rights to a  
27 hearing or trial on the allegations of the Complaint.

28

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

2             4.1     As to Covered Products and exposures to lead and lead compounds, this Consent  
3 Judgment is a final and binding resolution between MEJF, acting on behalf of itself and (as to  
4 those matters raised in the 60-Day Notice Letter) the general public, and Cooper Tools of: (i) any  
5 violation of Proposition 65 (including but not limited to the claims made in the Complaint); and  
6 (ii) any other statutory or common law claim to the fullest extent that any of the foregoing  
7 described in (i) or (ii) were or could have been asserted by any person or entity against Cooper  
8 Tools or its parents, subsidiaries or affiliates, and all of their suppliers, customers, distributors,  
9 wholesalers, retailers, or any other person in the course of doing business, and the successors and  
10 assigns of any of them, who may use, maintain, distribute or sell Covered Products ("Released  
11 Entities"), based on its or their exposure of persons to lead or lead compounds from Covered  
12 Products or their failure to provide a clear and reasonable warning of exposure to such  
13 individuals; and (iii) as to alleged exposures to lead or lead compounds from Covered Products,  
14 any other claim based in whole or in part on the facts alleged in the Complaint, whether based on  
15 actions committed by the Released Entities or others. As to alleged exposures to lead or lead  
16 compounds from Covered Products, compliance with the terms of this Consent Judgment resolves  
17 any issue, now and in the future, concerning compliance by Cooper Tools and the Released  
18 Entities, with the requirements of Proposition 65 with respect to Covered Products, and any  
19 alleged resulting exposure.

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

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

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

11 4.3 MEJF understands and acknowledges that the significance and consequence of this  
12 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising  
13 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered  
14 Products, including but not limited to any exposure to, or failure to warn with respect to exposure  
15 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for  
16 those damages against Cooper Tools or the Released Entities. Furthermore, MEJF acknowledges  
17 that it intends these consequences for any such Claims as may exist as of the date of this release  
18 but which MEJF does not know exist, and which, if known, would materially affect their decision  
19 to enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of  
20 ignorance, oversight, error, negligence, or any other cause.

21 4.4 Notwithstanding the above, the terms of this Section 4 shall not operate to release  
22 from liability any retailer that sells a Covered Product that was supplied to the retailer by Cooper  
23 Tools with a warning that complied with Section 7.3 and the Retailer either (a) removed the  
24 warning supplied by Cooper Tools, (b) repackaged the Covered Product without affixing a  
25 warning that complied with Section 7.3, or (c) sold the Covered Product in bulk without  
26 providing its customers a warning that uses the language set forth in section 7.3.1, that is clearly  
27 visible to the customer prior to the purchase of the Covered Product.  
28

1     **5. ENFORCEMENT OF JUDGMENT**

2             5.1     The terms of this Consent Judgment shall be enforced exclusively by the parties  
3 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
4 San Francisco County, giving the notice required by law, enforce the terms and conditions  
5 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment  
6 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the  
7 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to  
8 comply in an open and good faith manner.

9             5.2     In any proceeding brought by either party to enforce this Consent Judgment, such  
10 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
11 violation of Proposition 65 or this Consent Judgment.

12     **6. MODIFICATION OF JUDGMENT**

13             6.1     This Consent Judgment may be modified only upon written agreement of the  
14 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
15 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

16     **7. INJUNCTIVE RELIEF**

17             7.1     **Implementation.** Covered Products that are (a) galvanized chain sold in bulk and  
18 shipped by Cooper Tools for sale in California on or after the Effective Date, or (b) galvanized  
19 fittings that are manufactured on or after the Effective Date and shipped by Cooper Tools for sale  
20 in California, shall comply with the requirements of Section 7.2 or 7.3.

21             7.2     **Warning Exemptions.** Covered Products that meet the conditions of this Section  
22 7.1 shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65  
23 warning requirements:

24                     7.2.1 Covered Products that are galvanized with zinc coating meeting the  
25 chemical specifications set forth for "High Grade" zinc in ASTM specification B6-07, or zinc  
26 coating meeting the chemical specifications set forth for "Special High Grade" zinc set forth in  
27 ASTM specification B6-07.

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1           7.2.2 Covered Products that are galvanized with zinc coating that has been  
2 applied to the Covered Product by means of electrogalvanization.

3           7.3   **Warnings.** Covered Products that do not meet one of the warning exemptions  
4 of Section 7.1 shall be accompanied by a warning that contains one of the warning statements in  
5 Section 7.3.1, and shall be provided by one of the methods provided in Sections 7.3.2 or 7.3.3.

6           7.3.1 The warning statements shall be one of the following:

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

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

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

13           7.3.2 **Warnings for Individually Packaged or Displayed Products.** If the  
14 Covered Product is packaged for individual sale to consumers, or is shipped to retailers in bulk  
15 but will be displayed individually for purchase by consumers, the warning shall be affixed to or  
16 printed on the Covered Product itself or to the Covered Product’s packaging or labeling.

17           7.3.3 **Warnings for Bulk Products.** If the Covered Product is sold by Cooper  
18 Tools to distributors and/or retailers in bulk pails for ultimate resale to consumers from such  
19 pails, Cooper Tools shall provide a warning on the lid, and, if product labeling is not displayed by  
20 Cooper Tools on the lid, on any side of the pail where product labeling is displayed.

21           7.3.4 **Conspicuousness of Warnings.** The warning shall be prominently affixed  
22 to or printed on the Covered Product or packaging or labeling and displayed with such  
23 conspicuousness, as compared with other words, statements, designs, or devices on the Covered  
24 Product, or its packaging or labeling, as to render it likely to be read and understood by an  
25 ordinary individual under customary conditions of purchase or use. A warning may be contained  
26 in the same section of the packaging or labeling that contains other safety warnings, if any,  
27 concerning the use of the Covered Product, or near its displayed price and/or UPC code. The type  
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1 size of the warning must be legible, but need not be any larger than any other warning provided  
2 for the Covered Product, and its relative size may take into account the nature, immediacy, and  
3 acuteness of the risks for which other warnings are provided.

4 **8. RETENTION OF JURISDICTION**

5 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
6 terms this Consent Judgment.

7 **9. AUTHORITY TO STIPULATE**

8 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
9 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
10 the party represented and legally to bind that party.

11 **10. DUTIES LIMITED TO CALIFORNIA**

12 10.1 This Consent Judgment shall have no effect on Covered Products sold by Cooper  
13 Tools outside the State of California.

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

15 11.1 KELC shall serve a copy of this Consent Judgment, signed by both parties, on the  
16 California Attorney General on behalf of the parties so that the Attorney General may review this  
17 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)  
18 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
19 and in the absence of any written objection by the Attorney General to the terms of this Consent  
20 Judgment, the parties may then submit it to the Court for approval.

21 **12. ENTIRE AGREEMENT**

22 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
23 of the parties with respect to the entire subject matter hereof and any and all prior discussions,  
24 negotiations, commitments and understandings related hereto. No representations, oral or  
25 otherwise, express or implied, other than those contained herein have been made by any party  
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
27 deemed to exist or to bind any of the parties.

28

1 **13. GOVERNING LAW**

2 13.1 The validity, construction and performance of this Consent Judgment shall be  
3 governed by the laws of the State of California, without reference to any conflicts of law  
4 provisions of California law.

5 **14. EXECUTION AND COUNTERPARTS**

6 14.1 This Consent Judgment may be executed in counterparts and by means of  
7 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
8 one document.

9 **15. COURT APPROVAL**

10 15.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of  
11 no force or effect, and cannot be used in any proceeding for any purpose.

12 **16. NOTICES**

13 16.1 Any notices under this Consent Judgment shall be by personal delivery of First  
14 Class Mail.

15 If to MEJF: William Verick, Esq.  
16 Klamath Environmental Law Center  
424 First Street  
Eureka, CA 95501

17 If to Cooper Tools: Cooper Tools, Inc.  
18 3535 Glenwood Avenue  
19 Raleigh, North Carolina 27612;  
Attention: General Counsel

20 With a copy to:  
21 Jeffrey B. Margulies  
22 FULBRIGHT & JAWORSKI, L.L.P.  
23 555 S. Flower Street, 41st Floor  
24 Los Angeles, California 90071  
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IT IS SO STIPULATED:

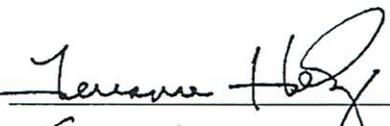
DATED: \_\_\_\_\_

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

BY:   
WILLIAM VERICK

DATED: 3/18/2010

COOPER TOOLS, INC.

BY:   
ITS: Secretary

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JUN - 8 2010

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT

PETER J. BUSCH