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19 FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

JUL 09 2009

GORDON PARK-LI, Clerk

BY: _____ Deputy Clerk

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

22 MATEEL ENVIRONMENTAL
23 JUSTICE FOUNDATION,,

24 Plaintiff,

25 v.

26 BELL AUTOMOTICE PRODUCTS,
27 INC.; EMPIRE LEVEL MFG. CORP.;
28 et al.,

Defendants.

Case No. CGC-09-486368

CONSENT JUDGMENT AS TO
DEFENDANT EMPIRE LEVEL
MANUFACTURING CORPORATION

1. INTRODUCTION

1.1 On March 20, 2009, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel" or "Plaintiff") acting on behalf of itself and the public interest, filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. 486368, against Empire Level Manufacturing Corporation ("Empire" or "Defendant"). The Complaint alleges, among other things, that Empire

1 violated certain provisions of the Safe Drinking Water and Toxic Enforcement Act of
2 1986, Health and Safety Code Sections 25249.5, *et seq.* ("Proposition 65"). In particular,
3 Mateel alleges that Empire has, in the course of doing business, knowingly and
4 intentionally exposed persons to tools that are made of brass or that have brass
5 components that contains lead and/or lead compounds (hereinafter "leaded brass"),
6 without first providing a clear and reasonable warning to such individuals. Lead and lead
7 compounds are chemicals known to the State of California to cause cancer and birth
8 defects or other reproductive harm.

9 1.2 On November 20, 2008, Mateel sent a 60-Day Notice letter ("Notice
10 Letter") to Empire (among other defendants named in the above-captioned Action), the
11 California Attorney General, all California District Attorneys, and all City Attorneys of
12 every California city with populations exceeding 750,000.

13 1.3 Empire is a business that employs ten or more persons and manufactures,
14 distributes and/or markets tools (among other products) for sale within the State of
15 California (among other locations).

16 1.4 For purposes of this Consent Judgment, the term "Covered Products" shall
17 be defined as tools that are made from leaded brass or that have leaded brass components
18 that a consumer touches while using the tools in their normally intended manner, to the
19 extent such products are distributed and sold within the State of California, and that are
20 manufactured, distributed, marketed and/or sold by Empire, regardless of whether they
21 bear Empire labels.

22 1.5 For purposes of this Consent Judgment, Mateel and Empire stipulate that:
23 this Court has jurisdiction over the allegations of violations contained in the Complaint
24 with respect to Empire and personal jurisdiction over Empire as to the acts alleged in the
25 Complaint; that venue as to Empire is proper in the County of San Francisco; and that this
26 Court has jurisdiction to enter this Consent Judgment as a full and final settlement and
27 resolution of the allegations contained in the Complaint as to Empire and of all related
28 claims that were or could have been raised by any person or entity based in whole or in

1 part, directly or indirectly, on the facts alleged therein or arising therefrom or related
2 thereto.

3 **1.6** Mateel and Empire further stipulate that this Consent Judgment resolves
4 claims that are denied and disputed by Empire and enter into this Consent Judgment for
5 the purpose of avoiding prolonged litigation. As such, this Consent Judgment shall not
6 constitute or act as an admission by Empire with respect to any allegation of the
7 Complaint, each and every allegation of which Empire denies; nor may this Consent
8 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct,
9 culpability or liability on the part of Empire.

10 **2. SETTLEMENT PAYMENT**

11 **2.1** In consideration of the resolution of all of the claims referred to in or arising
12 in association with the Complaint with respect to Empire and their resolution via the
13 negotiation, execution and Court's approval of this Consent Judgment, within twenty (20)
14 business days of entry of this Consent Judgment, Empire shall pay \$20,000 to the Klamath
15 Environmental Law Center ("KELC") to cover Mateel's attorneys' fees and costs.

16 **2.2** In further consideration of the resolution of all of the claims referred to in or
17 arising in association with the Complaint with respect to Empire and their resolution via
18 the negotiation, execution and Court's approval of this Consent Judgment, within twenty
19 (20) business days of notice of entry of this Consent Judgment, Empire shall pay \$10,000
20 to Ecology Law Quarterly at the University of California Berkeley School of Law
21 ("ELQ"), a California non-profit tax exempt organization. This payment is to be used by
22 ELQ for funding recipients of the Barry Sandals Fellowship who are placed as summer
23 law student interns in non-governmental public interest organizations which inform
24 Californians about toxic chemicals, advocate for reducing exposures of Californians to
25 toxic chemicals, and/or work to protect sources of drinking water in California.

26 **2.3** All payments referenced in Sections 2.1 and 2.2 shall be made by check,
27 payable to the above specified recipient and sent so as to reasonably guarantee timely
28 delivery to William Verick, Klamath Environmental Justice Foundation, 424 First Street,

1 Eureka, CA 95501, to be distributed within a commercially reasonable time by Mr.
2 Verick to the ultimate recipients.

3 2.4 Mateel and Empire acknowledge and agree that, except as provided
4 in Section 2.1 of this Consent Judgment, Plaintiff and Defendant shall bear all of their
5 own costs, expenses, consultant and expert fees, and attorneys' fees.

6 3. **ENTRY OF CONSENT JUDGMENT**

7 3.1 Mateel and Empire hereby request that the Court approve and enter this
8 Consent Judgment based on the stipulations and commitments made herein and pursuant
9 to the motion and memorandum of points and authorities Mateel will promptly be filing
10 following the execution of this settlement document.

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

12 4.1 This Consent Judgment is a final and binding resolution between Mateel,
13 acting on behalf of itself and the public interest, and Empire, of any violation of
14 Proposition 65 as to those matters raised in the Notice Letter with respect to the Covered
15 Products, whether based on actions committed by Empire or any entity within Empire's
16 chain of distribution, including, but not limited to, manufacturers, wholesale or retail
17 sellers or distributors and any other person in the course of doing business. As to those
18 matters raised in the Notice Letter and/or Complaint, compliance with the terms of this
19 Consent Judgment resolves any issue, now and in the future, concerning the Covered
20 Products' compliance with Proposition 65 be it by Empire and its parents, subsidiaries or
21 affiliates, predecessors, officers, directors, employees, and all of their manufacturers,
22 customers, distributors, wholesalers, retailers or any other person in the course of doing
23 business, and the successors and assigns of any of these who may manufacture, use,
24 maintain, distribute, market or sell Covered Products.

25 4.2 Mateel and Mateel's agents, successors and assigns, also waive on behalf of
26 themselves only, all rights to institute any form of legal action, under Proposition 65 or
27 otherwise, and release all claims against Empire and 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 with respect to the Covered Products. In
3 furtherance of the foregoing, Mateel waives any and all rights and benefits which it now
4 has, or in the future may have, conferred upon it with respect to the Covered Products by
5 virtue of the provisions of Section 1542 of the California Civil Code, which provides as
6 follows:

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

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

22 **5. ENFORCEMENT OF JUDGMENT**

23 5.1 The terms of this Consent Judgment shall be enforced exclusively by motion
24 or order to show cause before the Superior Court of San Francisco County.

25 **6. MODIFICATION OF JUDGMENT**

26 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
27 modified only upon written agreement of Mateel and Empire and upon entry of a modified
28 Consent Judgment by the Court thereon, or upon motion of either Mateel or Empire as

1 provided by law and upon entry of a modified Consent Judgment by the Court.

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

3 7.1 Covered Products shall be deemed to comply with Proposition 65 and be
4 exempt from any Proposition 65 warning requirements if the brass that is part of the
5 Covered Products meets the following criteria: (a) the brass alloy from which the brass
6 fittings are made shall have a lead content by weight of no more than 0.03% (300 parts per
7 million, or "300 ppm"). Empire may comply with the above requirements by relying on
8 information obtained from its suppliers regarding the content of the brass alloy from
9 which the brass fittings are made, provided such reliance is in good faith. Obtaining test
10 results showing that the lead content is no more than 0.03%, using a method of sufficient
11 sensitivity to establish a limit of quantification (as distinguished from detection) of less
12 than 300 ppm shall be deemed to establish good faith reliance.

13 7.2 Covered Products that do not meet the warning exemption standard set forth
14 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
15 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply
16 only to: (1) Covered Products that Empire ships for distribution after 270 days after entry
17 of this Consent Judgment ("the Effective Date"); and (2) products sold in the State of
18 California.

19 7.3 Except as provided in Sections 7.1 and 7.2 above, Empire shall provide
20 Proposition 65 warnings for the Covered Products as follows:

21 (a) Empire shall provide either of the following warning statements:

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

25 or

26 **WARNING:** This product contains one or more chemicals known to
27 the State of California to cause birth defects or other reproductive
28 harm. *Wash hands after handling.*

1 In either event, the word "WARNING" shall appear in bold. The words "Wash hands
2 after handling" shall appear in bold and be italicized.

3 Empire shall also provide such warning on the unit package of the Covered
4 Product, on the Covered Product's label, or affixed to the Covered Product itself. The
5 warning shall be at least the same size as the largest of any other chemical safety
6 warnings, if any, on the Covered Product or its label or its unit package; it shall not
7 appear on the bottom side of the unit package unless its price or other safety warnings or
8 instructions for use of the Covered Product appear there.

9 (b) The requirements for product labeling, set forth in subparagraph (a)
10 above are imposed pursuant to this Consent Judgment. Mateel and Empire recognize that
11 product labeling is not the exclusive method of providing a warning under Proposition 65
12 and its implementing regulations. Mateel and Empire also recognize that while lead is
13 listed under Proposition 65 a chemical known to the State of California to cause both
14 cancer and reproductive toxicity, warnings for cancer are not implicated by the Covered
15 Products and therefore are not being required by this Consent Judgment.¹

16 (c) If reproductive toxicity warnings for lead or lead compounds should
17 no longer be required pursuant to Proposition 65, Empire shall have no further warning
18 obligations pursuant to this Consent Judgment. However, in the event that Empire ceases
19 to implement or modifies the warnings required under this Consent Judgment for reasons
20 other than those set forth in Sections 7.1 and 7.2 above (e.g., because of a change in the
21 law or otherwise), Empire shall provide written notice to Mateel (through KELC) of its
22 intent to do so, and of the basis for its intent, no less than thirty (30) days in advance.
23 Mateel shall notify Empire in writing of any objection within thirty (30) days of its receipt
24 of such notice, or such objection by Mateel shall be waived.

25 (d) If after the Effective Date, Empire ships Covered Products to a
26 retailer or distributor outside of California that do not meet the Reformulation Standard

27 ¹ Under Proposition 65's implementing regulations the level of exposure to lead triggering a cancer warning
28 requirement is approximately thirty times higher than the level at which reproductive toxicity warnings may be
triggered under the statute.

1 specified in Section 7.1 of this Consent Judgment and, alternatively do not contain either
2 of the warnings set forth in Section 7.3 ("Non-Conforming Covered Products"), and if the
3 retailer or distributor then offers those Non-Conforming Covered Products for sale in
4 California, then as to those sales of Non-Conforming Covered Products, that retailer or
5 distributor, and their customers, are not released pursuant to Sections 4.1 and 4.2 above.

6 **8. AUTHORITY TO STIPULATE**

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

10 **9. RETENTION OF JURISDICTION**

11 This Court shall retain jurisdiction of this matter to implement the Consent
12 Judgment.

13 **10. ENTIRE AGREEMENT**

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

21 **11. GOVERNING LAW**

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

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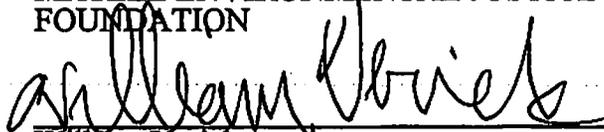
12. COURT APPROVAL

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:

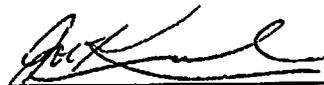
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED:

EMPIRE LEVEL MANUFACTURING
CORPORATION



By: JOE KUBACKI
Its: Controller/CFO

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUL 09 2009

HAROLD KAHN

JUDGE OF THE SUPERIOR COURT