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18 MATEEL ENVIRONMENTAL JUSTICE
19 FOUNDATION

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

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,,

Plaintiff,

v.

CROSCILL, INC.

Defendant.

Case No. 488856

CONSENT JUDGMENT

1. INTRODUCTION

1.1 On May 29, 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. 488856, against Defendant Croscill, Inc., ("Croscill" or "Settling Defendant"). The Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986.

**ENDORSED
FILED**
San Francisco County Superior Court
MAY 21 2010
CLERK OF THE COURT
BY: ERICKA LARNAUTI
Deputy Clerk

1 Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In particular,
2 Mateel alleges that Croscill has knowingly and intentionally exposed persons to home
3 products, including toothbrush holders and lotion dispensers that are made of brass or that
4 have brass components that contains lead and/or lead compounds, without first providing
5 a clear and reasonable warning to such individuals. Lead and lead compounds are
6 chemicals known to the State of California to cause cancer and birth defects or other
7 reproductive harm.

8 **1.2** On December 4, 2008, Mateel sent a 60-Day Notice letter (“Notice Letter”)
9 to Croscill, the California Attorney General, all California District Attorneys, and all City
10 Attorneys of every California city with populations exceeding 750,000.

11 **1.3** Croscill was a business that employed ten or more persons and
12 manufactured, distributed, and/or marketed leaded brass home products, including
13 toothbrush holders and lotion dispensers, within the State of California. Some of these
14 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
16 known to the State of California to cause reproductive toxicity pursuant to Health and
17 Safety Code Section 25249.9. Under specified circumstances, products containing lead
18 and/or lead compounds that are sold or distributed in the State of California are subject to
19 the Proposition 65 warning requirement set forth in Health and Safety Code Section
20 25249.6. Plaintiff Mateel alleges that home products that are made from leaded brass, or
21 that have leaded brass components, were manufactured, distributed, sold and/or marketed
22 by Croscill for use in California and require a warning under Proposition 65.

23 **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall
24 be defined as all sku’s (stock keeping units) in the Croscill Saxony Line of home products
25 that are or were made from leaded brass or that have leaded brass components and are or
26 were manufactured, distributed, marketed and/or sold by Settling Defendant.

27 **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court
28 has jurisdiction over the allegations of violations contained in the Complaint and personal

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

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

14 **2. SETTLEMENT PAYMENT**

15 **2.1** In settlement of all of the claims referred to in this Consent Judgment
16 against Croscill, Croscill or its affiliates shall pay \$25,000 (twentyfive thousand dollars),
17 in total monetary relief. Of this amount, a total of \$9,000 (nine thousand dollars) shall be
18 paid in lieu of and as an offset for any civil penalty and shall be divided such that \$4,500
19 (four thousand five hundred dollar) shall be made payable to Ecological Rights
20 Foundation, and \$4,500 (four thousand five hundred dollars) shall be made payable to
21 Californians for Alternatives to Toxics. Also, \$16,000 (sixteen thousand dollars) shall be
22 made payable to the Klamath Environmental Law Center (“KELC”) for attorneys fees and
23 costs incurred by KELC on behalf of Plaintiff in investigating and prosecuting this matter
24 and in negotiating this Consent Judgment on behalf of itself and in the public interest.
25 The payments described above shall be delivered at least 5 days prior to any hearing on a
26 motion to approve this settlement, to William Verick, 424 First Street, Eureka, CA 95501.
27 If payment has not been received as provided in this paragraph, Plaintiff may withdraw
28 any motion to approve and enter the agreement and the agreement shall become null and

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

5 **2.2** MEJF and KELC represent and warrant that Ecological Rights Foundation
6 and Californians for Alternatives to Toxics are each a tax exempt, section 501(c)(3) non-
7 profit 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.

11 **2.3** Except as specifically provided in this Consent Judgment, each side shall
12 bear its own costs and attorney's fees.

13 **3. ENTRY OF CONSENT JUDGMENT**

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

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

18 **4.1** This Consent Judgment is a full, final and binding resolution between
19 Settling Defendant and Mateel, acting on behalf of itself and, as to those matters raised in
20 the First and Second 60 Day Notice Letters, in the public interest pursuant to Health and
21 Safety Code section 25249.7(d), of all matters that are or that could have been alleged in
22 the Complaint, including any violation of Proposition 65, or the regulations promulgated
23 thereunder, to the fullest extent that any violation could have been asserted by Mateel
24 against the Settling Defendant based upon, arising out of, or relating to Settling
25 Defendant's compliance with Proposition 65, or regulations promulgated thereunder, with
26 respect to exposures to lead or lead compounds from the Covered Products (and
27 components thereof), whether based on actions committed by Settling Defendant, or by
28 any other entity within the chain of manufacture, distribution and sale of the Covered

1 Products. As to alleged lead and lead compound exposures from Covered Products, as
2 expressed in the 60 Day Notice Letters, compliance with the terms of this Consent
3 Judgment resolves any issue, now and in the future, concerning compliance by Settling
4 Defendant and its parents, subsidiaries or affiliates, divisions, predecessors, successors,
5 assigns, officers, directors, shareholders, attorneys, representatives, agents, employees,
6 and all manufacturers, customers, distributors, wholesalers, retailers or any other person in
7 the course of doing business involving the Covered Products, and the successors and
8 assigns of any of these who may manufacture, use, maintain, distribute, market or sell
9 Covered Products, with the current requirements and standards of Proposition 65. This
10 Consent Judgment also is a full, final and binding resolution between Plaintiff and Settling
11 Defendant as to any other claims that could have been asserted against Settling Defendant
12 or its affiliates, parent or subsidiary corporations, divisions, successors, officers, directors,
13 shareholders, attorneys, representatives, agents, assigns, distributors, manufacturers,
14 retailers, or customers for failure to disclose the presence of lead (or lead compounds) in
15 or associated with use of the Covered Products.

16 **4.2** As to alleged chemical exposures associated with Covered Products, Mateel,
17 acting on behalf of itself, and its agents, attorneys, representatives, successors and
18 assigns, (but not on behalf of the general public or in the public interest) waives all rights
19 to institute or participate in, directly, or indirectly, any form of legal action, and releases
20 all claims as between Mateel and Croscill, including, without limitation, all actions, and
21 causes of action, in law or in equity, suits, liabilities, demands, obligations, agreements,
22 promises, royalties, accountings, damages, costs, fines, penalties, losses, or expenses
23 (including, but not limited to, investigation fees, expert fees, and attorney's fees) of any
24 nature whatsoever, whether known or unknown, fixed or contingent (collectively
25 "claims"), against Settling Defendant and its parents, subsidiaries or affiliates,
26 predecessors, officers, directors, shareholders, attorneys, representatives, agents,
27 employees, and all customers, manufacturers, distributors, wholesalers, retailers, or any
28 other person in the course of doing business involving the Covered Products, and the

1 successors and assigns of any of them, who may manufacture, use, maintain, distribute or
2 sell the Covered Products or components found in the covered products, including, but not
3 limited to, any claims regarding exposure to, and/or failure to warn with respect to, the
4 Covered Products. In furtherance of the foregoing, as to alleged violations of Proposition
5 65 and exposures to Covered Products, Mateel hereby waives any and all rights and
6 benefits which it now has, or in the future may have respecting the Covered Products,
7 conferred upon it with respect to claims involving Covered Products by virtue of the
8 provisions of Section 1542 of the California Civil Code, which provides as follows:

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

16 Mateel understands and acknowledges that the significance and consequence of this
17 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
18 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
19 Covered Products, including but not limited to any exposure to, or failure to warn with
20 respect to exposure to lead or lead compounds from Covered Products, Mateel will not be
21 able to make any claim for those damages against the Settling Defendant, its parents,
22 subsidiaries or affiliates, predecessors, officers, directors, shareholders, representatives,
23 attorneys, agents, employees, and all customers, manufacturers, distributors, wholesalers,
24 retailers or any other person in the course of doing business involving the Covered
25 Products, and the successors and assigns of any of them, who may manufacture, use,
26 maintain, distribute or sell the Covered Products. Furthermore, Mateel acknowledges that
27 it intends these consequences for any such claims and any other claims for violations of
28 Proposition 65 which may exist as of the date of this release concerning Covered Products

1 but which Mateel does not know exist, and which, if known, would materially affect its
2 decision to enter into this Consent Judgment, regardless of whether its lack of knowledge
3 is the result of ignorance, oversight, error, negligence, or any other cause.

4 **5. ENFORCEMENT OF JUDGMENT**

5 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
6 parties hereto. The parties may, by noticed motion or order to show cause before the
7 Superior Court of San Francisco County, giving the notice required by law, enforce the
8 terms and conditions contained herein.

9 **6. MODIFICATION OF JUDGMENT**

10 **6.1** This Consent Judgment may be modified only upon written agreement of
11 the parties and upon entry of a modified Consent Judgment by the Court thereon, or upon
12 motion of any party as provided by law and upon entry of a modified Consent Judgment
13 by the Court.

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

15 **7.1** Settling Defendant agrees that it has discontinued and will no longer ship or
16 distribute for sale into California any Covered Products that use leaded brass, including
17 those specifically identified in the 60 Day Notice letter attached to the Complaint in this
18 action and shall at no time in the future ship or distribute Covered Products for sale into
19 California.

20 **8. AUTHORITY TO STIPULATE**

21 **8.1** 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 **9.1** This Court shall retain jurisdiction of this matter to implement the Consent
26 Judgment.

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10. ENTIRE AGREEMENT

10.1 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

11.1 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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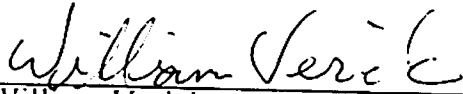
12. COURT APPROVAL

12.1 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:

CROSCILL, INC.

By: _____
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT

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12. COURT APPROVAL

12.1. 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:

CLOSCILL, INC.

Deirdre J. Kahn
By: *Deirdre J. Kahn*
Its: *President*

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

MAY 21 2010

CHARLOTTE WALTER WOOLARD
JUDGE OF THE SUPERIOR COURT