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12 FOUNDATION

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

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,,

17 Plaintiff,

18 . v.

19 SUPERIOR PRODUCTS, INC., et al,

20 Defendants.

Case No. CGC 09486753

CONSENT JUDGMENT AS TO
DEFENDANT SUPERIOR PRODUCTS,
INC.

21
22 1. INTRODUCTION

23 1.1 On March 30, 2009, the MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a
25 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco County
26 Superior Court, Case No.CGC-09486753, against Defendants Superior Products, Inc.
27 ("Superior") and Veyance Technologies, Inc. (collectively, "Defendants"). The
28 Complaint alleges, among other things, that Defendants violated provisions of the Safe

ENDORSED
FILED
San Francisco County Superior Court

SEP 17 2009

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

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

8 1.2 On December 4, 2008, a Notice of Violation letter ("Notice Letter") was
9 sent by Mateel to Superior, the California Attorney General, all California District
10 Attorneys, and all City Attorneys of every California city with a population that exceeds
11 750,000.

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

24 1.4 For purposes of this Consent Judgment, the term "Covered Products" shall
25 be defined as gas fittings for use with compressed gasses, components and accessories that
26 are made from, or that have components made from, leaded brass, to the extent such
27 products are distributed and sold within the state of California, that are manufactured,
28

1 distributed, marketed and/or sold by Superior, regardless of whether they bear Superior
2 labels.

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

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

18 2. SETTLEMENT PAYMENT

19 2.1 In settlement of all of the claims referred to in this Consent Judgment
20 against the Settling Defendant, within five (5) calendar days of entry of this Consent
21 Judgment, Superior shall pay \$20,000 to the Klamath Environmental Law Center
22 ("KELC") to cover Mateel's attorneys' fees and costs.

23 2.2 Within five (5) calendar days of notice of entry of this Consent Judgment,
24 Superior shall pay \$5,000 to the Ecological Rights Foundation and \$5,000 to Californians
25 for Alternatives to Toxics. Both are California non-profit environmental organizations
26 that advocate for workers' and consumers' safety, and for awareness and reduction of
27 toxic exposures.

28

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, Superior 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 As to exposure to lead caused by Covered Products, this Consent Judgment
7 is a final and binding resolution between Mateel, acting on behalf of itself and the public
8 interest, and Superior, 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 any person or
11 entity against Superior based upon, arising out of or relating to Superior's compliance
12 with Proposition 65, or regulations promulgated thereunder, with respect to the Covered
13 Products, and any other claim based in whole or part on the facts alleged in the Complaint,
14 whether based on actions committed by Superior, or by any other Defendant or entity
15 within the chain of distribution, including, but not limited to, manufacturers, wholesale or
16 retail sellers or distributors and any other person in the course of doing business. As to
17 lead exposures alleged to have been caused by Covered Products, compliance with the
18 terms of this Consent Judgment resolves any issue, now and in the future, concerning
19 compliance by Superior 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 lead exposures alleged to have been caused by Covered Products,
25 Mateel, acting on behalf of itself and the public interest, and its agents, successors and
26 assigns, waives all rights to institute any form of legal action, and releases all claims
27 against Superior and its parents, subsidiaries or affiliates, predecessors, officers, directors,
28 employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or

1 any other person in the course of doing business, and the successors and assigns of any of
2 them, who may manufacture, use, maintain, distribute or sell the Covered Products,
3 whether under Proposition 65 or otherwise, arising out of or resulting from, or related
4 directly or indirectly to, in whole or in part, the Covered Products and claims identified in
5 Mateel's Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself,
6 hereby waives any and all rights and benefits which it now has, or in the future may have,
7 conferred upon it with respect to the Covered Products by virtue of the provisions of
8 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 FAVOR AT THE TIME OF
12 EXECUTING THE RELEASE, WHICH IF KNOWN BY
13 HIM MUST HAVE MATERIALLY AFFECTED HIS
14 SETTLEMENT WITH THE DEBTOR."

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

28

1 5. **ENFORCEMENT OF JUDGMENT**

2 5.1 The terms of this Consent Judgment shall be enforced exclusively by the
3 parties hereto. The parties may, by noticed motion or order to show cause before the
4 Superior Court of San Francisco County, giving the notice required by law, enforce the
5 terms and conditions contained herein.

6 6. **MODIFICATION OF JUDGMENT**

7 Except as provided for in Paragraph 7.2(c), this Consent Judgment may be
8 modified only upon written agreement of the parties and upon entry of a modified Consent
9 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
10 entry of a modified Consent Judgment by the Court.

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

12 7.1 As to any Covered Products for which the normally intended function and
13 manner of use of the product involves the gripping or holding of the product by gripping
14 or holding a component made from leaded brass where such brass comes into contact with
15 the user, a warning as described in paragraph 7.2 below shall be provided. The warning
16 requirements set forth in paragraph 7.2 shall apply only to: (1) Covered Products that
17 Superior ships for distribution after 180 days after entry of this Consent Judgment (“the
18 Effective Date”); and (2) products manufactured, distributed, marketed, sold or shipped
19 for sale or use inside the State of California.

20 7.2 Superior shall provide Proposition 65 warnings as follows:

21 (a) Defendant Superior shall provide either of the following warning
22 statements:

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

28 or

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

4 The word "WARNING" shall be in bold. The words "Wash hands
5 after handling" shall be in bold and italicized.

6 Superior shall provide such warning with the unit package of the
7 Covered Products. Such warning shall be prominently affixed to or printed
8 on each Covered Product's label or package. The warning shall be at least
9 the same size as the largest of any other safety warnings, if any, on the
10 product container. If printed on the label itself, the warning shall be
11 contained in the same section that states other safety warnings, if any,
12 concerning the use of the product.

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

17 (c) If Proposition 65 warnings for lead or lead compounds should no
18 longer be required, Superior shall have no further warning obligations
19 pursuant to this Consent Judgment. In the event that Superior ceases to
20 implement or modifies the warnings required under this Consent Judgment
21 (because of a change on the law or otherwise), Superior shall provide
22 written notice to Mateel (through KELC) of its intent to do so, and of the
23 basis for its intent, no less than thirty (30) days in advance. Mateel shall
24 notify Superior in writing of any objection within thirty (30) days of its
25 receipt of such notice, or such objection by Mateel shall be waived.

26 8. **AUTHORITY TO STIPULATE**

27 Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the party he or she represents to enter into this Consent Judgment and to

1 execute it on behalf of the party represented and legally to bind that party.

2 9. RETENTION OF JURISDICTION

3 This Court shall retain jurisdiction of this matter to implement the Consent
4 Judgment.

5 10. ENTIRE AGREEMENT

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

12 11. GOVERNING LAW

13 The validity, construction and performance of this Consent Judgment shall
14 be governed by the laws of the State of California, without reference to any conflicts of
15 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:

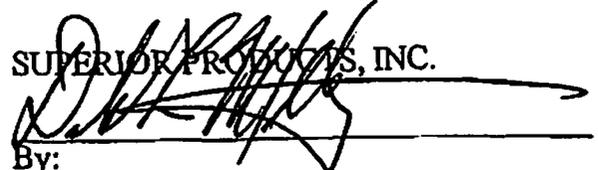
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED:

SUPERIOR PRODUCTS, INC.



By:
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: SEP 17 2009

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT