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MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

Plaintiff,

v.

BELL AUTOMOTIVE PRODUCTS, INC. et al.,

Defendants.

ENDORSED
FILED
San Francisco County Superior Court

OCT 26 2009

GORDON PARK-LI, Clerk
BY: ERICKA LARNAUTI
Deputy Clerk

) Case No. 486368
)
)
)

) **CONSENT JUDGMENT AS TO**
) **BELL AUTOMOTIVE PRODUCTS,**
) **INC.**
)

1. INTRODUCTION

1.1 On March 20, 2009, the Mateel Environmental Justice Foundation ("Plaintiff MEJF") 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. CGC-09-486368, against defendant Bell Automotive Products, Inc., (referred to as "Bell Automotive" or

1 "Defendant") and other defendants. The Complaint alleges, among other things, that Defendant
2 violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
3 Safety Code Sections 25249.5, et seq. (Proposition 65) by failing to give clear and reasonable
4 warnings to those residents of California who handle and use products made of, or incorporate
5 parts made of, brass and/or bronze, that handling and use of these products causes those residents
6 to be exposed to lead and/or lead compounds. Lead is known to the State of California to cause
7 cancer and/or birth defects or other reproductive harm. The Complaint was based upon a 60-Day
8 Notice letter, dated November 20, 2008, sent by MEJF to Bell Automotive, the California
9 Attorney General, all District Attorneys, and all City Attorneys with populations exceeding
10 750,000.

11 1.2 Defendant is a business that employs more than ten persons, and manufactures,
12 distributes, and sells brass products, including but not limited to, couplers, clamps, gauges and
13 nipples ("Brass Products"). Many Brass Products contain components manufactured from brass
14 that contains lead and/or lead compounds. Pursuant to Health and Safety Code Section 25249.8,
15 lead and lead compounds are chemicals known to the State of California to cause cancer and
16 reproductive toxicity. Plaintiff MEJF alleges that Brass Products with components containing
17 lead-containing brass that are sold by Bell Automotive for use in California require a warning
18 under Proposition 65, pursuant to Health and Safety Code Section 25249.6. Bell Automotive
19 denies that a warning is required. For purposes of this Consent Judgment, the parties stipulate
20 that this Court has jurisdiction over the allegations of violations contained in the Complaint and
21 personal jurisdiction over Bell Automotive as to the acts alleged in the Complaint, that venue is
22 proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
23 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of
24 all claims which were or could have been raised by any person or entity based in whole or in part,
25 directly or indirectly, on the facts alleged therein or arising therefrom or related to.

26 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
27 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
28 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment

1 shall not constitute an admission with respect to any material allegation of the Complaint, each
2 and every allegation of which Bell Automotive denies, nor may this Consent Judgment or
3 compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on
4 the part of Bell Automotive.

5 1.4 For purposes of this Consent Judgment, the term "Covered Products" means Brass
6 Products as described in paragraph 1.2, that contain one or more components manufactured from
7 brass, and that are manufactured, marketed or sold by Bell Automotive.

8 1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

9 2. **SETTLEMENT PAYMENT**

10 2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the
11 Complaint concerning Covered Products, Bell Automotive shall pay \$20,000 to the Klamath
12 Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. The above described
13 payments shall be forwarded by Defendant so that they are received by September 4, 2009. If the
14 Consent Judgment is not approved within 120 days of the receipt of the above described
15 payments they shall be returned and the provisions of this Consent judgment shall become null
16 and void. Additionally, on or before February 1, 2010, Bell Automotive shall pay \$5,000 to the
17 Ecological Rights Foundation for use toward reducing exposures to toxic chemicals and other
18 pollutants, and toward increasing consumer, worker and community awareness of health hazards
19 posed by lead and other toxic chemicals. The parties agree and acknowledge that the charitable
20 contributions made pursuant to this section shall not be construed as a credit against the personal
21 claims of absent third parties for restitution against the defendant.

22 2.2 Bell Automotive 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, Bell Automotive and MEJF waive their respective rights to
27 a hearing or trial on the allegations of the Complaint.

28

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

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

19 4.2 As to alleged exposures to lead or lead compounds from Covered Products, MEJF,
20 by and on behalf of itself and its respective agents, successors and assigns, waives any and all
21 rights to institute any form of legal action, and releases all claims against Bell Automotive and the
22 Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their
23 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of
24 doing business, and the successors and assigns of any of them, who may use, maintain, distribute
25 or sell the Covered Products, whether, under Proposition 65 or otherwise, arising out of or
26 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
27 including but not limited to any exposure to, or failure to warn with respect to, the Covered
28 Products (referred to collectively in this paragraph as the "Claims"). In furtherance of the

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

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

10 4.3 MEJF understands and acknowledges that the significance and consequence of this
11 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising
12 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
13 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
14 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for
15 those damages against Bell Automotive or the Released Entities. Furthermore, MEJF
16 acknowledges that it intends these consequences for any such Claims as may exist as of the date
17 of this release but which MEJF does not know exist, and which, if known, would materially affect
18 their decision to enter into this Consent Judgment, regardless of whether their lack of knowledge
19 is the result of ignorance, oversight, error, negligence, or any other cause.

20 5. ENFORCEMENT OF JUDGMENT

21 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
22 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
23 San Francisco County, giving the notice required by law, enforce the terms and conditions
24 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
25 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the
26 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
27 comply in an open and good faith manner.
28

1 5.2 In any proceeding brought by either party to enforce this Consent Judgment, such
2 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
3 violation of Proposition 65 or this Consent Judgment.

4 **6. MODIFICATION OF JUDGMENT**

5 6.1 This Consent Judgment may be modified only upon written agreement of the
6 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
7 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

8 6.2 If, with respect to brass containing lead, the Attorney General of the State of
9 California or Plaintiff permit any other reformulation standard by way of settlement or
10 compromise with any other person in the course of doing business, or any other entity, or if
11 another reformulation standard for brass is incorporated by way of final judgment as to any other
12 person in the course of doing business, or any other entity, then Defendant is entitled to seek a
13 modification to this Consent Judgment on the same terms as provided in those settlements,
14 compromises or judgments.

15 **7. INJUNCTIVE RELIEF**

16 7.1 The requirements of this paragraph 7 shall apply only to Covered Products that are
17 manufactured by Bell Automotive after the Effective Date.

18 7.2 As to any Covered Product that contains a component made from brass that
19 contains lead as an intentionally added ingredient, where such brass comes into contact with the
20 user, a warning that contains one of the following warning statements shall be provided:

21 (a) **“WARNING: This product contains chemicals, including lead, known to**
22 **the State of California to cause birth defects and other reproductive harm. *Wash hands after***
23 ***handling*”** or

24 (b) **“WARNING: Handling the brass parts of this product will expose you to**
25 **lead, a chemical known to the State of California to cause birth defects and other reproductive**
26 **harm. *Wash hands after handling.*”**

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

1 (c) The warning statements required in paragraph 7.2 shall be affixed to or
2 printed on the Covered Product itself or to the Covered Product's packaging, labeling, or
3 instruction booklet, if any. The warning shall be prominently affixed to or printed on the Covered
4 Product or packaging, labeling, or instruction booklet, and displayed with such conspicuousness,
5 as compared with other words, statements, designs, or devices on the Covered Product, or its
6 packaging, labeling, or instruction booklet, as to render it likely to be read and understood by an
7 ordinary individual under customary conditions of purchase or use. For purposes of this
8 paragraph, a warning may be contained in the same section of the packaging, labeling, or
9 instruction booklet that contains other safety warnings, if any, concerning the use of the Covered
10 Product, or near its displayed price and/or UPC code. The type size of the warning must be
11 legible, but need not be any larger than any other warning provided for the Covered Product, and
12 its relative size may take into account the nature, immediacy, and acuteness of the risks for which
13 other warnings are provided.

14 (d) Notwithstanding the above, Bell Automotive and its customers may
15 continue to sell-through products that are currently in stock and that carry the following warning
16 statement: "Warning: This product contains lead, an element known by the State of California to
17 cause cancer, birth defects, or other reproductive harm."

18 8. TERMINATION AND RETENTION OF JURISDICTION

19 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
20 terms this Consent Judgment.

21 9. AUTHORITY TO STIPULATE

22 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
23 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
24 the party represented and legally to bind that party.

25 10. DUTIES LIMITED TO CALIFORNIA

26 10.1 This Consent Judgment shall have no effect on Covered Products sold by Bell
27 Automotive outside the State of California.

28

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

2 11.1 KELC shall serve a copy of this Consent Judgment, signed by both parties, on the
3 California Attorney General on behalf of the parties so that the Attorney General may review this
4 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
5 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
6 and in the absence of any written objection by the Attorney General to the terms of this Consent
7 Judgment, the parties may then submit it to the Court for approval.

8 **12. ENTIRE AGREEMENT**

9 12.1 This Consent Judgment contains the sole and entire agreement and understanding
10 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
11 negotiations, commitments and understandings related hereto. No representations, oral or
12 otherwise, express or implied, other than those contained herein have been made by any party
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
14 deemed to exist or to bind any of the parties.

15 **13. GOVERNING LAW**

16 13.1 The validity, construction and performance of this Consent Judgment shall be
17 governed by the laws of the State of California, without reference to any conflicts of law
18 provisions of California law.

19 **14. EXECUTION AND COUNTERPARTS**

20 14.1 This Consent Judgment may be executed in counterparts and by means of
21 facsimile, which taken together shall be deemed to constitute one document.

22 **15. COURT APPROVAL**

23 15.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of
24 no force or effect, and cannot be used in any proceeding for any purpose.

25 **16. NOTICES**

26 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
27 Class Mail.

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If to MEJF:

William Verick, Esq.
Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

If to Bell Automotive
Industries, Inc.:

Jason Ohta
Latham & Watkins
600 West Broadway, Suite 1800
San Diego, CA 92101

IT IS SO STIPULATED:

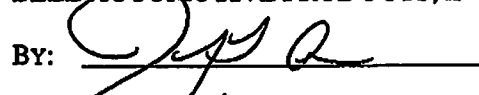
DATED: 9-24-09

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

BY: 
WILLIAM VERICK

DATED: 9-2-09

BELL AUTOMOTIVE PRODUCTS, INC.

BY: 
ITS: CEO/COO

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: OCT 26 2009

CHARLOTTE WALTER WOOLARD

JUDGE OF THE SUPERIOR COURT