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11 ENVIRONMENTAL JUSTICE 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 vs.

19 CARQUEST PRODUCTS, INC., et al.,

20 Defendants.

Case No. CGC 09-488626

21 CONSENT JUDGMENT
22 (Onward Multi-Corp., Inc.)

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Mateel v. Carquest Products, Inc., et al.,
Case No 488626

CONSENT JUDGMENT (ONWARD MULTI-CORP., INC.)

**ENDORSED
FILED**
San Francisco County Superior Court.

APR 19 2010

CLERK OF THE COURT
BY: ERICKA LARNAUTI
Deputy Clerk

1 I. INTRODUCTION

2 1.1 On or about May 22, 2009, MATEEL ENVIRONMENTAL JUSTICE
3 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a
4 complaint, and on August 12, 2009, an Amended Complaint. Both the Complaint and
5 Amended Complaint were for civil penalties and injunctive relief in the above captioned
6 matter in San Francisco County Superior Court, against several defendants, including
7 Onward Multi-Corp., Inc., ("Onward" or "Settling Defendant"). The Complaint alleges,
8 among other things, that Settling Defendant violated the provisions of the Safe Drinking
9 Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5 *et*
10 *seq.* ("Proposition 65"), by failing to give clear and reasonable warnings to those residents
11 in California who handle leaded brass hose-fittings made from leaded brass alloys that
12 handling and use of these products causes those residents to be exposed to lead and/or
13 lead compounds, chemicals known to the State of California to cause cancer and birth
14 defects or other reproductive harm, as required by Health and Safety Code Section
15 25249.6. For purposes of this Consent Judgment, "Covered Products" shall be defined as
16 leaded brass hose-fittings and couplings manufactured, distributed or otherwise marketed
17 by Settling Defendant and which are ultimately sold to California consumers.

18 1.2 Settling Defendant is a business that employs ten or more persons and
19 manufactures, distributes supplies and/or otherwise markets brass products, including
20 Covered Products. Pursuant to Health and Safety Code Section 25249.8, lead and lead
21 compounds are chemicals known to the State of California to cause cancer and
22 reproductive toxicity. Under specified circumstances, products containing lead and/or
23 lead compounds that are sold or distributed in the State of California are subject to the
24 Proposition 65 warning requirement set forth in Health and Safety Code Section 25249.6.
25 Plaintiff Mateel alleges that the leaded brass hose fittings and hose couplings ("Covered
26 Products") sold and/or marketed by Settling Defendant for use in California require a
27 warning under Proposition 65.

1 1.3 For purposes of this Consent Judgment, the parties stipulate that this Court
2 has jurisdiction over the allegations of violations contained in the Complaints, and
3 personal jurisdiction over Settling Defendant as to the acts alleged in the Complaints, and
4 that venue is proper in the County of San Francisco and that this Court has jurisdiction to
5 enter this Consent Judgment as a full settlement and resolution of the allegations
6 contained in the Complaints, and of all claims that were or could have been raised by
7 Mateel, or as to those matters included in the 60 Day Notice Letters, raised by a member
8 of the general public.

9 1.4 This Consent Judgment resolves claims that are denied and disputed. The
10 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
11 all claims between the parties for the purpose of avoiding prolonged litigation. This
12 Consent Judgment shall not constitute an admission with respect to any material allegation
13 of the Complaint, each and every allegation of which Settling Defendant denies, nor may
14 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
15 misconduct, culpability or liability on the part of Settling Defendant.

16 **2. SETTLEMENT PAYMENT**

17 2.1 Settling Defendant shall pay \$ 7,000 to the Ecological Rights Foundation
18 and \$ 7,000 to Californians for Alternatives to Toxics for use toward reducing exposures
19 to toxic chemicals and other pollutants, and toward increasing consumer, worker and
20 community awareness of health hazards posed by lead and other toxic chemicals. Both
21 are California non-profit, tax-exempt organizations.

22 2.2 Settling Defendant shall pay \$ 16,000 to the Klamath Environmental Law
23 Center ("KELC") to cover a portion of Mateel's attorneys' fees and costs.

24 2.3 All payments shall be made by check, payable to the above specified payee
25 and mailed, or otherwise delivered, to William Verick, Esq., Klamath Environmental
26 Justice Foundation, 424 First Street, Eureka, CA 95501, so that the payments are received
27 at least 5 days prior to any noticed hearing of a motion for approval. Klamath
28 Environmental Law Center shall distribute the payments within a commercially

1 reasonable time. If this settlement is not approved by the court within 120 days of it being
2 signed by Settling Defendant, all payments shall be returned.

3 **3. ENTRY OF CONSENT JUDGMENT**

4 3.1 The parties hereby request that the Court promptly enter this Consent
5 Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive
6 their respective rights to a hearing or trial on the allegations of the Complaint.

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

8 4.1 As to exposures to Lead alleged to be cause by the Covered Product, this
9 Consent Judgment is a final and binding resolution between Mateel, acting on behalf of
10 itself and, as to those matters raised in the 60 Day Notice Letters, in the public interest,
11 and Settling Defendant, of any violation of Proposition 65, or the regulations promulgated
12 thereunder, to the fullest extent that it could have been asserted by Mateel against the
13 Settling Defendant based upon, arising out of, or relating to Settling Defendant's
14 compliance with Proposition 65, or regulations promulgated thereunder, with respect to
15 the Covered Products, whether based on actions committed by Settling Defendant, or by
16 any other entity within the chain of distribution of the Covered Products, including, but
17 not limited to, manufacturers, wholesale or retail sellers or distributors and any other
18 person in the course of doing business that manufactured, sold, or distributed the Covered
19 Products. As to alleged exposures to chemicals listed in the 60 Day Notice Letter from
20 Covered Products, compliance with the terms of this Consent Judgment resolves any
21 issue, now and in the future, concerning compliance by Settling Defendant and its parents,
22 subsidiaries or affiliates, predecessors, officers, directors, employees, and all
23 manufacturers, customers, distributors, wholesalers, retailers or any other person in the
24 course of doing business involving the Covered Products, and the successors and assigns
25 of any of these who may manufacture, use, maintain, distribute, market or sell Covered
26 Products, with the current requirements of Proposition 65. Notwithstanding any other
27 provision of this agreement, the release by the general public shall not extend beyond the
28 claims and chemicals identified in the 60 Day Notice Letters referenced in this agreement.

1 4.2 As to alleged exposures to chemicals identified in the 60 Day Notice Letter
2 from Covered Products, Mateel and its agents, successors and assigns, waives all rights to
3 institute any form of legal action, and releases all claims which were or could have been
4 brought against Settling Defendant and its parents, subsidiaries or affiliates, predecessors,
5 officers, directors, employees, and all customers, manufacturers, distributors, wholesalers,
6 retailers or any other person in the course of doing business involving the Covered
7 Products, and the successors and assigns of any of them, who may manufacture, use,
8 maintain, distribute or sell the Covered Products. In furtherance of the foregoing, Mateel,
9 hereby waives any and all rights and benefits which it now has, or in the future may have,
10 conferred upon it with respect to the Covered Products by virtue of the provisions of
11 Section 1542 of the California Civil Code, which provides as follows:

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

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

1 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or
2 any other cause.

3 **5. ENFORCEMENT OF JUDGMENT**

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

12 **5.2** In any proceeding brought by either party to enforce this Consent Judgment,
13 such party may seek whatever fines, costs, penalties or remedies as may be provided by
14 law for any violation of Proposition 65 or this Consent Judgment.

15 **6. MODIFICATION OF JUDGMENT**

16 **6.1** This Consent Judgment may be modified only upon written agreement of
17 the parties and upon entry of a modified Consent Judgment by the Court, or upon motion
18 of any party as provided by law and upon entry of a modified Consent Judgment by the
19 Court.

20 **6.2** If, with respect to brass containing lead, the Attorney General of the State of
21 California or Plaintiff permit any other reformulation standard by way of settlement or
22 compromise with any other person in the course of doing business, or any other entity, or
23 permit another reformulation standard for brass to be incorporated by way of final
24 judgment as to any other person in the course of doing business, and any other entity, then
25 Defendant is entitled to seek a modification to this Consent Judgment on the same terms
26 as provided in those settlements, compromises or judgments.
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1 7. INJUNCTIVE RELIEF

2 7.1 The requirements of this paragraph 7 and its subparts, shall apply only to
3 Covered Products that are manufactured or distributed by Settling Defendant after
4 approval of this settlement.

5 7.2 As to any Covered Product that is itself, or contains a component which is,
6 made from brass that contains lead as an intentionally added ingredient, where such brass
7 comes in contact with the user, a warning that contains one of the following warning
8 statements shall be provided:

9 **PROP 65 WARNING: This product contains lead and lead compounds,**
10 **known to the State of California to cause [cancer] and birth defects or**
11 **other reproductive harm. *Wash your hands after handling this product.***

12 or

13 **PROP 65 WARNING: Handling the brass parts of this product will expose**
14 **you to lead, a chemical known to the State of California to cause[cancer]**
15 **and birth defects and other reproductive harm. *Wash hands after use.***

16 The phrase "PROP 65" may be excluded at the Defendant's discretion. If included, the
17 phrase "PROP 65" shall be in capitals. The word "WARNING" shall be in bold text and
18 in capital letters. The words "*Wash hands after handling this product*" or "*Wash hands*
19 *after use,*" shall be italicized or underlined. Inclusion of the bracketed words "cancer,
20 and" in the above warning shall be at Settling Defendant's option.

21 7.3 The warning statements required in paragraph 7.2, shall be prominently
22 affixed to or printed on each Covered Product, its label, or package and contained in the
23 same section of the label or package that contains other safety warnings, if any,
24 concerning the use of the Covered Product or near its displayed price and/or UPC code,
25 and with such conspicuousness, as compared with other words, statements, designs, or
26 devices on the Covered Product, its label, package or display as to render it likely to be
27 read and understood by an ordinary individual under customary conditions of purchase or
28 use. The type size of the warning must be legible, but need not be larger than any other
warning provided for the Covered Product, and its relative size may take into account the
nature, immediacy, and acuteness of the risks for which other warnings are provided.

1 7.4 The warning requirements of Section 7.1 shall not apply to any Products
2 containing 600 parts per million (ppm) lead content or less. The warning requirements of
3 Section 7.1 shall not apply to Products that have left Settling Defendant's custody or
4 control prior to the date of approval of this settlement. Mateel agrees that as to the lead
5 content of any reformulated Covered Products, Settling Defendant may rely upon the
6 representations of its respective suppliers, and upstream sources, provided Settling
7 Defendant's reliance is in good faith.

8 **8. AUTHORITY TO STIPULATE**

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

12 **9. RETENTION OF JURISDICTION**

13 This Court shall retain jurisdiction of this matter to implement the Consent
14 Judgment.

15 **10. ENTIRE AGREEMENT**

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

22 **11. GOVERNING LAW**

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

26 **12. FEES AND EXPENSES**

27 The parties acknowledge and agree that, except as set provided in Section 2.2 of
28 this Consent Judgment, each party shall bear its own costs and attorneys fees.

1 13. COURT APPROVAL

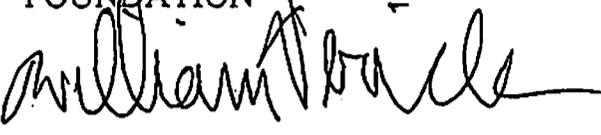
2 If this Consent Judgment is not approved by the Court, it shall be of no force or
3 effect, and cannot be used in any proceeding for any purpose.

4 IT IS SO STIPULATED:

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Dated:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

Dated:

ONWARD MULTI-CORP., INC.,

By:
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

JUDGE OF THE SUPERIOR COURT

1 **13. COURT APPROVAL**

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

4 **IT IS SO STIPULATED:**

5
6 Dated: MATEEL ENVIRONMENTAL JUSTICE
7 FOUNDATION

8
9 William Verick
10 CEO Mateel Environmental Justice Foundation,
11 Klamath Environmental Law Center

12 Dated: ONWARD MULTI-CORP., INC.,

13 *APRIL 10, 2010*

14 *[Signature]*
15 By: T.A. WITZEL
16 Its:

17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18 Dated: CHARLOTTE WALTER WOOLARD

19 APR 19 2010

20 JUDGE OF THE SUPERIOR COURT
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