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19 FOUNDATION

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 APACHE HOSE AND BELTING CO.,
27 INC., et al.,

28 Defendants.

Case No. CGC-09-495336

**CONSENT JUDGMENT AS TO
DEFENDANT PARKER-HANNIFIN
CORPORATION**

1 **1. INTRODUCTION**

2 1.1 On December 21, 2009 the MATEEL ENVIRONMENTAL JUSTICE
3 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a
4 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco
5 Superior Court, Case No. 495336, against Defendant Parker-Hannifin Corporation
6 ("Parker-Hannifin" or "Defendant"). The Complaint alleges, among other things, that

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CONSENT JUDGMENT

ENDORSED
FILED
San Francisco County Superior Court
OCT 01 2010
CLERK OF THE COURT
ERICK LARNAUTI
Deputy Clerk

1 Defendant violated 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 Parker-Hannifin has knowingly and intentionally exposed persons to
4 brass pneumatic welding hose connectors and fittings, that are made of brass or that have
5 brass components that contains lead and/or lead compounds (hereinafter “Leaded Brass
6 Hose Fittings”), without first providing a clear and reasonable warning to such
7 individuals. Lead and lead compounds are chemicals known to the State of California to
8 cause cancer and birth defects or other reproductive harm.

9 **1.2** On March 26, 2009, Mateel sent a Notice of Violation to Parker-Hannifin,
10 the California Attorney General, all California District Attorneys, and all City Attorneys
11 of every California city with populations exceeding 750,000. The Notice of Violation
12 alleged that Parker-Hannifin exposed California residents to lead through its sales of brass
13 products that were themselves made of leaded brass, or which had components made from
14 leaded brass.

15 **1.3** Parker-Hannifin is a business that employs ten or more persons and
16 manufactures, distributes, and/or markets leaded brass products, within the State of
17 California. Some of those products are alleged to contain lead and/or lead compounds.
18 Lead and lead compounds are chemicals known to the State of California to cause cancer,
19 and lead is a chemical known to the State of California to cause reproductive toxicity
20 pursuant to Health and Safety Code Section 25249.9. Under specified circumstances,
21 products containing lead and/or lead compounds that are sold or distributed in the State of
22 California are subject to the Proposition 65 warning requirement set forth in Health and
23 Safety Code Section 25249.6. Plaintiff Mateel alleges that tools that are made from
24 leaded brass, or that have leaded brass components, are manufactured, distributed, sold
25 and/or marketed by Parker-Hannifin for use in California and require a warning under
26 Proposition 65.

27 For purposes of this Consent Judgment, the term “Covered Products” shall be defined as
28 products that are made from leaded brass or that have leaded brass components that a

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1 consumer touches while using the products in their normally intended manner, to the
2 extent such products are distributed and sold within the state of California, and are
3 manufactured, distributed, marketed and/or sold by Parker-Hannifin's Industrial Hose
4 Division, including the Leaded Brass Hose Fittings as described in paragraph 1.1,
5 regardless of whether they bear Parker-Hannifin labels.

6 **1.4** For purposes of this Consent Judgment, the parties stipulate that this Court
7 has jurisdiction over the allegations of violations contained in the Complaint and personal
8 jurisdiction over Parker-Hannifin as to the acts alleged in the Complaint, that venue is
9 proper in the County of San Francisco and that this Court has jurisdiction to enter this
10 Consent Judgment as a full settlement and resolution of the allegations contained in the
11 Complaint and of all claims that were or could have been raised by any person or entity
12 based in whole or in part, directly or indirectly, on the facts alleged therein or arising
13 therefrom or related thereto.

14 **1.5** This Consent Judgment resolves claims that are denied and disputed. The
15 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
16 all claims between the parties for the purpose of avoiding prolonged litigation. This
17 Consent Judgment shall not constitute an admission with respect to any material allegation
18 of the Complaint, each and every allegation of which Parker-Hannifin denies, nor may
19 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
20 misconduct, culpability or liability on the part of Parker-Hannifin.

21 **2. SETTLEMENT PAYMENT**

22 **2.1** In settlement of all of the claims referred to in this Consent Judgment
23 against the Settling Defendant Parker-Hannifin, no later than five days before the day the
24 court hears any motion to approve this Consent Judgment, Parker-Hannifin shall pay
25 \$20,000 to the Klamath Environmental Law Center ("KELC") to cover Mateel's
26 attorneys' fees and costs.

27 **2.2** No later than the five days prior to the hearing on any motion to approve the
28 settlement, Parker-Hannifin shall pay \$5,000₃ to the Ecological Rights Foundation ("ERF")
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1 and \$5,000 to Californians for Alternatives to Toxics (“CATs”). Both organizations are
2 California non-profit tax exempt organizations. These payments are to be used by ERF
3 and CATs to inform Californians about toxic chemicals or to eliminate or reduce
4 exposures to toxic chemicals.

5 **2.3** In the event this settlement is not approved and the Consent Judgment not
6 entered by the court within 120 days of it being executed by Parker-Hannifin, any and all
7 monetary payments shall be returned.

8 **3. ENTRY OF CONSENT JUDGMENT**

9 **3.1** The parties hereby request that the Court promptly enter this Consent
10 Judgment. Upon entry of the Consent Judgment, Parker-Hannifin on one hand, and
11 Mateel, on the other, waive their respective rights to a hearing or trial on the allegations of
12 the Complaint.

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

14 **4.1** As to lead exposures caused by Covered Products, this Consent Judgment is
15 a final and binding resolution between Mateel, acting on behalf of itself and, as to those
16 matters raised in the Notice of Violation, the general public, and Parker-Hannifin of:
17 (i) any violation of Proposition 65 with respect to the Covered Products, and (ii) any other
18 statutory or common law claim, to the fullest extent that any of the foregoing described in
19 (i) or (ii) were or could have been asserted by Mateel against Parker-Hannifin based upon
20 those matters raised in the Notice of Violation and arising out of or relating to Parker-
21 Hannifin’s compliance with Proposition 65, or regulations promulgated thereunder, with
22 respect to the Covered Products, and any other claim based in whole or part on the facts
23 alleged in the Complaint, whether based on actions committed by Parker-Hannifin, or any
24 entity within Parker-Hannifin’s chain of distribution, including, but not limited to,
25 manufacturers, wholesale or retail sellers or distributors and any other person in the course
26 of doing business. As to lead exposures alleged to be caused by Covered Products,
27 compliance with the terms of this Consent Judgment resolves any issue, now and in the
28 future, concerning compliance with the requirements of Proposition 65 for lead in

NBI:705484.5

1 Covered Products' brass components by Parker-Hannifin, and their parents, subsidiaries
2 or affiliates, predecessors, officers, directors, employees, and all of their manufacturers,
3 customers, distributors, wholesalers, retailers or any other person in the course of doing
4 business, and the successors and assigns of any of these to they extent they manufacture,
5 use, maintain, distribute, market or sell Covered Products.

6 **4.2** As to those alleged exposures to Covered Products raised in the Notice of
7 Violation, Mateel, acting on behalf of itself, and Mateel's agents, successors and assigns,
8 waive all rights to institute any form of legal action, and release all claims against Parker-
9 Hannifin, and their parents, subsidiaries or affiliates, predecessors, officers, directors,
10 employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or
11 any other person in the course of doing business, and the successors and assigns of any of
12 them, who may manufacture, use, maintain, distribute or sell the Covered Products,
13 whether under Proposition 65 or otherwise, arising out of or resulting from, or related
14 directly or indirectly to, in whole or in part, the Covered Products and claims identified in
15 Mateel's Notices of Violation. In furtherance of the foregoing, Mateel, acting on behalf
16 of itself hereby waives any and all rights and benefits which it now has, or in the future
17 may have, conferred upon it with respect to the Covered Products by virtue of the
18 provisions of Section 1542 of the California Civil Code, which provides as follows:

19 “A GENERAL RELEASE DOES NOT EXTEND TO
20 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
21 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
22 EXECUTING THE RELEASE, WHICH IF KNOWN BY
23 HIM MUST HAVE MATERIALLY AFFECTED HIS
24 SETTLEMENT WITH THE DEBTOR.”

25 Mateel understands and acknowledges that the significance and consequence of this
26 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
27 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
28 Covered Products, it will not be able to make any claim for those damages against Parker-

NBI:705484.5

CONSENT JUDGMENT

1 Hannifin, and their parents, subsidiaries or affiliates, predecessors, officers, directors,
2 employees, and all of their customers, manufacturers, distributors, wholesalers, retailers or
3 any other person in the course of doing business, and the successors and assigns of any of
4 them, who may manufacture, use, maintain, distribute or sell the Covered Products.

5 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
6 which may exist as of the date of this release but which Mateel does not know exist, and
7 which, if known, would materially affect its decision to enter into this Consent Judgment,
8 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
9 negligence, or any other cause.

10 **5. ENFORCEMENT OF JUDGMENT**

11 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
12 parties hereto. The parties may, by noticed motion or order to show cause before the
13 Superior Court of San Francisco County, giving the notice required by law, enforce the
14 terms and conditions contained herein.

15 **6. MODIFICATION OF JUDGMENT**

16 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
17 modified only upon written agreement of the parties and upon entry of a modified Consent
18 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
19 entry of a modified Consent Judgment by the Court.

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

21 **7.1** Covered Products' brass components shall be deemed to comply with
22 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning
23 requirements for lead if the brass that is part of the Covered Products meets the following
24 criteria: (a) the brass alloy from which the brass fittings are made shall have a lead
25 content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). Parker-
26 Hannifin may comply with the above requirements by relying on information obtained
27 from their suppliers regarding the content of the brass alloy from which the brass fittings
28 are made, provided such reliance is in good faith. Obtaining test results showing that the

NB1:705484.5

1 lead content is no more than 0.03%, using a method of sufficient sensitivity to establish a
2 limit of quantification (as distinguished from detection) of less than 300 ppm shall be
3 deemed to establish good faith reliance.

4 **7.2** Covered Products that do not meet the warning exemption standard set forth
5 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
6 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply
7 only to: (1) Covered Products that Parker-Hannifin ships for distribution after 120 days
8 after entry of this Consent Judgment (“the Effective Date”); and (2) products
9 manufactured, distributed, marketed, sold or shipped for sale or use inside the State of
10 California.

11 **7.3** Parker-Hannifin shall provide Proposition 65 warnings as follows:

12 (a) Defendant Parker-Hannifin shall provide either of the following
13 warning statements:

14 **WARNING:** This product contains lead, a chemical known to the State of
15 California to cause cancer and birth defects or other reproductive harm. .

16 *Wash your hands after touching this product.*

17 or

18 **WARNING:** This product contains one or more chemicals, including lead,
19 that are known to the State of California to cause cancer and birth defects or
20 other reproductive harm. *Wash hands after handling.*

21 The word “WARNING” shall be in bold. The words “Wash hands
22 after handling” shall be in bold and italicized.

23 Parker-Hannifin shall provide such warning with the unit package of
24 the Covered Products. Such warning shall be prominently affixed to or
25 printed on each Covered Product’s label or package. The warning shall be
26 at least the same size as the largest of any other safety warnings, if any, on
27 the product container. If printed on the label itself, the warning shall be
28 contained in the same section as other safety warnings, if any, concerning

1 the use of the product.

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

6 (c) If Proposition 65 warnings for lead or lead compounds should no
7 longer be required, Parker-Hannifin shall not have any further warning
8 obligations pursuant to this Consent Judgment. In the event that Parker-
9 Hannifin ceases to implement or modifies the warnings required under this
10 Consent Judgment (because of a change in the law or otherwise), then
11 Parker-Hannifin shall provide written notice to Mateel (through KELC) of
12 its intent to do so, and of the basis for its intent, no less than thirty (30) days
13 in advance. Mateel shall notify Parker-Hannifin in writing of any objection
14 within thirty (30) days of its receipt of such notice, or such objection by
15 Mateel shall be waived.

16 (d) If after the Effective Date, Parker-Hannifin ships Covered Products
17 to a retailer or distributor outside of California that do not provide the
18 warnings specified in this paragraph (“Non-Conforming Covered
19 Products”), and if the retailer or distributor then offers those Non-
20 Conforming Covered Products for sale in California, then as to those Non-
21 Conforming Covered Products, that retailer or distributor, and their
22 customers, are not released pursuant to Sections 4.1 and 4.2 above.

23 (e) Nothing in this Consent Judgment shall limit enforcement of a new
24 Proposition 65 action based on future conduct if such future conduct is not
25 in compliance with the injunctive terms of this Consent Judgment.
26 Nonetheless, prior to taking any action based on future conduct, plaintiff
27 agrees to resolve the issue informally.

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8. AUTHORITY TO STIPULATE

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

9. RETENTION OF JURISDICTION

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

10. ENTIRE AGREEMENT

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

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.

12. COURT APPROVAL

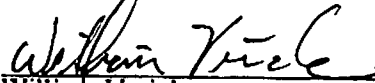
If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED AND AGREED:

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DATED: 8/25/2010

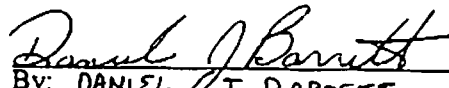
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED: 8/25/2010

PARKER-HANNIFIN CORPORATION



By: DANIEL J. BARRETT
Its: General Manager
Industrial Hose Products Division

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

OCT 0 1 2010

CHARLOTTE WALTER WOOLARD
JUDGE OF THE SUPERIOR COURT