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18 ENVIRONMENTAL JUSTICE FOUNDATION

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE CITY AND COUNTY OF SAN FRANCISCO

21 MATEEL ENVIRONMENTAL
22 JUSTICE FOUNDATION,

23 Plaintiff,

24 vs.

25 HSN, INC.; MARTHA STEWART
26 LIVING OMNIMEDIA, INC.; PIER 1
27 IMPORTS (U.S.), INC.; REED &
28 BARTON CORPORATION; AND
RUSH GIDEON, LLC,

Defendants.

Case No. CGC 09-492166

CONSENT JUDGMENT AS TO
DEFENDANT REED & BARTON
CORPORATION

ENDORSED
FILED
San Francisco County Superior Court

JUN 10 2010

CLERK OF THE COURT

BY: _____
Deputy Clerk

Mateel v. Reed & Barton Corporation, et al.,
Case No 09-492166

CONSENT JUDGMENT AS TO REED & BARTON

sf-2782705

1 **1. INTRODUCTION**

2 **1.1** On or about September 3, 2009, the Mateel Environmental Justice
3 Foundation (“Mateel”), acting on behalf of itself and the public interest, filed a complaint
4 for civil penalties and injunctive relief in the Superior Court for the City and County of
5 San Francisco, Case No. CGC 09-486678 (“Complaint” or “Action”) against, among
6 others, Reed & Barton Corporation (“Reed & Barton” or “Defendant”). The Complaint
7 alleges, among other things, that Reed & Barton violated provisions of the Safe Drinking
8 Water and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5, et
9 seq. (“Proposition 65”). In particular, Mateel alleges that, through the sale in or shipment
10 to California of beverage dispensing products that incorporate brass valves or spigots,
11 Reed & Barton knowingly and intentionally exposed persons to lead and/or lead
12 compounds, which are chemicals known to the State of California to cause cancer and
13 birth defects or other reproductive harm, without first providing clear and reasonable
14 warnings to such individuals. This action was filed more than 60 days after Mateel had
15 sent a 60-Day Notice Letter to Reed & Barton, the California Attorney General, all
16 California District Attorneys, and all City Attorneys of each California city with a
17 population exceeding 750,000, providing notice of Mateel’s alleged violations concerning
18 beverage dispensing products that incorporate brass valves or spigots that Reed and
19 Barton offers for sale in California (“Covered Products”).

20 **1.2** Reed & Barton is a business that employs ten or more persons and
21 manufactures, distributes, supplies and/or otherwise markets within the State of California
22 Covered Products.

23 **1.3** Lead and lead compounds are listed as chemicals known to the State of
24 California to cause cancer, and lead is listed as a chemical known to the State of
25 California to cause reproductive toxicity, pursuant to Health and Safety Code Section
26 25249.9.¹

27 ¹ Under Proposition 65’s implementing regulations the level of exposure to lead triggering a cancer warning
28 requirement is at least thirty times higher than the level at which reproductive toxicity warnings may be triggered
 under the statute such that the Parties agree that warnings for cancer-related effects of the Covered Products are not a
 Mateel v. Reed & Barton Corporation, et al.,
 Case No 09-492166

1 **1.4** For purposes of this Consent Judgment, Mateel and Reed & Barton stipulate
2 that this Court has jurisdiction over the allegations of violations contained in the 60-Day
3 Notice Letter and the Complaint, as well as personal jurisdiction over the Reed & Barton
4 as to the acts alleged in the 60-Day Notice Letter and Complaint; that venue is proper in
5 the City and County of San Francisco and that this Court has jurisdiction to enter this
6 Consent Judgment as a full and final settlement and resolution of the allegations made
7 against Reed & Barton contained in the 60-Day Notice Letter and Complaint and of all
8 claims that were or could have been raised against the Reed & Barton based on the facts
9 alleged therein or arising therefrom.

10 **1.5** Prior to the entry of this Consent Judgment, Mateel shall send an additional
11 60-Day Notice Letter to Reed & Barton, the California Attorney General, all California
12 District Attorneys, and all City Attorneys of each California city with a population
13 exceeding 750,000, providing notice of alleged violations of Proposition 65 concerning
14 Reed & Barton's alleged failure to provide warnings with respect to lead exposures
15 arising from silverplated and nickelplated hollowware that Reed & Barton offers for sale
16 in California which is used for the service of food or beverages and which does not
17 incorporate a brass valve or spigot ("Additional Products"). If no authorized public
18 prosecutor files a Proposition 65 enforcement action against Reed & Barton concerning
19 alleged lead exposures arising from the Additional Products within sixty-five days of
20 Mateel's additional notice letter, this Action shall be deemed amended to address, and this
21 Consent Judgment shall be deemed to include, the Additional Products within the
22 definition of "Covered Products" as otherwise set forth herein.

23 **1.6** This Consent Judgment resolves claims that are denied and disputed.
24 Mateel and Reed & Barton enter into this Consent Judgment as a full and final settlement
25 for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
26 constitute an admission with respect to any allegation made in Mateel's 60-Day Notice
27 Letters or the Complaint, each and every material allegation of which the Reed & Barton

28 relevant issue in this Action.

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Case No 09-492166

1 denies; nor may this Consent Judgment or compliance with it be used as an admission or
2 evidence of any fact, wrongdoing, misconduct, culpability or liability on the part of Reed
3 & Barton.

4 **2. SETTLEMENT PAYMENT**

5 **2.1** In consideration of the resolution of all of the claims referred to in or arising
6 in association with the Complaint and their resolution via the negotiation, execution and
7 Court's approval of this Consent Judgment, within ten (10) days of entry of this Consent
8 Judgment, Reed & Barton shall pay \$30,000 to the Klamath Environmental Law Center
9 ("KELC") to cover Mateel's attorneys' fees and costs.

10 **2.2** In further consideration of the resolution of all of the claims referred to in or
11 arising in association with the Complaint and their resolution via the negotiation,
12 execution and Court's approval of this Consent Judgment, within ten (10) business days of
13 notice of entry of this Consent Judgment, Reed & Barton shall, in lieu of civil penalties,
14 pay \$5,000 to the Ecological Rights Foundation ("ERF") and \$5,000 to Californians for
15 Alternatives to Toxics ("CATS"), which respectively are California non-profit tax exempt
16 organizations. These payments are to be used by ERF and CATS to inform Californians
17 about toxic chemicals or to eliminate or reduce exposures to toxic chemicals.

18 **2.3** All payments referenced in Sections 2.1 and 2.2 shall be made by check,
19 payable to the above specified recipient and sent to William Verick, Klamath
20 Environmental Justice Foundation, 424 First Street, Eureka, CA 95501, within the 10-day
21 time periods specified above, to be distributed by Mr. Verick, within ten (10) additional
22 days, to the ultimate recipients.

23 **2.4** Mateel and Reed & Barton acknowledge and agree that, except as provided
24 in Sections 2.1 and 7.4 of this Consent Judgment, each shall bear their own costs,
25 expenses, consultant and expert fees, and attorneys' fees.

26 **3. ENTRY OF CONSENT JUDGMENT**

27 **3.1** Mateel and Reed & Barton hereby request that the Court promptly enter this
28 Consent Judgment based on the stipulations and commitments made herein and pursuant

1 to the motion and memorandum of points and authorities Mateel will promptly be filing
2 following the execution of this settlement document.

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

4 **4.1** This Consent Judgment is a final and binding resolution between Mateel,
5 acting on behalf of itself and the public interest, and Reed & Barton of any violation of
6 Proposition 65 with respect to lead exposures allegedly arising from the Covered Products
7 whether based on actions or omissions committed by Reed & Barton, or by any other
8 person or entity within Reed & Barton's chain of distribution of the Covered Products,
9 including, but not limited to, manufacturers, distributors, wholesale or retail sellers
10 (including but not limited to Costco Corporation), and any other person in the course of
11 doing business. As to lead exposures allegedly arising from the Covered Products,
12 compliance with the terms of this Consent Judgment resolves any issue, now and in the
13 future, concerning compliance by Reed & Barton and its affiliates, predecessors, officers,
14 directors, shareholders, employees, and all of their manufacturers, customers, distributors,
15 wholesalers, retailers, or any other person in the course of doing business, and the
16 successors and assigns of any of these who may manufacture, use, maintain, distribute,
17 market or sell Covered Products, with the requirements of Proposition 65.

18 **4.2** As to lead exposures allegedly arising from the Covered Products, Mateel,
19 acting on behalf of itself and its agents, successors and assigns, waives all rights to
20 institute any form of legal action, and releases all claims against Reed & Barton and its
21 affiliates, predecessors, officers, directors, shareholders, employees, and all of its
22 customers, manufacturers, distributors, wholesalers, retailers (including but not limited to
23 Costco Corporation) or any other person in the course of doing business, and the
24 successors and assigns of any of them, who may manufacture, use, maintain, distribute or
25 sell the Covered Products, whether under Proposition 65 or otherwise. In furtherance of
26 the foregoing, Mateel, acting on behalf of itself hereby waives any and all rights and
27 benefits which it now has, or in the future may have, conferred upon it with respect to the
28

1 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code,
2 which provides as follows:

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

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

20 4.3 The downstream releases of future liability set forth in Sections 4.1 and 4.2
21 above, shall not apply to any entity which, in the course of doing business in California,
22 serves coffee, tea or other beverage from a Covered Product for which Reed & Barton has
23 provided a warning pursuant to Section 7.3(b), if that entity fails to pass along that
24 warning or, alternatively, to provide a Proposition 65 warning that is substantially similar
25 to that specified in Section 7.3(b) to the consumer purchasing or partaking of the beverage
26 dispensed from the Covered Product.

1 **5. ENFORCEMENT OF JUDGMENT**

2 **5.1** The terms of this Consent Judgment shall be enforced exclusively by motion
3 or order to show cause before the Superior Court of San Francisco County.

4 **6. MODIFICATION OF JUDGMENT**

5 **6.1** This Consent Judgment may be modified only upon written agreement of
6 Mateel and Reed & Barton and upon entry of a modified Consent Judgment by the Court,
7 or upon motion of Mateel or Reed & Barton as provided by law and upon entry of a
8 modified Consent Judgment by the Court.

9 **7. INJUNCTIVE RELIEF**

10 **7.1** Reed & Barton represents and warrants that it has previously discontinued
11 its sales, and no longer offers for sale in or into California, any beverage dispensers that
12 use leaded brass valves or spigots.

13 **7.2** Reed & Barton shall not in the future offer for sale in or into California, any
14 beverage dispensers with leaded brass valves or spigots. Covered Products which are
15 beverage dispensers containing valves or spigots, but which do not contain leaded brass
16 valves or spigots, may be sold in California in the future provided that they otherwise
17 meet the requirements of Section 7.3 below.

18 **7.3** Reed & Barton shall not offer for sale in or into California, any silverplated
19 or nickelplated hollowware which does not contain leaded brass valves or spigots and
20 which is intended for the service of food or beverages unless such Covered Products
21 either:

- 22 (a) meet the following specifications:
- 23 (i) the plating material is intended to cover all food contact surfaces and
 - 24 applied consistent with the best practices described in Exhibit A,
 - 25 (ii) the plating material does not contain any intentionally added lead or
 - 26 have unintentionally added lead in excess of 200 ppm, and
 - 27 (iii) the material and any solder underlying the plating does not contain any
 - 28 intentionally added lead or have unintentional lead in excess of 500 ppm,

1 or
2 (b) are sold with the following Proposition 65 warning on or affixed to them, their
3 label or their immediate packaging in a font size and location that is legible to an
4 ordinary consumer prior to purchase: "WARNING: Serving food or beverages
5 from this product causes exposure to lead, a chemical known to the State of
6 California to cause birth defects or other reproductive harm."

7 7.4 Reed & Barton may rely on suppliers' representations concerning (a)
8 whether lead has been intentionally added and (b) the maximum unintended lead content
9 levels of materials for purposes of effectuating compliance with this Consent Judgment,
10 provided that such reliance is reasonable. In the event that Mateel determines in the future
11 that materials have been used in Covered Products for which Proposition 65 warnings are
12 not provided that do not meet the maximum lead content specifications set forth above, it
13 may notify Reed & Barton thereof in writing and Reed & Barton shall, within 60 days,
14 provide Mateel with information to demonstrate that such is not the case or that its
15 reliance on a material' supplier's representations concerning the lack of intentionally
16 added lead or the maximum lead content of a material to which lead was not intentionally
17 added was otherwise reasonable. If Mateel does not concur with Reed & Barton's
18 position, the parties shall meet and confer to discuss and attempt to resolve their
19 differences, which such differences may be resolved by Reed & Barton agreeing not to
20 continue relying on the supplier's representation going forward; in the event that such
21 differences are not resolved within 30 additional days or such longer time as is otherwise
22 agreed upon by the parties, Mateel may apply to enforce the terms of this Consent
23 Judgment before the Court and obtain such remedies as the Court determines are
24 appropriate, if any. Mateel shall also obtain reimbursement for reasonable attorneys' fees
25 incurred in the event the Court agrees with its position.

26 7.5 The maximum lead levels set forth in Section 7.3 above are based on the
27 pattern and duration of use of Reed & Barton's Covered Products by average users of
28 those Covered Products, including at special or large events such as weddings,

1 conferences and bar mitzvahs, as well as at other formal or holiday gatherings. They are
2 accepted by the parties solely for purposes of resolving issues disputed between them and
3 for purposes of defining Reed & Barton's future compliance obligations under this
4 Consent Judgment. They are not intended to be used by any other person or apply in any
5 other context, including with respect to Proposition 65.

6 **7.6** The parties stipulate that permissible maximum unintended lead
7 concentration levels for materials set forth in Section 7.3 represent the state of
8 commercially reasonable technology at this time for use in the Covered Products that are
9 the subject of this Consent Judgment only. In the event that Mateel in the future believes
10 that the state of commercially reasonable technology has advanced to the point at which
11 the permissible maximum unintended lead concentration levels for materials used in the
12 Covered Products addressed in this Consent Judgment may be further reduced from that
13 set forth above and to the extent at which it would make a material difference concerning
14 the injunctive relief terms otherwise agreed upon in this Consent Judgment, it may, at any
15 time following 3 years from the date of its entry by the Court, notify Reed & Barton
16 thereof and supply a basis for its conclusion to Reed & Barton in writing at that time.
17 Reed & Barton shall, within 120 days of receipt, either stipulate to a modification of this
18 Consent Judgment to incorporate such a change in the permissible maximum unintended
19 lead concentration levels for materials set forth above or, alternatively provide Mateel
20 with information to demonstrate why such lowered levels are not commercially
21 reasonable. If Mateel does not concur with Reed & Barton's position, the parties shall
22 meet and confer to discuss and attempt to resolve their differences; in the event that such
23 differences are not resolved within 60 additional days or such longer time as is otherwise
24 agreed upon by the parties, Mateel may apply to the Court to obtain a modification of this
25 Consent Judgment. In such event and regardless of the decision rendered by the Court,
26 each party shall bear its own attorneys' fees.

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8. NOTICE

8.1 When any party is entitled to receive any notice or report under this Consent Judgment, the notice or report shall be made in writing and sent via U.S. Mail or other manner of overnight delivery to the following:

(a) for Mateel: William Verick, Klamath Environmental Justice Foundation, 424 First Street, Eureka, CA 95501;

(b) for Reed & Barton: Tim Riddle, President, 144 West Britannia Street, Taunton, MA 02780, with a copy to Robert Falk, Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105.

9. AUTHORITY TO STIPULATE

9.1 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.

10. RETENTION OF JURISDICTION

10.1 This Court shall retain jurisdiction to implement the Consent Judgment.

11. ENTIRE AGREEMENT

11.1 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.

12. GOVERNING LAW

12.1 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.

1 **13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)**

2 13.1 Mateel agrees to comply with Health & Safety Code §25249.7(f)'s reporting
3 form and approval requirements and as implemented by various regulations.

4 **14. EXECUTION IN COUNTERPARTS**

5 14.1 This Consent Judgment may be executed in counterparts and/or by
6 facsimile, which taken together shall be deemed to constitute one original document.

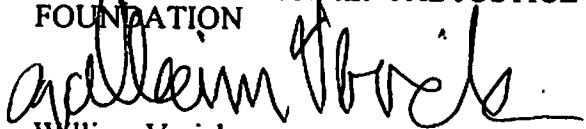
7 **15. COURT APPROVAL**

8 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force
9 or effect, and cannot be used in any proceeding for any purpose.

10 **IT IS SO STIPULATED:**

11 Dated:

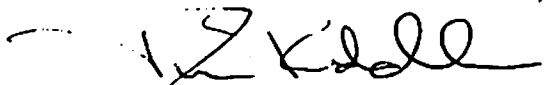
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

16 Dated: *April 16, 2010*

REED & BARTON CORPORATION,



By: *Tim Riddle*
Its: *President & CEO*

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

22 Dated: **JUN 10 2010**

CHARLOTTE WALTER WOOLARD

JUDGE OF THE SUPERIOR COURT

1 EXHIBIT A

2
3 (BEST MANAGEMENT PRACTICES FOR PLATING FACILITIES)

4 PRE-PLATING PROCEDURE

5 The pieces must be activated.

6 Any polishing compound must be removed before plating by cleaning with
7 aqueous or solvent solution.

8 The pieces must be sent through an electro-clean process before plating.

9 The pieces must be sent through an ultra-sonic cleaning bath before plating.

10 The pieces must be rinsed in clean water before plating.

11 PLATING BATH MAINTENANCE

12 The temperature of the plating bath must be controlled to the appropriate
13 temperature in accordance with the recommendations of the equipment and plating
14 chemical suppliers.

15 The silver or nickel tanks must be agitated or aerated in accordance with the
16 chemical suppliers' recommendations.

17 All baths must be filtered continuously during plating and filters changed at least
18 every two weeks.

19 The pH must be measured daily and adjusted within the chemical supplier's
20 recommendations.

21 All plating employees must be trained on the use of the equipment in accordance
22 with recommendation of equipment manufacturer and plating chemical suppliers.

23 The plating baths must be maintained in accordance with the plating chemical
24 suppliers recommendations.

25 Plating tanks must be swept at least weekly.

26 Anodes must be inspected weekly in accordance with the anode supplier's
27 recommendations.

1 Nickel plating racks should be stripped at least every 10 – 20 plating cycles and
2 silver plating racks should be stripped monthly. Both types of racks should be inspected
3 and adjusted daily.

4 Electrical equipment should be sized appropriately and calibrated every six
5 months.

6 Substantial pieces shall be plated with at least 15 minutes combined plating with
7 lead free silver or nickel.

8 Components that articulate closely together or that need to be manipulated into
9 position will be plated to prevent binding, stiffness, and cracking of plating.

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