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17 MATEEL ENVIRONMENTAL JUSTICE
18 FOUNDATION

ENDORSED
FILED
Francisco County Superior Court

AUG 25 2010

CLERK OF THE COURT
JANET L. HARRIS

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

21 MATEEL ENVIRONMENTAL
22 JUSTICE FOUNDATION,,

23 Plaintiff,

24 v.

25 SWANSON TOOL COMPANY;
26 COBRA PRODUCTS, INC.; and
27 MASCO CORPORATION,

28 Defendants.

Case No. CGC-09-492156

CONSENT JUDGMENT

1. INTRODUCTION

1.1 On October 15, 2009, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed an First Amended Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco County Superior Court, Case No. CGC-09-492156, against Defendant SWANSON TOOL COMPANY, (referred to herein as "Swanson" or "Defendant"). The

1 Complaint alleges, among other things, that Defendant violated provisions of the Safe
2 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections
3 25249.5, *et seq.* (“Proposition 65”). In particular, Mateel alleges that Swanson has
4 knowingly and intentionally exposed persons to lead and lead compounds, chemicals
5 known to the State of California to cause cancer and birth defects or other reproductive
6 harm, without first providing a clear and reasonable warning to such individuals.

7 1.2 On May 7, 2009, a 60-Day Notice letter (“Notice Letter”) was sent by
8 Mateel to Swanson, the California Attorney General, all California District Attorneys, and
9 all City Attorneys of every California city with populations exceeding 750,000.

10 1.3 Swanson is a business that employs ten or more persons and manufactures,
11 distributes, markets, and/or offers for sale tools that consist of, or which incorporate
12 components made of, leaded brass and/or bronze, within the State of California. Lead and
13 lead compounds are chemicals known to the State of California to cause cancer, and lead
14 is a chemical known to the State of California to cause reproductive toxicity pursuant to
15 Health and Safety Code Section 25249.9. Under specified circumstances, products
16 containing lead and/or lead compounds that are sold or distributed in the State of
17 California are subject to the Proposition 65 warning requirement set forth in Health and
18 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass and/or bronze
19 tools manufactured, distributed, sold and/or marketed by Swanson for use in California
20 require a warning under Proposition 65.

21 1.4 For purposes of this Consent Judgment, the term “Covered Products” shall
22 be defined as tools that consist of, or which incorporate components made of, leaded brass
23 and/or bronze, whether or not sold as freestanding products or as components of other
24 products to which they are attached, to the extent such products are distributed and sold
25 within the State of California, and that are manufactured, distributed, marketed and/or
26 sold by Swanson, regardless of whether they bear Swanson labels.

27 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court
28 has jurisdiction over the allegations of violations contained in the Complaint and personal

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

7 1.6 This Consent Judgment resolves claims that are denied and disputed. The
8 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
9 all claims between the parties for the purpose of avoiding prolonged litigation. This
10 Consent Judgment shall not constitute an admission with respect to any material allegation
11 of the Complaint, each and every allegation of which Swanson denies; nor may this
12 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
13 misconduct, culpability or liability on the part of Swanson or any other person or entity
14 related to the Defendant.

15 2. **SETTLEMENT PAYMENT**

16 2.1 In settlement of all of the claims that are alleged, or could have been
17 alleged, in the Complaint concerning Covered Products, Swanson shall pay \$20,000 to the
18 Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees.
19 Additionally, Swanson shall pay \$7,500 to the Ecological Rights Foundation, and \$7,500
20 to Californians for Alternatives to Toxics, for use toward reducing exposures to toxic
21 chemicals and other pollutants, and toward increasing consumer, worker and community
22 awareness of health hazards posed by lead and other toxic chemicals. The parties agree
23 and acknowledge that the charitable contributions made pursuant to this section shall not
24 be construed as a credit against the personal claims of absent third parties for restitution
25 against the defendant. The above described payments shall be forwarded by Swanson so
26 that it is received at least 5 days prior to the hearing date scheduled for approval of this
27 Consent Judgment. If the Consent Judgment is not approved with 120 days of the date
28

1 scheduled for approval, the above described payments shall be returned and the provisions
2 of this Consent judgment shall become null and void.

3 2.1 2.2 Swanson shall not be required to pay a civil penalty pursuant to
4 Health and Safety Code Section 25249.7(b).

5 3. **ENTRY OF CONSENT JUDGMENT**

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

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

10 4.1 As to lead exposures from the Covered Products, this Consent Judgment is a
11 final and binding resolution between Mateel, acting on behalf of itself and (as to those
12 matters raised in the 60 Day Notice Letter) the public interest, and Swanson of any
13 violation of Proposition 65 with respect to lead exposures allegedly arising from the
14 Covered Products whether based on actions committed by Swanson, or by any other
15 person or entity within Swanson's chain of distribution of the Covered Products,
16 including, but not limited to, manufacturers, distributors, wholesale or retail sellers, and
17 any other person in the course of doing business. As to lead exposures allegedly arising
18 from the Covered Products, compliance with the terms of this Consent Judgment resolves
19 any issue, now and in the future, concerning compliance by Swanson, and Swanson Tool
20 Hong Kong, Ltd., and their respective parents, subsidiaries or affiliates, predecessors,
21 officers, directors, employees, and all of their manufacturers, customers, distributors,
22 wholesalers, retailers, or any other person in the course of doing business, and the
23 successors and assigns of any of these who may manufacture, use, maintain, distribute,
24 market or sell Covered Products, with the requirements of Proposition 65.

25 4.2 As to lead exposures allegedly arising from the Covered Products, Mateel,
26 acting on behalf of itself and its agents, successors and assigns, waives all rights to
27 institute any form of legal action, and releases all claims against Swanson, and Swanson
28 Tool Hong Kong, Ltd., and their respective parents, subsidiaries or affiliates,

1 predecessors, officers, directors, employees, and all of their customers, manufacturers,
2 distributors, wholesalers, retailers or any other person in the course of doing business, and
3 the successors and assigns of any of them, who may manufacture, use, maintain, distribute
4 or sell the Covered Products, whether under Proposition 65 or otherwise. In furtherance
5 of the foregoing, Mateel, acting on behalf of itself hereby waives any and all rights and
6 benefits which it now has, or in the future may have, conferred upon it with respect to the
7 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code,
8 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 Swanson, and Swanson Tool Hong Kong, Ltd., and their respective parents, subsidiaries
20 or affiliates, predecessors, officers, directors, employees, and all of their customers,
21 manufacturers, distributors, wholesalers, retailers or any other person in the course of
22 doing business, and the successors and assigns of any of them, who may manufacture, use,
23 maintain, distribute or sell the Covered Products. Furthermore, Mateel acknowledges that
24 it intends these consequences for any such claims which may exist as of the date of this
25 release but which Mateel does not know exist, and which, if known, would materially
26 affect its decision to enter into this Consent Judgment, regardless of whether its lack of
27 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

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5. ENFORCEMENT OF JUDGMENT

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

6. MODIFICATION OF JUDGMENT

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

7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING

7.1 Covered Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements if the Covered Products meet the following criteria: (a) the brass or bronze alloys from which the Covered Products are made shall have no lead as an intentionally added constituent; and (b) the brass or bronze alloys from which the Covered Products are made shall have a lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). Swanson may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the brass or bronze alloys from which the Covered Products are made, provided such reliance is in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish good faith reliance.

7.2 Covered Products that do not meet the warning exemption standard set forth in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply only to: (1) Covered Products that Swanson ships for distribution after 90 days after entry

1 of this Consent Judgment (“the Effective Date”); and (2) Covered Products manufactured,
2 distributed, marketed, sold or shipped for sale or use inside the State of California.

3 7.3 Swanson shall provide Proposition 65 warnings as follows:

4 (a) Swanson shall provide one of the following warning statements set
5 forth below:

6 **WARNING:** This product contains lead, a chemical known to the
7 State of California to cause birth defects or other reproductive harm.
8 Do not place your hands in your mouth after handling the product.
9 *Wash your hands after touching this product.*

10 or

11 **WARNING:** This product contains one or more chemicals known to
12 the State of California to cause birth defects or other reproductive
13 harm. *Wash hands after handling.*

14 or

15 **WARNING:** This product contains lead, a chemical known to the
16 State of California to cause cancer, and birth defects or other
17 reproductive harm. **WASH HANDS AFTER HANDLING.**

18 The word “WARNING” shall be in bold. The words “Wash hands after
19 handling” shall be italicized and in bold or capital letters. Swanson shall
20 provide such warning directly on or with the unit package of the Covered
21 Products. Such warning shall be prominently affixed to or printed on each
22 Covered Product or its label or package. If printed on the label itself, the
23 warning shall be contained in the same section that states other safety
24 warnings, if any, concerning the use of the Covered Product.

25 Exhibit A hereto contains exemplar product labels and warnings that are
26 deemed to satisfy the requirements of Section 7.3.

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

5 (c) If Proposition 65 warnings for lead or lead compounds should no
6 longer be required, Swanson shall have no further warning obligations
7 pursuant to this Consent Judgment. Except as provided in section 7.1 above,
8 in the event that Swanson ceases to implement or modifies the warnings
9 required under this Consent Judgment (because of a change on the law or
10 otherwise), Swanson shall provide written notice to Mateel (through KELC)
11 of its intent to do so, and of the basis for its intent, no less than thirty (30)
12 days in advance. Mateel shall notify Swanson in writing of any objection
13 within thirty (30) days of its receipt of such notice, or such objection by
14 Mateel shall be waived.

15 **8. AUTHORITY TO STIPULATE**

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

19 **9. RETENTION OF JURISDICTION**

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

22 **10. ENTIRE AGREEMENT**

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

1 **11. GOVERNING LAW**

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

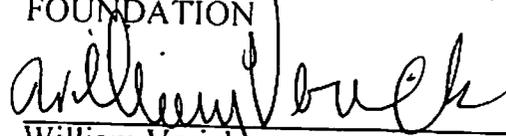
5 **12. COURT APPROVAL**

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

9 **IT IS SO STIPULATED:**

10
11 DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

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17 DATED:

SWANSON TOOL COMPANY

By:
Its:

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

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25 DATED:

JUDGE OF THE SUPERIOR COURT

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11. GOVERNING LAW

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12. COURT APPROVAL

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IT IS SO STIPULATED:

DATED:

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

DATED:

7/7/10

SWANSON TOOL COMPANY

By: JAMES ALLENARD
Its: PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

8/24/10

CHARLOTTE WALTER WOOLARD

JUDGE OF THE SUPERIOR COURT