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18 MATEEL ENVIRONMENTAL JUSTICE
19 FOUNDATION
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ENDORSED
FILED
San Francisco County Superior Court
DEC 08 2009
GORDON PARK-LI, Clerk
BY: _____ Deputy Clerk

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

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,,
Plaintiff,
v.
SWANSON TOOL COMPANY and
COBRA PRODUCTS, INC.,
Defendants.

Case No. CGC-09-492156
CONSENT JUDGMENT AS TO
COBRA PRODUCTS, INC. AND
MASCO CORPORATION

1 **1. INTRODUCTION**

2 1.1 On September 3, 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 County
5 Superior Court, Case No.CGC-09-492156, against, among others, defendants Cobra
6 Products, Inc. and Masco Corporation. The Complaint alleges, among other things, that
7 these defendants violated provisions of the Safe Drinking Water and Toxic Enforcement
8 Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In
9 particular, Mateel alleged that Cobra Products, Inc. and Masco Corporation knowingly
10 and intentionally exposed persons to tools that consist of, or which incorporate
11 components made of, leaded brass and/or bronze (hereinafter “leaded-brass tools”).
12 Mateel further alleged that lead and lead compounds are chemicals known to the State of
13 California to cause cancer and birth defects or other reproductive harm, without first
14 providing a clear and reasonable warning to such individuals.

15 1.2 On May 7, 2009, Mateel sent a 60-Day Notice letter (“Notice Letter”) to
16 Cobra Products, Inc. and Masco Corporation (among other companies), the California
17 Attorney General, all California District Attorneys, and all City Attorneys of every
18 California city with populations exceeding 750,000 containing its allegations concerning
19 certain leaded-brass tools offered for sale in California without Proposition 65 warnings.

20 1.3 Masco Corporation (hereinafter, “Masco”) is the corporate parent of Cobra
21 Products, Inc. (“Cobra”), but does not itself sell or offer for sale any of the leaded-brass
22 tools that are the subject of Mateel’s allegations.

23 1.4 Cobra is a business that employs ten or more persons and manufactures,
24 distributes, markets, and/or offers for sale within the State of California certain tools
25 containing brass components which are alleged to contain lead and/or lead compounds.
26 Lead and lead compounds are chemicals known to the State of California to cause cancer,
27 and lead is a chemical known to the State of California to cause reproductive toxicity
28 pursuant to Health and Safety Code Section 25249.9. Under specified circumstances,

1 products containing lead and/or lead compounds that are sold or distributed in the State of
2 California are subject to the Proposition 65 warning requirement set forth in Health and
3 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass tools, including
4 tools manufactured, distributed, sold and/or marketed by Cobra for use in California
5 require a warning under Proposition 65.

6 1.5 For purposes of this Consent Judgment, the term "Covered Products" shall
7 be defined as tools that utilize leaded brass components that are accessible and reasonably
8 likely to be handled by consumers, to the extent such products are distributed and sold
9 within the State of California, and that are manufactured, distributed, marketed and/or
10 sold by Cobra, regardless of whether they bear Cobra's labels.

11 1.6 For purposes of this Consent Judgment, the parties stipulate that this Court
12 has jurisdiction over the allegations of violations contained in the Complaint and personal
13 jurisdiction over Cobra as to the acts alleged in the Complaint, that venue is proper in the
14 County of San Francisco and that this Court has jurisdiction to enter this Consent
15 Judgment as a full settlement and resolution of the allegations contained in the Complaint
16 and of all claims that were or could have been raised by any person or entity based in
17 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
18 related thereto.

19 1.7 This Consent Judgment resolves claims that are denied and disputed. The
20 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
21 all claims between the parties for the purpose of avoiding prolonged litigation. This
22 Consent Judgment shall not constitute an admission with respect to any material allegation
23 of the Complaint, each and every allegation of which Cobra denies; nor may this Consent
24 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct,
25 culpability or liability on the part of Cobra or any other person or entity related to the
26 Defendant, including Masco Corporation.

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2. SETTLEMENT PAYMENTS

2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the Complaint concerning Covered Products, Cobra shall pay \$20,000 to the Klamath Environmental Law Center (“KELC”) to cover Plaintiff’s attorneys’ fees. Additionally, Cobra shall pay \$10,000 to the Ecological Rights Foundation for use toward reducing exposures to toxic chemicals and other pollutants, and toward increasing consumer, worker and community awareness of health hazards posed by lead and other toxic chemicals. The parties agree and acknowledge that the charitable contributions made pursuant to this section shall not be construed as a credit against the personal claims of absent third parties for restitution against the defendant. The above described payment shall be forwarded by Cobra so that it is received at least 5 days prior to the hearing date scheduled for approval of this Consent Judgment. If the Consent Judgment is not approved with 120 days of the date scheduled for approval, the above described payments shall be returned and the provisions of this Consent judgment shall become null and void.

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

3. ENTRY OF CONSENT JUDGMENT

3.1 The parties hereby request that the Court promptly enter this Consent Judgment. Upon entry of the Consent Judgment, Cobra and Mateel waive their respective rights to a hearing or trial on the allegations of the Complaint; Mateel shall also thereafter promptly dismiss Masco Corporation from the Complaint.

4. MATTERS COVERED BY THIS CONSENT JUDGMENT

4.1 This Consent Judgment is a final and binding resolution between Mateel, acting on behalf of itself and the public interest, and Cobra of any violation of Proposition 65 with respect to lead exposures allegedly arising from the Covered Products whether based on actions committed by Cobra, or by any other person or entity within Cobra’s chain of distribution of the Covered Products, including, but not limited to, manufacturers, distributors, wholesale or retail sellers, and any other person in the course of doing

1 business. As to lead exposures allegedly arising from the Covered Products, compliance
2 with the terms of this Consent Judgment resolves any issue, now and in the future,
3 concerning compliance by Cobra and its parent, subsidiaries or affiliates, predecessors,
4 officers, directors, employees, and all of their manufacturers, customers, distributors,
5 wholesalers, retailers, or any other person in the course of doing business, and the
6 successors and assigns of any of these who may manufacture, use, maintain, distribute,
7 market or sell Covered Products, with the requirements of Proposition 65.

8 4.2 As to lead exposures allegedly arising from the Covered Products, Mateel,
9 acting on behalf of itself and its agents, successors and assigns, waives all rights to
10 institute any form of legal action, and releases all claims against Cobra and its parent,
11 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its
12 customers, manufacturers, distributors, wholesalers, retailers or any other person in the
13 course of doing business, and the successors and assigns of any of them, who may
14 manufacture, use, maintain, distribute or sell the Covered Products, whether under
15 Proposition 65 or otherwise. In furtherance of the foregoing, Mateel, acting on behalf of
16 itself hereby waives any and all rights and benefits which it now has, or in the future may
17 have, conferred upon it with respect to the Covered Products by virtue of the provisions of
18 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 Cobra,

1 its parent, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of
2 its customers, manufacturers, distributors, wholesalers, retailers or any other person in the
3 course of doing business, and the successors and assigns of any of them, who may
4 manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel
5 acknowledges that it intends these consequences for any such claims which may exist as
6 of the date of this release but which Mateel does not know exist, and which, if known,
7 would materially affect its decision to enter into this Consent Judgment, regardless of
8 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or
9 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 7.2(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 shall be deemed to comply with Proposition 65 and be
22 exempt from any Proposition 65 warning requirements if the subject brass components
23 meet the following criteria: (a) the brass shall have no lead as an intentionally added
24 constituent; and (b) the brass shall have a lead content by weight of no more than 0.03%
25 (300 parts per million, or "300 ppm"). Cobra may comply with the above requirements
26 by relying on information obtained from its suppliers regarding the content of the brass
27 component, provided such reliance is in good faith. Obtaining test results showing that
28 the lead content is no more than 0.03%, using a method of sufficient sensitivity to

1 establish a limit of quantification (as distinguished from detection) of less than 300 ppm
2 shall be deemed to establish good faith reliance.

3 7.2 Covered Products that do not meet the warning exemption standard set forth
4 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
5 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply
6 only to: (1) Covered Products that Cobra ships for distribution after 90 days after entry of
7 this Consent Judgment (“the Effective Date”); and (2) Covered Products manufactured,
8 distributed, marketed, sold or shipped for sale or use inside the State of California.

9 7.3 Cobra shall provide Proposition 65 warnings as follows:

10 (a) Cobra shall provide either of the following warning statements:

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

13 Do not place your hands in your mouth after handling the product.

14 *Wash your hands after touching this product.*

15 or

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

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

21 Cobra shall provide such warning directly on or with the unit package of
22 the Covered Products. Such warning shall be prominently affixed to or
23 printed on each Covered Product or its label or package. If printed on the
24 label itself, the warning shall be contained in the same section that states
25 other safety warnings, if any, concerning the use of the Covered Product.

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

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

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.

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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.

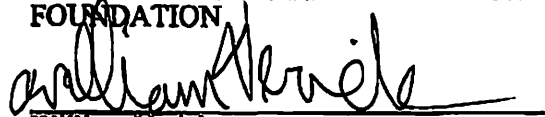
12. COURT APPROVAL

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:

DATED:

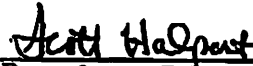
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED: September 24, 2009

COBRA PRODUCTS, INC.



By: Scott Halpert
Its: Corporate Counsel

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: **DEC 08 2009**

CHARLOTTE WALTER WOOLARD

JUDGE OF THE SUPERIOR COURT