



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-09-492164

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TEXT JUDGMENT

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION VS. RIVER OF GOODS, INC. et al.

001C02824435

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FILED
San Francisco County Superior Court

APR 19 2010

CLERK OF THE COURT
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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 CITY AND COUNTY OF SAN FRANCISCO

15 UNLIMITED JURISDICTION

16 MATEEL ENVIRONMENTAL JUSTICE
17 FOUNDATION,

18 Plaintiff,

19 v.

20 RIVER OF GOODS, INC., HOME
21 DECORATORS COLLECTION, INC., and
UNIVERSAL FOREST PRODUCTS, INC.,

22 Defendants.

) Case No. CGC-09-492164

)
) **CONSENT JUDGMENT**
) **(MAINE ORNAMENTAL,**
) **MENDOCINO FOREST PRODUCTS,**
) **UNIVERSAL FOREST PRODUCTS)**

23 **1. INTRODUCTION**

24 1.1 On or about March 26, 2009, plaintiff Mateel Environmental Justice Foundation
25 ("MATEEL"), provided a 60-day Notice of Violation to the California Attorney General, the
26 District Attorneys of each county in California, the City Attorneys of every California city with a
27 population greater than 750,000, and defendant Universal Forest Products, Inc.,
28

1 ("UNIVERSAL"), alleging that UNIVERSAL, through its sales in California of stained glass
2 products made from glass pieces that are connected using leaded solder or leaded came ("Covered
3 Products") was in violation of Proposition 65 by knowingly and intentionally exposing persons to
4 lead, a product known to the State of California to cause cancer and/or birth defects or other
5 reproductive harm, without first providing a clear and reasonable warning. For purposes of this
6 consent judgment, Covered Products shall be defined to be stained glass products made from
7 glass pieces that are connected using leaded solder or leaded came.

8 1.2 On or about August 27, 2009, MATEEL provided a 60-day Notice of Violation to
9 the California Attorney General, the District Attorneys of each county in California, the City
10 Attorneys of every California city with a population greater than 750,000, and defendant
11 Mendocino Forest Products, Inc., ("MENDOCINO") alleging that MENDOCINO through its
12 sales in California of stained glass products made from glass pieces that are connected using
13 leaded solder or leaded came, ("Covered Products") was in violation of Proposition 65 by
14 knowingly and intentionally exposing persons to lead, a product known to the State of California
15 to cause cancer and/or birth defects or other reproductive harm, without first providing a clear and
16 reasonable warning.

17 1.3 On or about November 24, 2009, MATEEL provided a 60-day Notice of Violation
18 to the California Attorney General, the District Attorneys of each county in California, the City
19 Attorneys of every California city with a population greater than 750,000, and defendant Maine
20 Ornamental, LLC., ("MAINE") alleging that MAINE through its sales in California of stained
21 glass products made from glass pieces that are connected using leaded solder or leaded came
22 ("Covered Products"), was in violation of Proposition 65 by knowingly and intentionally
23 exposing persons to lead, a product known to the State of California to cause cancer and/or birth
24 defects or other reproductive harm, without first providing a clear and reasonable warning.

25 1.4 On or about September 8, 2009, MATEEL, acting in the public interest pursuant to
26 Health and Safety Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive Relief
27 in San Francisco County Superior Court, Case No. CGC-09-492164 against, inter alia,
28

1 UNIVERSAL based on the allegations contained in the March 26, 2009 Notice. MATEEL
2 alleges that UNIVERSAL is a business that employs more than ten persons and manufactures,
3 distributes and/or markets Covered Products that cause an exposure to lead within the State of
4 California. Pursuant to Proposition 65, lead and lead compounds are chemicals known to the
5 State of California to cause cancer and reproductive toxicity. Products containing lead and/or
6 lead compounds that are sold or distributed in the State of California may be, under specified
7 circumstances, subject to the Proposition 65 warning requirement set forth in Health and Safety
8 Code § 25249.6. MATEEL further alleges that Covered Products which are manufactured,
9 distributed, sold and/or marketed by UNIVERSAL for use in California, require a warning under
10 Proposition 65.

11 1.5 On or about December 21, 2009, MATEEL, acting in the public interest pursuant
12 to Health and Safety Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive
13 Relief in San Francisco County Superior Court, Case No. CGC-09-495337 against,
14 MENDOCINO based on the allegations contained in the August 27, 2009 Notice. MATEEL
15 alleges that MENDOCINO is a business that employs more than ten persons and manufactures,
16 distributes and/or markets Covered Products that cause an exposure to lead within the State of
17 California. Pursuant to Proposition 65, lead and lead compounds are chemicals known to the
18 State of California to cause cancer and reproductive toxicity. Products containing lead and/or
19 lead compounds that are sold or distributed in the State of California may be, under specified
20 circumstances, subject to the Proposition 65 warning requirement set forth in Health and Safety
21 Code § 25249.6. MATEEL further alleges that Covered Products which are manufactured,
22 distributed, sold and/or marketed by MENDOCINO for use in California, require a warning under
23 Proposition 65.

24 1.6 UNIVERSAL, MENDOCINO and MAINE may each be referred to as a Settling
25 Defendant and collectively may be referred to as Settling Defendants. UNIVERSAL,
26 MENDOCINO, and MAINE as well as plaintiff MATEEL may be referred to individually as a
27 Party and collectively as the Parties. The Parties stipulate and agree that upon entry of this
28

1 settlement as a Consent Judgment, MENDOCINO shall be dismissed from the action in Case No.
2 CGC-09-495337, and that MENDOCINO and MAINE shall be added as defendants to this action,
3 Case No. CGC 09-492164.

4 1.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court
5 has jurisdiction over the allegations of violations contained in the Notices and Complaints and
6 personal jurisdiction over Settling Defendants as to the acts alleged in the Notices and
7 Complaints, that venue is proper in the County of San Francisco and that this Court has
8 jurisdiction to enter this Consent Judgment as a full and final settlement and resolution of the
9 allegations contained in the Notices and Complaints and of all claims which were or could have
10 been raised based on the facts alleged therein or arising therefrom.

11 1.8 The Parties enter into this Consent Judgment pursuant to a full and final settlement
12 of disputed claims between the parties for the purpose of avoiding prolonged litigation. This
13 Consent Judgment and compliance with it shall not constitute an admission with respect to any
14 allegation made in the Notices or the Complaints, each and every allegation of which Settling
15 Defendants deny, nor may this Consent Judgment or compliance with it be used as an admission
16 or evidence of any fact, wrongdoing, misconduct, culpability or liability on the part of a Settling
17 Defendant.

18 **2. INJUNCTIVE RELIEF**

19 2.1 CLEAR AND REASONABLE WARNINGS

20 2.1.1 The requirements of this Section 2.1 shall apply only to Covered Products
21 that are offered for sale in California by Settling Defendants after the Effective Date. Settling
22 Defendants shall provide a warning for all Covered Products that are offered for sale in
23 California.

24 2.1.2 The warning shall state:

25 "WARNING: This product contains chemicals, including lead, known to
26 the State of California to cause birth defects and other reproductive harm.

27 *Wash hands after handling*" or;

1 **WARNING:** Handling this product will expose you to lead, a chemical
2 known to the State of California to cause birth defects and other
3 reproductive harm. *Wash hands after handling.*”

4 The word “WARNING” shall be in bold text, and the phrase “Wash hands after handling” shall
5 be in bold italic text.

6 2.1.3 The warning statements shall be affixed to product packaging or to the
7 product itself. The warning shall be displayed with such conspicuousness, as compared with other
8 words, statements, or designs, as to render it likely to be read and understood by an ordinary
9 individual under customary conditions of purchase or use.

10 **3. ENFORCEMENT OF JUDGMENT**

11 3.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
12 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
13 San Francisco County, giving the notice required by law, enforce the terms and conditions
14 contained herein.

15
16 **4. MONETARY RELIEF**

17 4.1 Settling Defendants shall pay a total of \$40,000 in full and complete settlement of
18 all monetary claims by MATEEL, as follows:

19 4.2 At least five days prior to the hearing date on any motion to approve this Consent
20 Judgment, payment of the amount set forth in 4.1 above shall be sent to the attention of William
21 Verick, Klamath Environmental Law Center (“KELC”), 424 First Street, Eureka, California
22 95501. If the payments have not been so received, MATEEL may continue or withdraw any
23 motion to approve this agreement, and this Consent Judgment shall be deemed of no effect. If
24 within 120 days, this Consent Judgment has not been approved by the Court pursuant to Health &
25 Safety Code §25249.7(f)(4), all payments made pursuant to this settlement shall be returned.
26 Upon approval by the Court of this Consent Judgment, the payments shall subsequently and
27 within a commercially reasonable time be allocated by KELC as follows:

1 4.2.1 The sum of \$9,000 shall be paid as a charitable contribution to Californians
2 for Alternatives to Toxics and the sum of \$9,000 as a charitable contribution to Ecological Rights
3 Foundation. These payments shall be used for reducing exposures to toxic chemicals and other
4 pollutants, and for increasing consumer, worker and community awareness of health hazards
5 posed by lead and other toxic chemicals. The Parties agree and acknowledge that the charitable
6 contributions made pursuant to this Section shall not be construed as a credit against the personal
7 claims of absent third parties for restitution against the defendant.

8 4.2.2 The sum of \$22,000 shall be retained by Klamath Environmental Law
9 Center, as payment in part for the attorneys fees and costs incurred in this action.

10 **5. CLAIMS COVERED AND RELEASE**

11 5.1 As to Covered Products sold or marketed by Settling Defendants prior to the entry
12 of this Consent Judgment, this Consent Judgment is a final and binding resolution between
13 MATEEL, acting on behalf of itself and as to those matters raised in the 60 Day Notices the
14 general public in the public interest, and Settling Defendants and each Settling Defendant's
15 suppliers, distributors, wholesalers, retailers, or any other person in the chain of distribution and
16 retail sale of: (i) any violation of Proposition 65 (including but not limited to the claims made in
17 the Complaints and the Notices); and (ii) any other claim that could have been asserted by
18 MATEEL in the public interest against a Settling Defendant, based on exposure of persons to lead
19 from Covered Products or failure to provide a clear and reasonable warning of such exposure.
20 Notwithstanding any other provision in this Consent Judgment, no release by the general public
21 shall be construed to extend to claims or chemicals not included in the Notice Letters.

22 5.2 As to Covered Products, compliance by a Settling Defendant with the terms of this
23 Consent Judgment shall be considered compliance with the current requirements of Proposition
24 65.

25 5.3 As to Covered Products sold by Settling Defendants prior to the Effective Date,
26 MATEEL, by and on behalf of itself and its respective agents, attorneys, affiliates, successors and
27 assigns, waives any and all rights to institute any form of legal action, and releases all claims
28

1 against the Selling Defendants and each Settling Defendant's suppliers, distributors, wholesalers,
2 retailers, or any other person in the chain of distribution and retail sale based on the facts alleged
3 in the Complaints or the Notices, or facts similar to those alleged (referred to collectively in this
4 Section as the "Claims").

5 5.4 In furtherance of the Parties' intention that this Consent Judgment shall be
6 effective as a full and final accord, satisfaction, and release as to the Settling Defendants,
7 MATEEL acknowledges familiarity and understanding of California Civil Code § 1542, which
8 provides as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
11 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
12 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
13 SETTLEMENT WITH THE DEBTOR.

14 To the extent that Section 1542 or any similar law or statute may otherwise apply to this Consent
15 Judgment, MATEEL hereby waives and relinquishes as to all matters released hereunder all
16 rights and benefits it has, or may have, under Section 1542 or the laws of any other jurisdiction to
17 the same or similar effect. MATEEL further acknowledges that, subsequent to the execution of
18 this Consent Judgment, it may discover Claims that were unsuspected at the time this Consent
19 Judgment was executed, and which might have materially affected its decision to execute this
20 Consent Judgment, but nevertheless MATEEL releases the Settling Defendants from any and all
21 such Claims, whether known or unknown, suspected or unsuspected, at the time of the execution
22 of this Consent Judgment.

23 6. APPLICATION OF JUDGMENT

24 6.1 The obligations of this Consent Judgment shall apply to and be binding upon all
25 plaintiffs acting in the public interest pursuant to Health and Safety Code § 25249.7, and Settling
26 Defendants, and their successors or assigns. The terms contained in this Consent Judgment shall
27 be submitted to the California Attorney General's office prior to the entry of this Consent
28 Judgment by the Court in accordance with subsection (f) of Section 25249.7.

1 6.2 This Consent Judgment shall have no effect on Covered Products sold or offered
2 for sale by Settling Defendants outside the State of California.

3 **7. MODIFICATION OF JUDGMENT**

4 7.1 This Consent Judgment may be modified only upon written agreement of the
5 parties and upon entry of a modified Consent Judgment by the Court thereon or upon motion of
6 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

7 7.2 If the Attorney General of the State of California or Plaintiff permit any
8 reformulation standard and/or test protocol for lead in Covered Products by way of settlement or
9 compromise with any other person in the course of doing business, then each Settling Defendant
10 shall be entitled to apply any such reformulation standard and/or test protocol to Covered
11 Products. In the event that a Settling Defendant elects to use such alternative reformulation
12 standard and/or test protocol, it shall provide notice to MATEEL.

13 7.3 Settling Defendants shall be entitled to a modification to this Consent Judgment to
14 establish a reformulation standard and/or test protocol for lead content in Covered Products
15 consistent with any "safe use determination" regarding lead content in Covered Products issued
16 by the California Environmental Protection Agency Office of Environmental Health Hazard
17 Assessment, pursuant to 27 Cal. Code Regs. § 25204 or any successor regulation.

18 **8. COURT APPROVAL**

19 8.1 If the Court does not approve this Consent Judgment, it shall be of no force or
20 effect, and cannot be used in any proceeding for any purpose.

21 **9. RETENTION OF JURISDICTION**

22 9.1 This Court shall retain jurisdiction of this matter to implement this Consent
23 Judgment.

24 **10. GOVERNING LAW**

25 10.1 The laws of the State of California shall govern the validity, construction and
26 performance of this Consent Judgment.

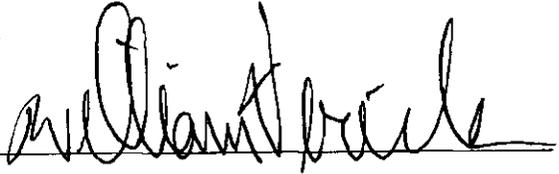
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1 portable document format (pdf). Signatures transmitted by facsimile or electronic image shall be
2 considered to be original signature and the executed counterparts taken together shall be deemed
3 to constitute one original document.

4 IT IS SO STIPULATED:

5
6 Dated: _____, 2010

**MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION**

8
9 By 

10
11 Dated: _____, 2010

UNIVERSAL FOREST PRODUCTS, INC.,

12
13 By _____

14
15 Dated: _____, 2010

MENDOCINO FOREST PRODUCTS, INC.

16
17
18 By _____

19 Dated: _____, 2010

MAINE ORNAMENTAL, LLC,

20
21
22 By _____

23
24 IT IS SO ORDERED, ADJUDGED AND DECREED:

25
26 Date: _____
JUDGE OF THE SUPERIOR COURT

1 portable document format (pdf). Signatures transmitted by facsimile or electronic image shall be
2 considered to be original signatures and the executed counterparts taken together shall be deemed
3 to constitute one original document.

4 IT IS SO STIPULATED:

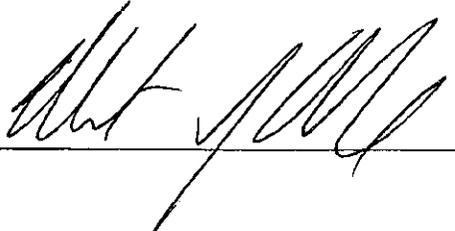
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6 Dated: _____, 2010

**MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION**

By _____

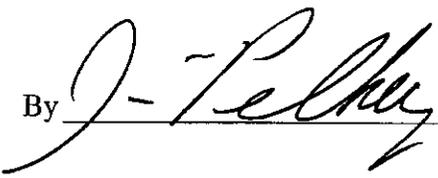
7
8
9
10
11 Dated: MARCH 26, 2010

UNIVERSAL FOREST PRODUCTS, INC.,

By 

12
13
14
15 Dated: 4/2/10, 2010

MENDOCINO FOREST PRODUCTS, INC.

By 

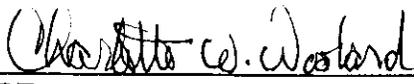
16
17
18
19 Dated: MARCH 26, 2010

MAINE ORNAMENTAL, LLC,

By 

20
21
22
23
24 IT IS SO ORDERED, ADJUDGED AND DECREED:

25 Date: 4-19-10



JUDGE OF THE SUPERIOR COURT

CHARLOTTE WALTER WOOLARD