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17 FOUNDATION

**ENDORSED
FILED**
San Francisco County Superior Court

AUG 23 2010

CLERK OF THE COURT
BY: MELINKA JONES
Deputy Clerk

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

17 MATEEL ENVIRONMENTAL
18 JUSTICE FOUNDATION,,
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20 Plaintiff,
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22 v.
23 Mi-T-M CORPORATION, et al., ,
24
25 Defendant.

Case No. CGC - 10 - 497228

**CONSENT JUDGMENT
(Mi-T-M Corporation)**

1. INTRODUCTION

1.1 On March 1, 2010, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco County Superior Court, Case No. 497228, against Defendant Mi-T-M Corporation ("Mi-T-M" or

1 "Defendant"). The Complaint alleges, among other things, that Defendant violated
2 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
3 Safety Code Sections 25249.5, *et seq.* ("Proposition 65"). In particular, Mateel alleges
4 that Mi-T-M has knowingly and intentionally exposed persons to products that utilize
5 fittings and other accessible components made of brass containing lead and/or lead
6 compounds (hereinafter "leaded brass"), which are chemicals known to the State of
7 California to cause cancer and birth defects or other reproductive harm, without first
8 providing a clear and reasonable warning to such individuals.

9 1.2 On November 24, 2009, Mateel sent a 60-Day Notice letter ("Notice
10 Letter") to Mi-T-M, the California Attorney General, all California District Attorneys, and
11 all City Attorneys of every California city with populations exceeding 750,000, a copy of
12 which is incorporated into the complaint in this action.

13 1.3 Mi-T-M is a business that employs ten or more persons and manufactures,
14 distributes, and/or markets products, brass fittings and products, within the State of
15 California. Some of those products are alleged to contain brass fittings and other
16 accessible components that contain lead and/or lead compounds. Lead and lead
17 compounds are chemicals known to the State of California to cause cancer, and lead is a
18 chemical known to the State of California to cause reproductive toxicity pursuant to
19 Health and Safety Code Section 25249.9. Under specified circumstances, products
20 containing lead and/or lead compounds that are sold or distributed in the State of
21 California are subject to the Proposition 65 warning requirement set forth in Health and
22 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass fittings and other
23 components on products manufactured, distributed, sold and/or marketed by Mi-T-M for
24 use in California require a warning under Proposition 65.

25 1.4 For purposes of this Consent Judgment, the term "Covered Products" shall
26 be defined as products that utilize leaded-brass fittings and/or contain other accessible
27 leaded-brass components, to the extent such products are distributed and sold within the
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1 State of California, and that are manufactured, distributed, marketed and/or sold by Mi-T-
2 M, regardless of whether they bear Mi-T-M labels.

3 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court
4 has jurisdiction over the allegations of violations contained in the Complaint and personal
5 jurisdiction over Mi-T-M as to the acts alleged in the Complaint, that venue is proper in
6 the County of San Francisco and that this Court has jurisdiction to enter this Consent
7 Judgment as a full settlement and resolution of the allegations contained in the Complaint
8 and of all claims that were or could have been raised by any person or entity based in
9 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
10 related thereto.

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

19 **2. SETTLEMENT PAYMENT**

20 2.1 In settlement of all of the claims referred to in this Consent Judgment, no
21 later than five (5) business days prior to the hearing of any motion to approve this
22 settlement, Mi-T-M shall pay \$15,000 to the Klamath Environmental Law Center
23 ("KELC") to cover a portion of Mateel's attorneys' fees and costs.

24 2.2 No later than five (5) business days prior to the hearing of any motion to
25 approve this settlement, Mi-T-M shall pay \$5,000 to the Ecological Rights Foundation
26 and \$5,000 to Californians for Alternatives to Toxics. Both are California non-profit
27 environmental organizations that advocate for workers' and consumers' safety, and for
28 awareness and reduction of toxic exposures.

1 2.3 In the event that this Consent Judgment has not been approved and entered
2 by the Court within 120 days of the execution of this Consent Judgment by the Parties,
3 any payments shall be returned to Mi-T-M at such time.

4 3. ENTRY OF CONSENT JUDGMENT

5 3.1 The parties hereby request that the Court promptly enter this Consent
6 Judgment. Upon entry of the Consent Judgment, Mi-T-M and Mateel waive their
7 respective rights to a hearing or trial on the allegations of the Complaint.

8 4. MATTERS COVERED BY THIS CONSENT JUDGMENT

9 4.1 This Consent Judgment is a final and binding resolution between Mateel,
10 acting on behalf of itself and, as to the claims made in the 60 Day Notice, acting in the
11 public interest, and Mi-T-M, of: (i) any violation of Proposition 65 with respect to the
12 Covered Products, and (ii) any other statutory or common law claim, to the fullest extent
13 that any of the foregoing described in (i) or (ii) were or could have been asserted by any
14 person or entity against Mi-T-M based upon, arising out of or relating to Mi-T-M's
15 compliance with Proposition 65, or regulations promulgated thereunder, with respect to
16 lead exposures allegedly caused by Covered Products, and any other claim based in whole
17 or part on the facts alleged in the Complaint, whether based on actions committed by Mi-
18 T-M, or by any other person or entity within Mi-T-M's chain of distribution of the
19 Covered Products, including, but not limited to, manufacturers, distributors, wholesale or
20 retail sellers, and any other person in the course of doing business. As to lead exposures
21 allegedly arising from the Covered Products, compliance with the terms of this Consent
22 Judgment resolves any issue, now and in the future, concerning compliance by Mi-T-M
23 and its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and
24 all of their manufacturers, customers, distributors, wholesalers, retailers, or any other
25 person in the course of doing business, and the successors and assigns of any of these who
26 may manufacture, use, maintain, distribute, market or sell Covered Products, with the
27 current requirements of Proposition 65 as to Covered Products manufactured, distributed,
28 marketed and/or sold by Mi-T-M.

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2 **4.2** As to lead exposures allegedly caused by Covered Products, Mateel, acting
3 on behalf of itself, and its agents, successors and assigns, waives all rights to institute any
4 form of legal action, and releases all claims against Mi-T-M and its parents, subsidiaries
5 or affiliates, predecessors, officers, directors, employees, and all of its customers,
6 manufacturers, distributors, wholesalers, retailers or any other person in the course of
7 doing business, and the successors and assigns of any of them, who may manufacture, use,
8 maintain, distribute or sell the Covered Products, whether under Proposition 65 or
9 otherwise, including any other statutory or common law claims that were or could have
10 been asserted, arising out of or resulting from, or related directly or indirectly to, in whole
11 or in part, the Covered Products and claims identified in Mateel's Notice Letter. In
12 furtherance of the foregoing, Mateel, acting on behalf of itself hereby waives any and all
13 rights and benefits which it now has, or in the future may have, conferred upon it with
14 respect to the Covered Products by virtue of the provisions of Section 1542 of the
15 California Civil Code, which provides as follows:

16 **"A GENERAL RELEASE DOES NOT EXTEND TO**
17 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR**
18 **SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF**
19 **EXECUTING THE RELEASE, WHICH IF KNOWN BY**
20 **HIM MUST HAVE MATERIALLY AFFECTED HIS**
21 **SETTLEMENT WITH THE DEBTOR."**

22 Mateel understands and acknowledges that the significance and consequence of this
23 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
24 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
25 Covered Products, it will not be able to make any claim for those damages against Mi-T-
26 M, its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and
27 all of its customers, manufacturers, distributors, wholesalers, retailers or any other person
28 in the course of doing business, and the successors and assigns of any of them, who may

1 manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel
2 acknowledges that it intends these consequences for any such claims which may exist as
3 of the date of this release but which Mateel does not know exist, and which, if known,
4 would materially affect its decision to enter into this Consent Judgment, regardless of
5 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or
6 any other cause.

7 **5. ENFORCEMENT OF JUDGMENT**

8 5.1 The terms of this Consent Judgment shall be enforced exclusively by the
9 parties hereto. The parties may, by noticed motion or order to show cause before the
10 Superior Court of San Francisco County, giving the notice required by law, enforce the
11 terms and conditions contained herein.

12 **6. MODIFICATION OF JUDGMENT**

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

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

18 7.1 The Covered Products shall be deemed to comply with Proposition 65 and
19 be exempt from any Proposition 65 warning requirements for lead if the surface materials
20 that may be touched or handled for such Products meet the following criteria: (a) the
21 surface materials shall have no lead as an intentionally added constituent; and (b) the
22 surface materials shall have a lead content by weight of no more than 0.03% (300 parts
23 per million, or "300 ppm"). Mi-T-M may comply with the above requirements by relying
24 on information obtained from its suppliers regarding the content of the brass alloy from
25 which the brass fittings and components are made, provided such reliance is in good faith.
26 Obtaining test results showing that the lead content is no more than 0.03%, using a
27 method of sufficient sensitivity to establish a limit of quantification (as distinguished from
28 detection) of less than 300 ppm shall be deemed to establish good faith reliance.

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

8 7.3 Mi-T-M shall provide Proposition 65 warnings as follows:

9 (a) Defendant Mi-T-M shall provide the following warning statement:

10 **WARNING: This product contains lead, a chemical known to the**
11 State of California to cause birth defects or other reproductive harm.
12 *Wash your hands after handling this product.*

13 The word “WARNING” shall be in bold. The words “Wash your hands
14 after handling” shall be in bold and italicized.

15 (b) Where utilized as an alternative to meeting the criteria set forth in
16 Section 7.1, Mi-T-M shall provide the warning language set forth in
17 subsection 7.3(a) either:

18 (1) with the unit package of the Covered Products. Such warning
19 shall be prominently affixed to or printed on each Covered
20 Product’s label or package. If printed on the label itself, the
21 warning shall be contained in the same section that states other
22 safety warnings, if any, concerning the use of the Covered
23 Product. Mi-T-M may continue to utilize, on an ongoing
24 basis, packages containing substantively the same Proposition
25 65 warnings as those set forth in paragraph 7.3(a) above
26 without modifying them, but only to the extent labels for such
27 packages have already been printed prior to the date on which
28 this Consent Judgment has been entered by the Court; or

1 (2) in the owner's manual of a Covered Product, but only if the
2 Covered Product: (i) may cause serious injury or bodily harm
3 unless used as directed; (ii) is sophisticated, difficult to
4 understand or install, set-up, or assemble; or (iii) has one or
5 more features a consumer must read about in order to know
6 how to program or use the Covered Product. If the warning is
7 given in the owners manual pursuant to this subsection, it shall
8 be located in one of the following places in the manual: the
9 outside of the front cover; the inside of the front cover; the
10 first page other than the cover; or the outside of the back
11 cover. The warning shall be printed or stamped in the manual
12 or contained in a durable label or sticker affixed to the manual
13 in a font no smaller than the font used for other chemically-
14 related safety warnings in the manual. Alternatively, the
15 warning may be included in a safety warning section of the
16 owner's manual. Mi-T-M may continue to utilize, on an
17 ongoing basis, owners manuals containing substantively the
18 same Proposition 65 warnings as those set forth in paragraph
19 7.3(a) above without modifying them, but only to the extent
20 such manuals have already been printed prior to the date on
21 which this Consent Judgment has been entered by the Court.
22 Owners manual warnings may only be allowed if the owners
23 manual is sold in the same package and at the same time as the
24 Covered Product and not for individual fittings sold
25 separately, or

26 (3) if Covered Products are displayed and sold without the
27 packaging prepared by Mi-T-M, no release shall apply to the
28 retail seller unless point-of-sales warnings using language

1 substantially the same as the language on the packaging is
2 posted in close proximity to the point of display of the
3 Covered Products.

4 (c) The requirements for warnings, set forth in subparagraph (a) above
5 are imposed pursuant to the terms of this Consent Judgment. The parties
6 recognize that these are not the exclusive methods of providing a warning
7 under Proposition 65 and its implementing regulations and that they may or
8 may not be appropriate in other circumstances.

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

19 (e) If after the Effective Date, Defendant ships Covered Products to a
20 retailer or distributor outside of California that neither provide the warnings
21 specified in this paragraph nor meet the Reformulation Standard specified in
22 paragraph 7.1 of this Consent Judgment ("Non-Conforming Covered
23 Products"), and if the retailer or distributor then offers those Non-
24 Conforming Covered Products for sale in California, then as to those Non-
25 Conforming Covered Products, that retailer or distributor, and their
26 customers, are not released pursuant to Sections 4.1 and 4.2 above.
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1 (f) Nothing in this Consent Judgment shall create a limitation on
2 enforcement of a new Proposition 65 action based on future conduct if such
3 future conduct is not in compliance with the injunctive terms of this Consent
4 Judgment.

5 **8. AUTHORITY TO STIPULATE**

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

9 **9. RETENTION OF JURISDICTION**

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

12 **10. ENTIRE AGREEMENT**

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

19 **11. GOVERNING LAW**

20 The validity, construction and performance of this Consent Judgment shall
21 be governed by the laws of the State of California, without reference to any conflicts of
22 law provisions of California law.
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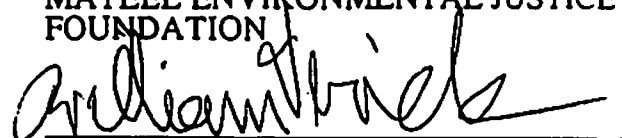
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12. COURT APPROVAL

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:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

THE MI-T-M CORPORATION



By: Samuel J. Humphrey
Its: President

DATED:

AUG 23 2010

CHARLOTTE WALTER WOOLAR
JUDGE OF THE SUPERIOR COURT