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16 Attorneys for Plaintiff  
17 **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**

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

20 MATEEL ENVIRONMENTAL  
21 JUSTICE FOUNDATION,

22 Plaintiff,

23 v.

24 H.D. HUDSON MANUFACTURING  
25 COMPANY, ET AL.

26 Defendants.

**FILED**  
San Francisco County Superior Court

MAR 22 2013

CLERK OF THE COURT

BY: Sharon Verick  
Deputy Clerk

Case No. CGC-10-500847  
Consolidated with Case No. CGC-11-511593

12/1/12  
[PROPOSED] CONSENT JUDGMENT

27 **1.0 INTRODUCTION**

28 **1.1** This case is a consolidated action involving two cases, both of which are Proposition 65 enforcement actions. These cases were both brought by plaintiff, MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel”), pursuant to Health & Saf. Code § 2524977, on behalf of the public interest. The first case is San Francisco Superior Court Case No. 500847. The defendants in Case No. 500847 are H.D.

1 Hudson Manufacturing Company, (“Hudson”), Amazon.com (“Amazon”) and Do it Best  
2 Corp. (“Do it Best”). The second case is San Francisco Superior Court Case No. 511593.  
3 The defendant in Case No. 511593 is Orchard Supply Hardware LLC (“OSH”). The two  
4 cases have been consolidated for all purposes with Case No. 500847 designated the lead  
5 case. The defendants in both cases shall hereinafter collectively be referred to as  
6 “Defendants.” Defendant Hudson manufactures and markets yard and garden sprayers  
7 that utilize brass parts, as well as replacement spray wands and spray nozzle tips, which  
8 also are made from brass or have components made from brass. Defendants Amazon, Do  
9 it Best and OSH sell these sprayers and replacement parts in California. Defendants  
10 Amazon, Do it Best and OSH are hereinafter referred to as “Defendants” or “Retailer  
11 Defendants.”

12           **1.2**       The Complaints in both cases allege, among other things, that Defendants  
13 violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 Health and Safety Code Sections 25249.5, et seq. (“Proposition 65”). In particular,  
15 Mateel alleges that Defendants knowingly and intentionally exposed persons to sprayers  
16 and sprayer replacement parts that are made of or that include a component made of  
17 leaded brass, without first providing a clear and reasonable warning to such individuals.  
18 Lead and lead compounds are chemicals known to the State of California to cause cancer  
19 and birth defects or other reproductive harm.

20           **1.3**       On March 11, 2010, Mateel sent a Notice of Violation letter to Hudson,  
21 Do it Best and Amazon.com, the California Attorney General, all California District  
22 Attorneys, and all City Attorneys of every California city with populations exceeding  
23 750,000, with regard to the violation alleged against Hudson, Do it Best and Amazon in  
24 this case. On January 13, 2011, Mateel sent a Notice of Violation letter to defendant OSH,  
25 the California Attorney General, all California District Attorneys, and all City Attorneys  
26 of every California city with populations exceeding 750,000, with regard to the violation  
27 alleged against OSH in this case.  
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1           1.4    On June 21, 2010 Mateel filed a Proposition 65 enforcement action (Case  
2 No. 500847) against Hudson, Do it Best and Amazon alleging that these three Defendants  
3 had violated Proposition 65 by selling Hudson sprayers and sprayer parts that exposed  
4 California consumers to lead without first providing a clear and reasonable warning.

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6           On June 9, 2011 Mateel filed a Proposition 65 enforcement action (Case No. 511593)  
7 against OSH alleging that OSH had violated Proposition 65 by selling Hudson sprayers  
8 and sprayer parts that exposed California consumers to lead without first providing a clear  
9 and reasonable warning. On August 5, 2011 the court entered an order consolidating Case  
10 Nos. 500847 and 511593 for all purposes and making Case No. 500847 the lead case.  
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12           1.5    Defendants are each a business that employs ten or more persons and sell  
13 sprayers and sprayer parts (such as replacement wands and spray nozzles) within the State  
14 of California. These sprayers and sprayer parts are alleged to contain lead and/or lead  
15 compounds. Lead and lead compounds are chemicals known to the State of California to  
16 cause cancer, and lead is a chemical known to the State of California to cause  
17 reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under  
18 specified circumstances, products containing lead and/or lead compounds in the State of  
19 California are subject to the Proposition 65 warning requirement set forth in Health and  
20 Safety Code Section 25249.6. Plaintiff Mateel alleges that sprayers and sprayer  
21 replacement parts that are made of leaded brass, or that have leaded brass components, are  
22 sold by Settling Defendants for use in California such that a warning is required under  
23 Proposition 65.  
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1           **1.6**     In both Complaints, Mateel alleges that Settling Defendants violated Cal.  
2 Health & Safety Code Section 25249.6 by knowingly and intentionally exposing persons  
3 to sprayers and sprayer parts made of brass, or which include a component made of brass  
4 that contains lead and/or lead compounds, without first providing a clear and reasonable  
5 warning to such individuals. Lead and lead compounds are chemicals known to the State  
6 of California to cause cancer and birth defects or other reproductive harm.

7           **1.7**     For purposes of this Consent Judgment, the term “Covered Products” shall  
8 be defined as sprayers and sprayer replacement parts that are made from brass, or which  
9 incorporate leaded brass components and that are manufactured, distributed or otherwise  
10 marketed by Defendant Hudson.

11           **1.8**     For purposes of this Consent Judgment, the parties stipulate that this Court  
12 has jurisdiction over the allegations of violations contained in the Complaints and  
13 personal jurisdiction over each Settling Defendant as to the acts alleged in the First  
14 Amended Complaint, that venue is proper in the County of San Francisco and that this  
15 Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of  
16 the allegations contained in the Complaints and of all claims that were or could have been  
17 raised by any person or entity based in whole or in part, directly or indirectly, on the facts  
18 alleged therein or arising therefrom or related thereto.

19           **1.9**     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 Complaints, each and every allegation of which each Defendant denies, nor may  
24 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,  
25 misconduct, culpability or liability on the part of any of the Defendants, individually or  
26 collectively.

1                   **2.0     SETTLEMENT PAYMENTS**

2                   **2.1**       In settlement of all of the claims referred to in this Consent Judgment,  
3 Defendant H.D. Hudson shall pay the following: H.D. Hudson shall pay a total of  
4 \$55,000 in civil penalties. Of the \$55,000 in civil penalties, Defendants shall pay a total  
5 of \$41,250 to the Office of Environmental Health Hazard Assessment (“OEHHA”), and  
6 pursuant to Health & Safety Code § 25249.12(d), \$13,750 shall be paid to Californians for  
7 Alternatives to Toxics, which is the designated recipient of plaintiff’s share of the civil  
8 penalties.

9                   **2.2**       In addition, in settlement of Mateel’s claim for attorneys’ fees and costs  
10 Defendant H.D. Hudson shall pay the amount of \$900,000. Except for this payment, the  
11 parties shall bear their own fees and costs. All payments shall be lodged with defense  
12 counsel at least 5 days prior to the motion for approval of settlement, currently calendared  
13 for March 15, 2013, and sent by overnight mail within one business day of the entry of an  
14 order approving settlement to Klamath Environmental Law Center, 424 First Street,  
15 Eureka California, 95501. If the settlement is not approved within a reasonable time  
16 following March 15, 2013, the funds shall be returned to defendant. Notwithstanding any  
17 other provision in this consent judgment, if payments called for in this section, or section  
18 2.1 above, are not delivered to Mateel, as provided for herein, this judgment shall be null  
19 and void and trial of Phase II of this action shall be placed on the Court’s calendar.

20                   **2.3**       In the event the court grants final approval to this Settlement, and except  
21 as provided in section 2.2 above, the court’s judgment shall constitute full and final  
22 satisfaction of any and all claims, contentions, disputes, rights and/or theories of recovery  
23 which Mateel may have in this action for attorneys fees and costs as against all  
24 Defendants.

25                   **2.4**       Except as specifically provided for in this Consent Judgment, each side  
26 shall bear its own costs and attorney’s fees.  
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1                   **3.0    ENTRY OF CONSENT JUDGMENT**

2                   **3.1**       The parties hereby request that upon hearing Mateel’s motion for final  
3 approval of this Settlement as described in Section 13 of this Settlement, the Court  
4 promptly enter this Settlement as the Court’s final Judgment in this action. Upon entry of  
5 this Settlement as the Court’s final judgment, Defendants and Mateel waive their  
6 respective rights to a hearing or trial on the allegations of the Complaints, and to  
7 enforcement or appeal of any ruling or order issued by the Court prior to the Effective  
8 Date.

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10                   **4.0    MATTERS COVERED BY THIS CONSENT JUDGMENT**

11                   **4.1**       As to lead and lead compounds from Covered Products, this Consent  
12 Judgment provides a full release of liability on behalf of the Public Interest to Defendants,  
13 (as well as their past, present and future parents, subsidiaries affiliates, predecessors,  
14 successors, and assigns “Released Entities”), from all claims for violations of Proposition  
15 65 up through the Effective Date of this Consent Judgment based on exposure to lead  
16 from Covered Products as set forth in Mateel’s March 11, 2010 and January 13, 2011  
17 Notice of Violation letters.

18                   **4.2**       As to alleged lead and lead compound exposures associated with Covered  
19 Products, Mateel, acting on behalf of itself, and its agents, attorneys, representatives,  
20 successors and assigns, waives all rights to institute or participate in, directly, or  
21 indirectly, any form of legal action, and releases all claims as between Mateel and each  
22 Settling Defendant, including, without limitation, all actions, and causes of action, in law  
23 or in equity, suits, liabilities, demands, obligations, agreements, promises, royalties,  
24 accountings, damages, costs, fines, penalties, losses, or expenses (including, but not  
25 limited to, investigation fees, expert fees, and attorney’s fees) of any nature whatsoever,  
26 whether known or unknown, fixed or contingent (collectively “claims”), against each  
27 Settling Defendant and its parents, subsidiaries or affiliates, predecessors, officers,  
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1 directors, shareholders, attorneys, representatives, agents, employees, and all customers,  
2 manufacturers, distributors, wholesalers, retailers, or any other person in the course of  
3 doing business involving the Covered Products, and the successors and assigns of any of  
4 them, who may manufacture, use, maintain, distribute or sell the Covered Products or  
5 components found in the Covered Products, including, but not limited to, any claims  
6 regarding exposure to, and/or failure to warn with respect to, the Covered Products. In  
7 furtherance of the foregoing, Mateel on its own behalf hereby waives any and all rights  
8 and benefits which it now has, or in the future may have respecting the Covered Products,  
9 conferred upon it with respect to claims involving Covered Products by virtue of the  
10 provisions of Section 1542 of the California Civil Code, which provides as follows:

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

18 Mateel understands and acknowledges that the significance and consequence of  
19 this waiver of California Civil Code Section 1542 is that even if Mateel suffers future  
20 damages arising out of or resulting from, or related directly or indirectly to, in whole or in  
21 part, the Covered Products, including but not limited to any exposure to, or failure to warn  
22 with respect to exposure to lead or lead compounds from, the Covered Products, Mateel  
23 will not be able to make any claim for those damages against Defendants, their parents,  
24 subsidiaries or affiliates, predecessors, officers, directors, shareholders, representatives,  
25 attorneys, agents, employees, and all customers, manufacturers, distributors, wholesalers,  
26 retailers or any other person in the course of doing business involving the Covered  
27 Products, and the successors and assigns of any of them, who may manufacture, use,  
28 maintain, distribute or sell the Covered Products. Furthermore, Mateel acknowledges that  
it intends these consequences for any such claims and any other claims which may exist as  
of the date of this release but which Mateel does not know exist, and which, if known,

1 would materially affect its decision to enter into this Consent Judgment, regardless of  
2 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or  
3 any other cause.

4 **5.0 ENFORCEMENT OF JUDGMENT**

5 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the  
6 parties hereto. The parties may, by noticed motion or order to show cause before the  
7 Superior Court of San Francisco County, giving the notice required by law, enforce the  
8 terms and conditions contained herein. The parties hereto agree that prior to any such  
9 enforcement action they will notify each other of any perceived violation of this Consent  
10 Judgment. The parties further agree to take no enforcement action for 30 days after such  
11 notice is given, in order to allow the parties to meet and confer in good faith in an effort to  
12 resolve the alleged violation.

13 **6.0 MODIFICATION OF JUDGMENT**

14 **6.1** Except as provided for in Paragraph 7.3(c), this Consent Judgment may be  
15 modified only upon written agreement of the parties and upon entry of a modified Consent  
16 Judgment by the Court thereon, or upon motion of any party as provided by law and upon  
17 entry of a modified Consent Judgment by the Court.

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19 **7.0 INJUNCTIVE RELIEF - REFORMULATION**

20 **7.1** Covered Products shall be deemed to comply with the warning requirements  
21 of Proposition 65 for lead and lead compounds (H&S Code 25249.6), and be exempt from  
22 any Proposition 65 warning requirements for these listed chemicals if the brass that is part  
23 of the Covered Products is made of an alloy which contains no intentionally added lead  
24 and no lead content by weight of more than 0.03% ("300 parts per million," or "300  
25 ppm").  
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1           7.2    As to Covered Products that do not meet the warning exemption standard set  
2 forth in Sections 7.1 of this Consent Judgment (“Non-Reformulated Covered Products”),  
3 Defendant Hudson shall ensure that all such Non-Reformulated Covered Products it  
4 knows or has reason to believe are offered for sale in California shall be accompanied by a  
5 warning as described in paragraph 7.3 below. The warning requirements set forth in  
6 paragraph 7.3 shall apply only to products a Defendant Hudson manufactures, distributes,  
7 markets, sells or ships after the Effective Date for sale or use inside the State of  
8 California.

9           7.3    For Non-Reformulated Covered Products, Defendant Hudson shall provide  
10 Proposition 65 warnings as follows:

11                   (a)    Defendant Hudson shall provide either of the following warning  
12 statements:

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

15                               or

16                   **WARNING:** This product contains [one or more] chemicals, including  
17 lead, known to the State of California to cause cancer and birth defects or  
other reproductive harm. *Wash hands after handling.*

18                               or

19                   **PROP 65 WARNING:** Handling the brass material on this product exposes  
20 you to lead, a chemical known to the State of California to cause birth  
defects or other reproductive harm. *Wash hands after use.*

21                               Bracketed language may be omitted at Defendant Hudson’s option.  
22 Hudson may add additional listed chemicals to the warning unless the  
23 Attorney General advises that the inclusion of such additional chemicals  
24 would render the warning misleading or constitute an over warning. The  
25 word “WARNING” shall be in bold, and may be preceded by the word  
26 “CALIFORNIA”, “PROP 65”, or “CALIFORNIA PROP 65” at the  
27 Defendant’s option provided such words are also in bold. The words  
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1 “Wash your hands after touching this product” or “Wash hands after  
2 handling” in either warning above may be replaced by “Wash hands after  
3 use”, and in any case such words shall be underlined, in bold or italicized.

4 Defendant Hudson shall provide such warning on or attached to  
5 Covered Product or with the unit package of the Covered Products as  
6 packaged by Hudson. Such warning shall be included with, affixed to or  
7 printed on each Covered Product or its label, package or container in the  
8 same section that states other safety warnings, if any, concerning the use of  
9 the product or near the product brand name, or displayed price and/or UPC  
10 code, in a manner reasonably calculated to be seen by an ordinary  
11 individual. For sprayers, the font size of the warning on the product packaging  
12 shall be no smaller than the text relating to instructions for use or patent and  
13 trademark information which appears on the product packaging. For replacement  
14 parts, the font size of the warning on the product packaging shall be no smaller  
15 than the text relating to instructions for use or patent and trademark information  
16 which appears on the product packaging. Hudson shall comply with the font size  
17 requirements within 120 days after the entry of the consent judgment.

18 (b) If after the Effective Date, Defendant Hudson ships Covered  
19 Products to a retailer or distributor outside of California that neither  
20 provides the warnings specified in this paragraph nor meets the  
21 Reformulation Standard specified in this Consent Judgment (“Non-  
22 Conforming Covered Products”), and if the retailer or distributor then offers  
23 those Non-Conforming Covered Products for sale in California, then as to  
24 those Non-Conforming Covered Products, that retailer or distributor, and  
25 their customers, are not released pursuant to Sections 4.1 and 4.2 above.

26 (c) Except as provided in paragraphs 4.1 and 4.2 hereof for Covered  
27 Products manufactured or distributed prior to the Effective Date, nothing in  
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1 this Consent Judgment shall create a limitation on a Proposition 65  
2 enforcement action based on future conduct if such future conduct is not in  
3 compliance with the injunctive terms of this Consent Judgment.

#### 4 **7.4 EFFECT OF COMPLIANCE WITH THIS CONSENT JUDGMENT**

5 Compliance with the terms of this Consent Judgment constitutes compliance with  
6 Proposition 65 with respect to exposures to lead from Covered Products as set forth in the  
7 March 11, 2010 and January 13, 2011 Notice of Violation letters.

#### 8 **8.0 AUTHORITY TO STIPULATE**

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10 **8.1** Each signatory to this Consent Judgment certifies that he or she is fully  
11 authorized by the party he or she represents to enter into this Consent Judgment and to  
12 execute it on behalf of the party represented and legally to bind that party.

#### 13 **9.0 RETENTION OF JURISDICTION**

14 **9.1** This Court shall retain jurisdiction of this matter to implement the Consent  
15 Judgment.

#### 16 **10.0 ENTIRE AGREEMENT**

17 **10.1** This Consent Judgment contains the sole and entire agreement and  
18 understanding of the parties with respect to the entire subject matter hereof, and any and  
19 all prior discussions, negotiations, commitments and understandings related hereto. No  
20 representations, oral or otherwise, express or implied, other than those contained herein  
21 have been made by any party hereto. No other agreements not specifically referred to  
22 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

#### 23 **11.0 GOVERNING LAW**

24 **11.1** The validity, construction and performance of this Consent Judgment shall  
25 be governed by the laws of the State of California, without reference to any conflict of law  
26 provisions of California law.  
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**12.0 NOTICES**

**12.1** Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

To Mateel:

William Verick, Esq.  
Klamath Environmental Law Center  
424 First Street  
Eureka, CA 95501

To Hudson:

Robert C. Hudson, III  
H.D. Hudson Manufacturing Company  
500 N. Michigan Avenue, 23<sup>rd</sup> Floor  
Chicago, IL 60611-3769

**13. COURT APPROVAL**

**13.1** If the court fails to grant the motion to make this settlement the court's final judgment, the other terms of this Settlement shall be of no force or effect and the Parties shall be deemed to have jointly requested that the Court set a new date for Phase II of the trial in this action.

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13.2 Upon the final approval of this Settlement, its entry as the court's judgment, and receipt of the settlement monetary relief payments, Mateel shall dismiss the Retailer Defendants with prejudice as to H.D. Hudson products.

**IT IS SO STIPULATED:**

DATED: 2/12/13

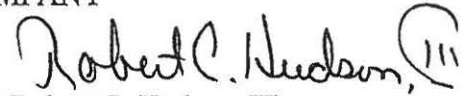
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION



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

DATED: Tues. 2/12/13

H.D. HUDSON MANUFACTURING COMPANY



By: Robert C. Hudson, III  
Its: President

**IT IS SO ORDERED:**

DATED: March 21 2013

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

CURTIS E.A. KARNOW