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Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,

Plaintiff,

v.

FLORIDA PNEUMATIC MFG.
CORPORATION, A SUBSIDIARY OF
P&F INDUSTRIES, INC., et al.,

Defendants.

Case No. CGC - 10 - 504376

CONSENT JUDGMENT

**(FLORIDA PNEUMATIC,
HBD/THERMOID, INC and HBD
INDUSTRIES, INC.)**

1. INTRODUCTION

1.1 On October 5, 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 Superior Court, Case No. 504376, against, inter alia, Florida Pneumatic Manufacturing,

CONSENT JUDGMENT AS TO FLORIDA PNEUMATIC,
HBD/THERMOID, INC. AND HBD INDUSTRIES, INC.

ENDORSED
FILED
San Francisco County Superior Court
MAR 24 2011
CLERK OF THE COURT
BY: MARTA VALLEJO
Plaintiff Clerk

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1 Corporation ("Florida Pneumatic"), HBD/Thermoid, Inc. and HBD Industries, Inc.
2 Hereafter, HBD/Thermoid, Inc. and HBD Industries, Inc. are collectively referred to as
3 "HBD/Thermoid," and Florida Pneumatic and HBD/Thermoid are each referred to
4 individually as a "Settling Defendant" and collectively as "Settling Defendants." The
5 Complaint alleges, among other things, that Settling Defendants violated provisions of the
6 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
7 Sections 25249.5, et seq. ("Proposition 65"). In particular, Mateel alleges that Settling
8 Defendants have knowingly and intentionally exposed persons to hose nozzles and hose
9 accessories that are made of leaded brass or which incorporate components which are
10 made of brass that contains lead and/or lead compounds, without first providing a clear
11 and reasonable warning to such individuals. Lead and lead compounds are chemicals
12 known to the State of California to cause cancer and birth defects or other reproductive
13 harm.

14 1.2 On July 22, 2010, Mateel sent a 60-Day Notice letter ("Notice Letter") to
15 Settling Defendants, the California Attorney General, all California District Attorneys,
16 and all City Attorneys of every California city with a population exceeding 750,000.

17 1.3 Mateel alleges that each Settling Defendant is a business that employs ten or
18 more persons and manufactures, distributes, and/or markets brass products within the
19 State of California. Some of these products are alleged to contain lead and/or lead
20 compounds. Lead and lead compounds are chemicals known to the State of California to
21 cause cancer, and lead is a chemical known to the State of California to cause
22 reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under
23 specified circumstances, products containing lead and/or lead compounds that are sold or
24 distributed in the State of California are subject to the Proposition 65 warning requirement
25 set forth in Health and Safety Code Section 25249.6. Plaintiff Mateel alleges that
26 products that are made from leaded brass, or that have leaded brass components, are

1 manufactured, distributed, sold and/or marketed by Settling Defendants for use in
2 California and require a warning under Proposition 65.

3 1.4 For purposes of this Consent Judgment, the term "Covered Products" shall
4 be defined as brass parts of air and water hoses, hose connectors, couplers and hose
5 accessory kits as well as the tools that connect to air or water hoses such as hose nozzles
6 and pressure washers that are made from leaded brass or that have leaded brass
7 components and are manufactured, distributed, marketed and/or sold by a Settling
8 Defendant in California. For Florida Pneumatic, the term Covered Products specifically
9 includes, but is not limited to, the Air Drive Air Chuck, SKU 16385, sold to Sears and/or
10 K-Mart as Item Number 7 2247021636 0. The "Effective Date" shall be defined as 90
11 days after entry of this Consent Judgment.

12 1.5 For purposes of this Consent Judgment only, the parties stipulate that this
13 Court has jurisdiction over the allegations of violations contained in the Complaint and
14 personal jurisdiction over each Settling Defendant as to the acts alleged in the Complaint,
15 that venue is proper in the County of San Francisco and that this Court has jurisdiction to
16 enter this Consent Judgment as a full settlement and resolution of the allegations
17 contained in the Complaint and of all claims that were or could have been raised by any
18 person or entity based in whole or in part, directly or indirectly, on the facts alleged
19 therein, arising therefrom or related thereto. This Consent Judgment resolves claims that
20 are denied and disputed by the Settling Defendants. The parties enter into this Consent
21 Judgment pursuant to a full and final settlement of any and all claims between the parties
22 for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
23 constitute an admission with respect to any material allegation of the Complaint, each and
24 every allegation of which each Settling Defendant denies, nor may this Consent Judgment
25 or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or
26 liability on the part of either Settling Defendant.

1 investigating and prosecuting this matter and in negotiating this Consent Judgment on
2 behalf of itself and in the public interest.

3 2.1.3 Each Settling Defendant shall deliver its settlement checks as described
4 above at least ten (10) days prior to any hearing on a motion to approve this settlement, to
5 William Verick, Esq., Klamath Environmental Law Center, 424 First Street, Eureka, CA
6 95501. If each Settling Defendants' settlement payment has not been received as
7 provided in this paragraph, Plaintiff may withdraw any motion to approve the Consent
8 Judgment and this agreement shall become null and void. If this Consent Judgment has
9 not been approved and entered by the Court within 120 days of the execution of the
10 agreement by the parties, the settlement payments described above shall be promptly
11 returned to the Settling Defendants, and the terms of this agreement shall be null and void
12 unless otherwise agreed among Plaintiff and the Settling Defendant or Settling Defendants
13 as the case may be.

14 2.2 MEJF and KELC represent and warrant that recipients of the offset
15 payments described above are each a tax exempt, section 501(c)(3) non-profit
16 organization and that funds distributed to each organization pursuant to this Consent
17 Judgment may only be spent to reduce harm from toxic chemicals, or to increase
18 consumer, worker and community awareness of health hazards posed by lead and other
19 toxic chemicals.

20 2.3 Except with respect to the payments to KELC described in Sections 2.1.1
21 and 2.1.2 above, each side shall bear its own costs and attorney's fees.

22 3. ENTRY OF CONSENT JUDGMENT

23 3.1 The parties hereby request that the Court promptly enter this Consent
24 Judgment. Upon entry of the Consent Judgment, Settling Defendants and Mateel waive
25 their respective rights to a hearing or trial on the allegations of the Complaint.

26 4. MATTERS COVERED BY THIS CONSENT JUDGMENT

1 **4.2** As to alleged exposures to any chemicals listed under Proposition 65
2 associated with Covered Products, Mateel, acting on behalf of itself, and its agents,
3 attorneys, representatives, successors and assigns, waives all rights to institute any form of
4 legal action, and releases all claims against each Settling Defendant and its parents,
5 subsidiaries, affiliates, predecessors, officers, directors, shareholders, attorneys,
6 representatives, agents, employees, and all customers, manufacturers, distributors,
7 wholesalers, retailers, or any other person in the course of doing business involving the
8 Covered Products, and the successors and assigns of any of them, who may manufacture,
9 use, maintain, distribute or sell the Covered Products or components found in the Covered
10 Products, including, but not limited to, any claims regarding exposure to, and/or failure to
11 warn with respect to, the Covered Products. In furtherance of the foregoing, as to alleged
12 violations of Proposition 65 for exposures to any chemicals listed under Proposition 65 in
13 Covered Products, Mateel hereby waives any and all rights and benefits which it now has,
14 or in the future may have conferred upon it with respect to claims involving Covered
15 Products by virtue of the provisions of Section 1542 of the California Civil Code, which
16 provides as follows:

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

24 Mateel understands and acknowledges that the significance and consequence of
25 this waiver of California Civil Code Section 1542 is that even if Mateel suffers future
26 damages or later discovers additional unknown claims arising out of, resulting from, or
27 related directly or indirectly to, in whole or in part, the Covered Products, including but
28 not limited to any exposure to, or failure to warn with respect to exposures to any

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1 chemicals listed under Proposition 65 from Covered Products, Mateel will not be able to
2 make any claim for those damages (or any other claims) against any or all of the Settling
3 Defendants, or any of their respective parents, subsidiaries, affiliates, predecessors,
4 officers, directors, shareholders, representatives, attorneys, agents, employees, and all
5 customers, manufacturers, distributors, wholesalers, retailers or any other person in the
6 course of doing business involving the Covered Products, and the successors and assigns
7 of any of them, who may manufacture, use, maintain, distribute or sell the Covered
8 Products. Furthermore, Mateel acknowledges that it intends these consequences for any
9 such claims and any other claims for violations of Proposition 65 which may exist as of
10 the date of this release but which Mateel does not know exist, and which, if known, would
11 materially affect its decision to enter into this Consent Judgment, regardless of whether its
12 lack of knowledge is the result of ignorance, oversight, error, negligence, or any other
13 cause.

14 **5. ENFORCEMENT OF JUDGMENT**

15 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
16 parties hereto. The parties may, by noticed motion or order to show cause before the
17 Superior Court of San Francisco County, giving the notice required by law, enforce the
18 terms and conditions contained herein. The parties hereto agree that prior to any such
19 enforcement action, they will give written notice to each other of any perceived violation
20 of this Consent Judgment. The parties further agree to take no enforcement action for 30
21 days after such notice is given, in order to allow the parties to meet and confer in good
22 faith in an effort to resolve the alleged violation.

23 **6. MODIFICATION OF JUDGMENT**

24 **6.1** Except as provided for in Paragraph 7.3(b), this Consent Judgment may be
25 modified only upon written agreement of the parties and upon entry of a modified Consent
26

1 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
2 entry of a modified Consent Judgment by the Court.

3 7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING

4 7.1 Covered Products' brass components shall be deemed to comply with the
5 requirements of Proposition 65 for lead and lead compounds, and be exempt from any
6 Proposition 65 warning requirements for lead and lead compounds if the brass that is part
7 of the Covered Products meets the following criteria: (a) the brass alloy from which the
8 brass fittings are made shall have a lead content by weight of no more than 0.03% (300
9 parts per million, or "300 ppm"). Each Settling Defendant may comply with the above
10 requirements by relying on information obtained from its suppliers regarding the content
11 of the brass alloy from which the brass fittings are made, provided such reliance is in good
12 faith. Although good faith reliance may also be established by other means, Mateel agrees
13 that obtaining test results showing that the lead content is no more than 0.03%, using a
14 method of sufficient sensitivity to establish a limit of quantification (as distinguished from
15 detection) of less than 300 ppm shall be deemed to establish good faith reliance.

16 7.2 Covered Products that do not meet the warning exemption standard set forth
17 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
18 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply
19 only to products a Settling Defendant manufactures, distributes, markets, sells or ships
20 after the Effective Date for sale or use inside the State of California.

21 7.3 For Covered Products that do not meet the reformulation requirements of
22 Section 7.1, each Settling Defendant shall provide Proposition 65 warnings as follows:

- 23 (a) Each Settling Defendant shall provide either of the following warning
24 statements:
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1 the same section that states other safety warnings, if any, concerning the use
2 of the product or near the product brand name, or displayed price and/or
3 UPC code, in a manner reasonably calculated to be seen by an ordinary
4 individual at time of purchase from Settling Defendant.

5 (b) Mateel agrees to stipulate by written agreement to a modification of
6 this Consent Judgment if it agrees that the law has changed such that
7 Proposition 65 warnings for lead or lead compounds in Covered Products
8 are no longer required.

9 (c) If after the Effective Date, any Settling Defendant ships Covered
10 Products to a retailer or distributor outside of California that neither
11 provides the warnings specified in this paragraph nor meets the
12 Reformulation Standard specified in paragraph 7.1 of this Consent Judgment
13 ("Non-Conforming Covered Products"), and if the retailer or distributor then
14 offers those Non-Conforming Covered Products for sale in California, then
15 as to those Non-Conforming Covered Products, that retailer or distributor,
16 and their customers, are not released pursuant to Sections 4.1 and 4.2 above.

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

22 **8. AUTHORITY TO STIPULATE**

23 Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the party he or she represents to enter into this Consent Judgment and to
25 execute it on behalf of the party represented and legally to bind that party.
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To Defendant Florida Pneumatic:

Ray Keegan
Chief Operating Officer
Florida Pneumatic Manufacturing Corporation
851 Jupiter Park Lane
Jupiter, Florida 33458-8998

With a copy to:

Richard B. Goodman, Esq.
General Counsel
P&F Industries, Inc.
445 Broadhollow Road
Melville, New York 11747

To Defendant HBD/Thermoid:
M. T. Clancey, General Counsel
HBD Industries, Inc.
5200 Upper Metro Place, Suite 110
Dublin, OH 43017

With a Copy to:

James Robert Maxwell, Esq.
Rogers Joseph O'Donnell
10th Floor
311 California Street
San Francisco, CA 94104

13. Each Settling Defendant is individually responsible for its own compliance with this Consent Judgment only, and bears no liability for any other Settling Defendant's compliance or non-compliance with the terms herein.

14. 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.

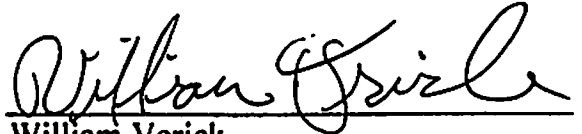
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IT IS SO STIPULATED:

Dated: _____

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION



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

Dated: 03/11/2011

FLORDIA PNEUMATIC
MANUFACTURING CORPORATION



Its: CHIEF OPERATING OFFICER

Dated: _____

HBD/THERMOID, INC.

By: _____

Its: _____

Dated: _____

HBD INDUSTRIES, INC.

By: _____

Its: _____

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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: _____

FLORDIA PNEUMATIC
MANUFACTURING CORPORATION

By: _____

Its: _____

Dated: March 10, 2011

HBD/THERMOID, INC.

By:  _____

Its: Chairman, President & CEO

Dated: March 10, 2011

HBD INDUSTRIES, INC.

By:  _____

Its: Chairman & CEO

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: MAR 24 2011

LORETTA M. GIORGI
Judge of the Superior Court

