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FILED
San Francisco County Superior Court

MAY 26 2011

CLERK OF THE COURT
BY: Marygro Schwab-Scott
Deputy Clerk

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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.

HYDE GROUP, INC., et al.,

Defendants.

Case No. CGC-10-504373

**CONSENT JUDGMENT
(TECHTRONIC INDUSTRIES NORTH
AMERICA, 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 in San Francisco Superior Court, Case No. 504373, against Defendant Techtronic Industries North America, Inc., ("TTI-NA").¹

¹ For the purposes of this consent judgment, the parties understand and agree that the term "TTI-NA" references and includes Techtronic Industries North America, Inc.'s

1 The Complaint alleges, among other things, that TTI-NA violated provisions of the Safe
2 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections
3 25249.5, et seq. ("Proposition 65"). In particular, Mateel alleges that TTI-NA exposed
4 persons to brass hose fittings commonly used on pressure washers and sprayers
5 (collectively "leaded brass fittings") that are made of, or that include a component made
6 of, leaded brass, without first providing a clear and reasonable warning to such
7 individuals. Lead and lead compounds are chemicals known to the State of California to
8 cause cancer and birth defects or other reproductive harm.

9 **1.2** On July 22, 2010, Mateel sent a Notice of Violation letter ("Notice
10 Letter") to TTI-NA, the California Attorney General, all California District Attorneys, and
11 all City Attorneys of every California city with populations exceeding 750,000.

12 **1.3** TTI-NA is a business that employs ten or more persons and manufactures,
13 distributes, and/or markets various products including products that contain brass
14 connectors, couplers and hose accessory kits as well as tools that connect to the air and
15 water hoses such as hose nozzles and pressure washers fittings within the State of
16 California. These products are alleged to contain lead and/or lead compounds. Lead and
17 lead compounds are chemicals known to the State of California to cause cancer, and lead
18 is a 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 products that are made from
23 leaded brass, or that have leaded brass components, are manufactured, distributed, sold
24 and/or marketed by TTI-NA for use in California and require a warning under Proposition
25 65.

26
27 subsidiaries, One World Technologies, Inc. and Homelite Consumer Products, Inc., as
28 well as its wholly owned, but indirect subsidiary, OWT Industries, Inc.

1 **1.4** In the Complaint, Mateel alleges that TTI-NA violated Cal. Health & Safety
2 Code Section 25249.6 by exposing persons to products that are made of brass, or include a
3 component made of brass, that contains lead and/or lead compounds, without first
4 providing a clear and reasonable warning to such individuals. Lead and lead compounds
5 are chemicals known to the State of California to cause cancer and birth defects or other
6 reproductive harm.

7 **1.5** For purposes of this Consent Judgment, the term “Covered Products” shall
8 be defined as brass products that are made from leaded brass or that have leaded brass
9 components, as set out in the 60 Day Notice Letter, and that are manufactured, distributed,
10 marketed and/or sold by TTI-NA. “Covered Products” include, but are not limited to
11 brass components on power washers, pressure washers and sprayers, and their respective
12 parts and accessories.²

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

21 **1.7** This Consent Judgment resolves claims that are denied and disputed. The
22 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
23 all claims between the parties for the purpose of avoiding prolonged litigation. This
24 Consent Judgment shall not constitute an admission with respect to any material allegation
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26 ² Specific examples of “Covered Products” include Power Washer Coupler (UPC Code
27 046396 550811; Power Care Detergent Hose Kit (AP 31027 719-577; UPC Code 046396
28 550675); Powercare 1/4” Quick Connect Wand With Adapters AP31021 719-379; UPC
Code 046396 550613); and Power Washer (UPC Code 04639 655056 9).

1 of the Complaints, each and every allegation of which TTI-NA denies, nor may this
2 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
3 misconduct, culpability or liability on the part of TTI-NA.

4 **2. SETTLEMENT PAYMENTS**

5 **2.1** In settlement of all of the claims referred to in this Consent Judgment,
6 TTI-NA shall collectively pay an aggregate of \$35,000 (thirty-five thousand dollars) in
7 total monetary relief.

8 **2.2** Of the foregoing \$35,000 amount, a total of \$5,000 (five thousand dollars)
9 shall be paid by TTI-NA in civil penalty: \$10,000 (ten thousand) shall be paid as an offset
10 payment in lieu of civil penalties to nonprofit, public benefit organizations. More
11 specifically, \$5,000 (five thousand) shall be made payable to the Environmental
12 Protection Information Center, and \$5,000 (five thousand) shall be made payable to the
13 KPFA Radio.

14 **2.3** In addition, a total amount of \$20,000 (twenty thousand dollars) shall be
15 paid by TTI-NA to the Klamath Environmental Law Center ("KELC") as reimbursement
16 for attorney's fees and costs incurred by KELC on behalf of Plaintiff in investigating and
17 prosecuting this matter and in negotiating this Consent Judgment on behalf of itself and in
18 the public interest. The payments described in Paragraphs 2.2 and 2.3 above shall be
19 delivered at least 5 days prior to any hearing on a motion to approve this settlement, to
20 William Verick, 424 First Street, Eureka, CA 95501. If payment has not been received as
21 provided in this paragraph, Plaintiff may withdraw any motion to approve and enter the
22 agreement and the agreement shall become null and void. If this Consent Judgment has
23 not been approved and entered by the Court within 120 days of the execution of the
24 agreement by the parties, the payments described above shall be promptly returned to
25 TTI-NA, and the terms of this agreement shall be null and void.

26 **2.4** MEJF and KELC represent and warrant that the Environmental Protection
27 Information Center and KPFA Radio are tax exempt, section 501(c)(3) non-profit
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1 organizations and that funds distributed to these organizations pursuant to this Consent
2 Judgment may only be spent to reduce harm from toxic chemicals, or to increase
3 consumer, worker and community awareness of health hazards posed by lead and other
4 toxic chemicals.

5 **2.5** Except as specifically provided in this Consent Judgment, each side shall
6 bear its own costs and attorney's fees.

7 **3. ENTRY OF CONSENT JUDGMENT**

8 **3.1** The parties hereby request that the Court promptly enter this Consent
9 Judgment. Upon entry of the Consent Judgment, TTI-NA and Mateel waive their
10 respective rights to a hearing or trial on the allegations of the Complaints.

11 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

12 **4.1** As to lead and lead compound exposures alleged to be caused by Covered
13 Products, this Consent Judgment is a full, final and binding resolution between TTI-NA
14 and Mateel, acting on behalf of itself and as to those matter included in the 60 Day Notice
15 Letter, acting in the public interest pursuant to Health and Safety Code section 25249.7(d),
16 of all matters that are or that could have been alleged in the Complaints, including any
17 violation of Proposition 65, or the regulations promulgated thereunder, to the fullest extent
18 that any violation could have been asserted by Mateel against TTI-NA based upon, arising
19 out of, or relating to TTI-NA's compliance with Proposition 65, or regulations
20 promulgated thereunder, whether based on actions committed by TTI-NA, or by any other
21 entity within the chain of manufacture, distribution and sale of the Covered Products. As
22 to alleged lead and lead compound exposures from Covered Products, compliance with
23 the terms of this Consent Judgment resolves any issue, now and in the future, concerning
24 compliance by TTI-NA and their parents, subsidiaries or affiliates, divisions,
25 predecessors, successors, assigns, officers, directors, shareholders, attorneys,
26 representatives, agents, employees, insurers, and all manufacturers, customers,
27 distributors, wholesalers, retailers or any other person in the course of doing business
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1 involving the Covered Products, and the successors and assigns of any of these who may
2 manufacture, use, maintain, distribute, market or sell Covered Products, with the current
3 requirements and standards of Proposition 65. This Consent Judgment also is a full, final,
4 and binding resolution between Plaintiff acting on behalf of itself and, as to those matters
5 raised in the 60 Day Notice Letter, acting in the public interest and TTI-NA as to any
6 other claims that could have been asserted against TTI-NA or its affiliates, parents or
7 subsidiaries, divisions, successors, officers, directors, shareholders, employees, insurers,
8 attorneys, representatives, agents, assigns, distributors, manufacturers, retailers, or
9 customers for failure to disclose the presence of lead (or lead compounds) in or associated
10 with use of the Covered Products.

11 **4.2** As to alleged lead and lead compound exposures associated with Covered
12 Products, Mateel, acting on behalf of itself, and its agents, attorneys, representatives,
13 successors and assigns, waives all rights to institute or participate in, directly, or
14 indirectly, any form of legal action, and releases all claims as between Mateel and TTI-
15 NA, including, without limitation, all actions, and causes of action, in law or in equity,
16 suits, liabilities, demands, obligations, agreements, promises, royalties, accountings,
17 damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
18 investigation fees, expert fees, and attorney's fees) of any nature whatsoever, whether
19 known or unknown, fixed or contingent (collectively "claims"), against TTI-NA and its
20 parents, subsidiaries or affiliates, predecessors, officers, directors, shareholders, attorneys,
21 representatives, agents, employees, insurers and all customers, manufacturers, distributors,
22 wholesalers, retailers, or any other person in the course of doing business involving the
23 Covered Products, and the successors and assigns of any of them, who may manufacture,
24 use, maintain, distribute or sell the Covered Products or components found in the Covered
25 Products, including, but not limited to, any claims regarding exposure to, and/or failure to
26 warn with respect to, the Covered Products. In furtherance of the foregoing, Mateel on its
27 own behalf hereby waives any and all rights and benefits which it now has, or in the future
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1 may have respecting the Covered Products, conferred upon it with respect to claims
2 involving Covered Products by virtue of the provisions of Section 1542 of the California
3 Civil Code, which provides as follows:

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

11 Mateel understands and acknowledges that the significance and consequence of
12 this waiver of California Civil Code Section 1542 is that even if Mateel suffers future
13 damages arising out of or resulting from, or related directly or indirectly to, in whole or in
14 part, the Covered Products, including but not limited to any exposure to, or failure to warn
15 with respect to exposure to lead or lead compounds from, the Covered Products, Mateel
16 will not be able to make any claim for those damages against TTI-NA, its parents,
17 subsidiaries or affiliates, predecessors, officers, directors, shareholders, representatives,
18 attorneys, agents, employees, insurers, and all customers, manufacturers, distributors,
19 wholesalers, retailers or any other person in the course of doing business involving the
20 Covered Products, and the successors and assigns of any of them, who may manufacture,
21 use, maintain, distribute or sell the Covered Products. Furthermore, Mateel acknowledges
22 that it intends these consequences for any such claims and any other claims which may
23 exist as of the date of this release but which Mateel does not know exist, and which, if
24 known, would materially affect its decision to enter into this Consent Judgment,
25 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
26 negligence, or any other cause.

24 5. ENFORCEMENT OF JUDGMENT

25 5.1 The terms of this Consent Judgment shall be enforced exclusively by the
26 parties hereto. The parties may, by noticed motion or order to show cause before the
27 Superior Court of San Francisco County, giving the notice required by law, enforce the
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1 terms and conditions contained herein. The parties hereto agree that prior to any such
2 enforcement action, they will notify each other of any perceived violation of this Consent
3 Judgment. The parties further agree to take no enforcement action for 30 days after such
4 notice is given, in order to allow the parties to meet and confer in good faith in an effort to
5 resolve the alleged violation.

6 **6. MODIFICATION OF JUDGMENT**

7 **6.1** Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
8 modified only upon written agreement of the parties and upon entry of a modified Consent
9 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
10 entry of a modified Consent Judgment by the Court.

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

12 **7.1** Covered Products' brass components shall be deemed to comply with
13 current warning requirements of Proposition 65 for lead if the brass that is part of the
14 Covered Products meets the following criteria: (a) the brass alloy from which the brass
15 components are made shall have no intentionally added lead and a lead content by weight
16 of no more than 0.03% (300 parts per million, or "300 ppm"). TTI-NA may comply with
17 the above requirements by relying on information obtained from its suppliers regarding
18 the content of the brass alloy from which the brass products or components are made,
19 provided such reliance is in good faith. Obtaining test results showing that the lead
20 content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit
21 of quantification (as distinguished from detection) of less than 300 ppm shall be deemed
22 to establish good faith reliance.

23 **7.2** Covered Products that are manufactured after the Effective Date that do
24 not meet the warning exemption standard set forth in Section 7.1 of the Consent Judgment
25 shall be accompanied by a warning as described in paragraph 7.3 below. The Effective
26 Date shall be the date this Consent Judgment is signed and entered by the Court. The
27 warning requirements set forth in paragraph 7.3 shall apply only to products TTI-NA
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1 manufactures, distributes, markets, sells or ships for distribution for sale or use inside the
2 State of California.

3 **7.3** TTI-NA shall provide Proposition 65 warnings as follows:

4 (a) TTI-NA shall provide either of the following warning statements:

5 **WARNING:** This product contains lead, a chemical known to the State of
6 California to cause cancer and birth defects or other reproductive harm. Do
7 not place your hands in your mouth after handling the product. ***Wash your***
8 ***hands after touching this product.***

9 or

10 **WARNING:** This product contains chemicals, including lead, known to the
11 State of California to cause cancer and birth defects or other reproductive
12 harm. ***Wash hands after handling.***

13 or, for products which emit exhaust, TTI-NA may provide an
14 alternative warning as follows:

15 **WARNING:** This product, its exhaust, and other substances that may
16 become airborne from its use contain chemicals, including lead, known to
17 the State of California to cause cancer, birth defects, or other reproductive
18 harm. ***Wash hands after handling.***

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

21 TTI-NA shall provide such warning with the unit package of the
22 Covered Products. Such warning shall be prominently affixed to or printed
23 on each Covered Product’s label or package. The warning shall be at least
24 the same size as the largest of any other written safety warnings, if any, on
25 the product container. If printed on the label itself, the warning shall be
26 contained in the same section that states other safety warnings, if any,
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1 concerning the use of the product.

2 (b) The requirements for product labeling, set forth in subparagraph (a)
3 above are imposed pursuant to the terms of this Consent Judgment.

4 (c) If following 90 days after the Effective Date, TTI-NA ships Covered
5 Products that are manufactured after the Effective Date to a retailer or
6 distributor outside of California that neither provide the warnings specified
7 in this paragraph nor meets the Reformulation Standard specified in
8 paragraph 7.1 of this Consent Judgment (“Non-Conforming Covered
9 Products”), and if the retailer or distributor then offers those Non-
10 Conforming Covered Products for sale in California, then as to those Non-
11 Conforming Covered Products, that retailer or distributor, and their
12 customers, are not released pursuant to Sections 4.1 and 4.2 above.

13 (d) Notwithstanding section 7.3(a), above, Proposition 65 warnings
14 provided on packaging which was printed or was under contract for printing
15 prior to the Effective Date need not use the precise language of section
16 7.3(a).

17 (e) Except as provided in paragraph 4.2 hereof, nothing in this Consent
18 Judgment shall create a limitation on a Proposition 65 enforcement action
19 based on future conduct if such future conduct is not in compliance with the
20 injunctive terms of this Consent Judgment.

21 **8. AUTHORITY TO STIPULATE**

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

25 **9. RETENTION OF JURISDICTION**

26 This Court shall retain jurisdiction of this matter to implement the Consent
27 Judgment.
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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.

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.

1. NOTICES

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 TTI-NA:
Mark A. Rowe, Esq.
Assistant General Counsel
Techtronic Industries North America, Inc.
1428 Pearman Dairy Road
Anderson, SC 29625

1 With a copy to:

2 Jeffrey R. Williams, Esq.

3 P. Mark Mahoney, Esq.

Schiff Hardin LLP

4 One Market, Spear Tower, 32nd Floor

5 San Francisco, CA 94105

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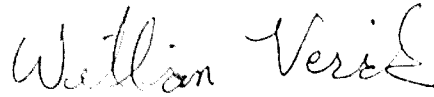
13. COURT APPROVAL

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 5-20-2011

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



William Verick
CEO Mateel Environmental Justice
Foundation
Edmund Environmental Law Center

DATED May 17, 2011

ELECTRONIC INDUSTRIES, NOBLE
AMERICA, INC.

by: Mark A. Rowe
Assistant General Counsel

IT IS SO ORDERED, APPROVED AND DECREED

DATED 5/26/11



JUDGE OF THE SUPERIOR COURT

PETER J. BUSCH

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13. 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: May 18, 2011

TECHTRONIC INDUSTRIES, NORTH
AMERICA, INC.



By: Mark A. Rowe
Its: Assistant General Counsel

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT

SF 10047826.1