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18 **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**

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

21 **MATEEL ENVIRONMENTAL**
22 **JUSTICE FOUNDATION,**
23 **Plaintiff,**
24 **v.**
25 **HYDE GROUP, INC., et al.,**
26 **Defendants.**

Case No. CGC-10-504373

CONSENT JUDGMENT
(LDR INDUSTRIES, INC.)

27 **1. INTRODUCTION**

28 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 LDR INDUSTRIES, INC., ("LDR" or "Settling
Defendant"); The Complaint alleges, among other things, that LDR violated provisions of
the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code

ENDORSED
FILED
San Francisco County Superior Court

SEP 26 2011

CLERK OF THE COURT
BY: GINA GONZALES
Deputy Clerk

1 Sections 25249.5, et seq. ("Proposition 65"). In particular, Mateel alleges that LDR
2 knowingly and intentionally exposed persons to leaded brass hose accessories and
3 connectors ("brass hose products") that are made of or that include a component made of
4 leaded brass, without first providing a clear and reasonable warning to such individuals.
5 Lead and lead compounds are chemicals known to the State of California to cause cancer
6 and birth defects or other reproductive harm.
7

8 1.2 On July 22, 2010, Mateel sent a Notice of Violation letter ("Notice Letter")
9 to LDR, the California Attorney General, all California District Attorneys, and all City
10 Attorneys of every California city with populations exceeding 750,000.
11

12 1.3 Settling Defendant is a business that employs ten or more persons and
13 manufactures, distributes, and/or markets brass hose products within the State of
14 California. These products are alleged to contain lead and/or lead compounds. Lead and
15 lead compounds are chemicals known to the State of California to cause cancer, and lead
16 is a chemical known to the State of California to cause reproductive toxicity pursuant to
17 Health and Safety Code Section 25249.9. Under specified circumstances, businesses that
18 use products containing lead and/or lead compounds in the State of California are subject
19 to the Proposition 65 warning requirement set forth in Health and Safety Code Section
20 25249.6. Plaintiff Mateel alleges that brass products that are made from leaded brass, or
21 that have leaded brass components, are manufactured, distributed, sold and/or marketed
22 by Settling Defendant for use in California such that a warning is required under
23 Proposition 65.
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27 1.4 In the Complaint, Mateel alleges that Settling Defendant violated Cal.
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1 Health & Safety Code Section 25249.6 by knowingly and intentionally exposing persons
2 to brass hose products made of brass, or which include a component made of brass, that
3 contains lead and/or lead compounds, without first providing a clear and reasonable
4 warning to such individuals. Lead and lead compounds are chemicals known to the State
5 of California to cause cancer and birth defects or other reproductive harm.
6

7 1.5 On November 18, 2010, Mateel sent a second Notice of Violation letter
8 (“Notice Letter”) to LDR, the California Attorney General, all California District
9 Attorneys, and all City Attorneys of every California city with population exceeding
10 750,000. In the November 60 Day Notice Letter, Mateel alleged that LDR violated Cal.
11 Health & Safety Code Section 25249.6 by knowingly and intentionally exposing persons
12 to plumbing fittings made of brass, or which include a component made of brass, that
13 contains lead and/or lead compounds, (“Brass plumbing fittings”) without first providing a
14 clear and reasonable warning to such individuals.
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17 1.6 For purposes of this Consent Judgment, the term “Covered Products” shall
18 be defined as: products consisting of or containing brass accessories, connectors, fittings,
19 fasteners or other components, manufactured, distributed, marketed and/or sold by
20 Settling Defendant and which are not considered the subject of California Health and
21 Safety Code §116875 (brass plumbing pipes and fittings). Products which are the subject
22 of Health and Safety Code §116875 are not addressed by this Consent Judgment, and no
23 inference regarding compliance or violation with the requirements of Proposition 65 by
24 such products is intended by this judgment or any term or requirement contained herein.
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27 1.7 For purposes of this Consent Judgment, the parties stipulate that this Court
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1 has jurisdiction over the allegations of violations contained in the Complaint and personal
2 jurisdiction over LDR as to the acts alleged in the Complaints, that venue is proper in the
3 County of San Francisco and that this Court has jurisdiction to enter this Consent
4 Judgment as a full settlement and resolution of the allegations contained in the Complaint
5 and of all claims that were or could have been raised by any person or entity based in
6 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
7 related thereto.
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9
10 1.8 This Consent Judgment resolves claims that are denied and disputed. The
11 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
12 all claims between the parties for the purpose of avoiding prolonged litigation. This
13 Consent Judgment shall not constitute an admission with respect to any material allegation
14 of the Complaints, each and every allegation of which Settling Defendant denies, nor may
15 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
16 misconduct, culpability or liability on the part of Settling Defendant.
17

18 1.9 This Consent Judgment shall be effective on March 31, 2012, the "Effective
19 Date." All products already shipped on or before the "Effective Date" are deemed to be
20 covered by the waiver and release provisions of Paragraphs 4 of this Consent Judgment
21 and shall not be subject to any enforcement action by Mateel under Paragraph 5 of this
22 Consent Judgment. The reformulation and warning requirements of Paragraph 7 shall
23 apply to any product shipped after March 31, 2012.
24

25 2. SETTLEMENT PAYMENTS

26 2.1 In settlement of all of the claims referred to in this Consent Judgment,
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1 Settling Defendant shall collectively pay an aggregate of \$40,000 (forty thousand dollars)
2 in total monetary relief, inclusive of Paragraph 2.2, below. Of the foregoing, a total of
3 \$6,000 (six thousand dollars) shall be paid in civil penalties. Mateel waives its right to
4 receive twenty-five (25%) of this payment, and, accordingly, the entire \$6,000 shall be
5 paid to the Office of Environmental Health Hazard Assessment (OEHHA). A total of
6 \$12,000 (twelve thousand dollars) shall be paid by Settling Defendant in lieu of, and as an
7 offset for, a larger civil penalty in the form of two equal payments, one to the Ecological
8 Rights Foundation and on to Californians for Alternatives to Toxics.
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11 2.2 A total amount of \$22,000 (twenty two thousand dollars) shall be paid by
12 the Settling Defendant to the Klamath Environmental Law Center ("KELC") as
13 reimbursement for attorney's fees and costs incurred by KELC on behalf of Plaintiff in
14 investigating and prosecuting this matter and in negotiating this Consent Judgment on
15 behalf of itself and in the public interest. The payments described in Paragraphs 2.1 and
16 2.2 above shall be delivered at least 5 days prior to any hearing on a motion to approve
17 this settlement, to William Verick, 424 First Street, Eureka, CA 95501. If payment has
18 not been received as provided in this paragraph, Plaintiff may withdraw any motion to
19 approve and enter the agreement and the agreement shall become null and void. If this
20 Consent Judgment has not been approved and entered by the Court within 120 days of the
21 execution of the agreement by the parties, the payments described above shall be promptly
22 returned to Settling Defendant, and the terms of this agreement shall be null and void.
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26 2.3 MEJF and KELC represent and warrant that Californians for Alternatives to
27 Toxics and the Ecological Rights Foundation 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

6 2.4 Except as specifically provided in this Consent Judgment, each side shall
7 bear its own costs and attorney's fees.

8 3. ENTRY OF CONSENT JUDGMENT

9 3.1 The parties hereby request that the Court promptly enter this Consent
10 Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive
11 their respective rights to a hearing or trial on the allegations of the Complaints.
12

13 4. MATTERS COVERED BY THIS CONSENT JUDGMENT

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

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

14
15 **“A GENERAL RELEASE DOES NOT EXTEND TO**
16 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR**
17 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE**
18 **TIME OF EXECUTING THE RELEASE, WHICH IF**
19 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
20 **AFFECTED HIS OR HER SETTLEMENT WITH THE**
21 **DEBTOR.”**

22 Mateel understands and acknowledges that the significance and consequence of
23 this waiver of California Civil Code Section 1542 is that even if Mateel suffers future
24 damages arising out of or resulting from, or related directly or indirectly to, in whole or in
25 part, the Covered Products, including but not limited to any exposure to, or failure to warn
26 with respect to exposure to lead or lead compounds from, the Covered Products, Mateel
27 will not be able to make any claim for those damages against Settling Defendant, its
28 parents, subsidiaries or affiliates, predecessors, officers, directors, shareholders,
representatives, attorneys, agents, employees, and all customers, manufacturers,
distributors, wholesalers, retailers or any other person in the course of doing business

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

8 5. ENFORCEMENT OF JUDGMENT

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

20 6.1 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
21 modified only upon written agreement of the parties and upon entry of a modified Consent
22 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
23 entry of a modified Consent Judgment by the Court.
24

25 6.2 Notwithstanding any other term or provision of this Consent Judgment, if
26 Plaintiff or any affiliated entity, or the California Attorney General and another (current or
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1 potential) party ("Future Settling Party") agrees to or is otherwise bound by injunctive
2 relief terms or provisions relating to the reformulation of, or provisions of Proposition 65
3 warnings for, products of like characteristics and use to those of Covered Products, which
4 are more favorable to the Future Settling Party than this Consent Judgment otherwise
5 provides to Settling Defendant, then the terms of injunctive relief provided for in Section
6 7 of this Consent Judgment shall automatically be deemed to have been modified to add
7 such more favorable terms or provisions as an option, which the Settling Defendant may
8 elect for compliance with this Consent Judgment.
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11 6.3 Mateel shall give notice to LDR, per section 12, of all consent judgments
12 entered into by Mateel described in Section 6.2 on or after the date of this Consent
13 Judgment involving similar products to those at issue in this Consent Judgment, unless
14 such consents are posted on the public Proposition 65 web site maintained by the
15 California Attorney General.
16

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18 7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING

19 7.1 Covered Products' brass components shall be deemed to comply with
20 current warning requirements of Proposition 65 for lead and lead compounds (H&S Code
21 25249.6) and be exempt from any Proposition 65 warning requirements for these listed
22 chemicals after the Effective Date, if the brass that is part of the Covered Products is made
23 of an alloy which contains no intentionally added lead and no lead content by weight of
24 more than 0.03% (300 parts per million, or "300 ppm").
25

26
27 7.2 Mateel agrees that as to the lead content of any reformulated Covered
28 Product, LDR and any other Released Entities, may rely upon the representations of their

1 or its respective manufacturers, suppliers, distributors, or any other person in the course of
2 doing business that manufactures, supplies or otherwise distributes the reformulated
3 Covered Product(s) to LDR, provided that LDR's reliance is in good faith. Although
4 good faith reliance regarding the brass alloy may also be established by other means,
5 Mateel agrees that obtaining test results showing that the lead content is no more than
6 0.03% (300 ppm), using a method of sufficient sensitivity to establish a limit of
7 quantification (as distinguished from detection) of less than 300 ppm shall be deemed to
8 establish good faith reliance.
9

10
11 7.3 Covered Products that do not meet the warning exemption standard set forth
12 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
13 paragraph 7.4 below after the Effective Date. The warning requirements set forth in
14 paragraph 7.4, below, apply only to products Settling Defendant manufactures, distributes,
15 markets, sells or ships for distribution after the Effective Date for sale or use inside the
16 State of California.
17

18 7.4 For Covered Products that do not meet the reformulation requirements of
19 Section 7.1, Settling Defendant shall provide Proposition 65 warnings as follows:
20

21 Settling Defendant shall provide either of the following warning statements:
22

23 **WARNING:** This product contains lead, a chemical known to the State of
24 California to cause cancer and birth defects or other reproductive harm.

25 *Wash your hands after handling this product.*

26 or

27 **WARNING:** This product contains [one or more] chemicals, including
28 lead, known to the State of California to cause cancer and birth defects or

1 other reproductive harm. *Wash hands after handling.*

2 Bracketed language may be omitted at Settling Defendant's option. A
3 Settling Defendant may add additional listed chemicals to the warning
4 unless the Attorney General advised that the inclusion of such additional
5 chemicals would render the warning misleading or constitute an over
6 warning. The word "WARNING" shall be in bold and may be preceded by
7 the word "CALIFORNIA," "PROP 65," or "CALIFORNIA PROP 65" at
8 the Settling Defendant's options provided such words are also in bold. The
9 words "Wash hands after handling this product" or "Wash hands after
10 handling" may be replaced with "Wash hands after use" and in any case
11 shall be underlined, in bold, or italicized.

12 7.5 Any warning shall be prominently placed with such conspicuousness as
13 compared with other words, statements, designs, or devices as to render it likely to be read
14 and understood by an ordinary individual under customary conditions before purchase or
15 use. Any warning shall be provided in a manner such that the ordinary competent
16 consumer or user understands to which specific Covered Product the warning applies.
17 LDR may provide warnings as specified in Section 7.4 as follows:
18

19
20 (a) Affixed Warnings. LDR may provide such warning on or attached to
21 Covered Products or with the unit package of the Covered Products as
22 packaged by Settling Defendant. Such warning shall be included with,
23 affixed to or printed on each Covered Product or its label, package or
24 container in the same section that states other safety warnings, if any,
25 concerning the use of the product or near the product brand name, or
26 displayed price and/or UPC code, in a manner reasonably calculated to be
27 seen by an ordinary individual.
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(b) Point of Sale Warnings. LDR may perform its warning obligation by arranging for the posting of the shelf labeling, signs, menus, warning slips or a combination of thereof as set forth in Health & Safety Code Section 25603.1 at retail outlets in the State of California where Covered Products are sold. In such instances, Settling Defendant shall provide the warning specified in Section 7.4, and instructions for its use, with the shipping materials containing the Covered Product. Such warning and instructions shall be included with or affixed to each package box or other container containing Covered Product(s). For a Point of Sale Warning to be considered reasonably calculated to be seen by an ordinary individual, the warning shall be posted at (1) each location in the store where the Covered Products are displayed and visible when the Covered Products are being viewed without the Covered Products being moved, or (2) for stores with less than 7,500 square feet retail space, adjacent to each check out counter, sales register, cash stand, cash wrap or similar check out location in the store. All warning signs must be displayed in such a manner that any potential purchaser would reasonably be expected to see the warning and adequately distinguish between brass products for which warnings are required and product which do not cause a lead exposure. If the point of sale warning is not posted in such a manner, or any other manner otherwise agreed to by the Attorney General, the retail entity shall not benefit from the terms of this consent judgment, including the release of claims contained therein.

(c) News Media Notices. LDR may perform its warning obligation by placing notices in public news media per Health & Safety Code section 25249.11 so long as the Attorney General has agreed, upon review, that the size, location and frequency of any such warning(s) meets with the Proposition 65's "clear and reasonable" warning requirements.

1 (d) Other Approved Warning Methods. LDR may perform its warning
2 obligations via any method specifically approved in writing by California's
3 Office of Attorney General.

4 7.6 If after the Effective Date, any Settling Defendant ships Covered Products to
5 a retailer or distributor outside of California that neither provide the warnings specified in
6 this paragraph nor meets the Reformulation Standard specified in paragraph 7.1 of this
7 Consent Judgment ("Non-Conforming Covered Products"), and if the retailer or
8 distributor then offers those Non-Conforming Covered Products for sale in California,
9 then as to those Non-Conforming Covered Products, that retailer or distributor, and their
10 customers, are not released pursuant to Sections 4.1 and 4.2 above.

12 7.7 Except as provided in paragraphs 4.1 and 4.2 hereof, for Covered Products
13 manufactured or distributed prior to the Effective Date, nothing in this Consent Judgment
14 shall create a limitation on a Proposition 65 enforcement action based on future conduct if
15 such future conduct is not in compliance with the injunctive terms of this Consent
16 Judgment.

18 **8. AUTHORITY TO STIPULATE**

19 8.1 Each signatory to this Consent Judgment certifies that he or she is fully
20 authorized by the party he or she represents to enter into this Consent Judgment and to
21 execute it on behalf of the party represented and legally to bind that party.

23 **9. RETENTION OF JURISDICTION**

24 9.1 This Court shall retain jurisdiction of this matter to implement the Consent
25 Judgment.

27 **10. ENTIRE AGREEMENT**

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

7 11. GOVERNING LAW

8 The validity, construction and performance of this Consent Judgment shall
9 be governed by the laws of the State of California, without reference to any conflicts of
10 law provisions of California law.

11 12. NOTICES

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

16 To Mateel:
17 William Verick, Esq.
18 Klamath Environmental Law Center
19 424 First Street
20 Eureka, CA 95501

21 To LDR:
22 David Pollans
23 LDR Industries, Inc.
24 600 N. Kilbourn Ave.
25 Chicago, IL 60624

26 With a copy to:
27 Michael Van Zandt, Esq.
28 Hanson Bridgett, LLP
29 425 Market Street, 26th Floor
30 San Francisco, California 94105

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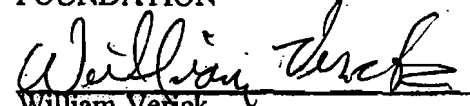
13. COURT APPROVAL

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:

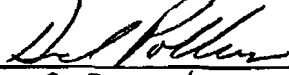
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION



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

DATED:

LDR INDUSTRIES, INC.

By: 
Its: VP FINANCE

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: SEP 26 2011

ERNEST H. GOLDSMITH
JUDGE OF THE SUPERIOR COURT