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15 ENVIRONMENTAL JUSTICE FOUNDATION

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**

18 MATEEL ENVIRONMENTAL
19 JUSTICE FOUNDATION,
20
21 Plaintiff,
22
23 v.
24
25 WILBUR CURTIS CO., INC.,
26
27 Defendant.

Case No. CGC 11-512375
CONSENT JUDGMENT

ENDORSED
FILED
JUN 18 2012
CLERK OF THE COURT
BY: MARTA VALLEJO
Deputy Clerk
San Francisco County Superior Court

1
2 **1. INTRODUCTION**

3 1.1 On or about July 7 2011, the Mateel Environmental Justice Foundation ("Mateel")
4 by its attorneys, the Klamath Environmental Law Center ("KELC"), acting on behalf of the
5 public interest, filed a complaint for civil penalties and injunctive relief in the Superior Court for
6 the City and County of San Francisco in the action entitled *Mateel Environmental Justice*
7 *Foundation v. Wilbur Curtis Co., Inc.*, Case No. CGC 11-512375 (the "Complaint") against
8 Wilbur Curtis Co. Inc. ("Wilbur Curtis" or "Settling Defendant"). The Complaint in the action
9 alleges, among other things, that Wilbur Curtis violated provisions of the Safe Drinking Water
10 and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5, et seq.
11 ("Proposition 65"). In particular, Mateel alleges that Wilbur Curtis, knowingly and intentionally
12 exposed persons to lead or lead compounds, which under Proposition 65 are chemicals known to
13 the State of California to cause cancer and birth defects of other reproductive harm. The alleged
14 exposure arose through consumer use of beverage dispensing vessels that incorporate
15 components that contain lead and/or lead compounds ("Covered Products"). The term "Covered
16 Products" specifically does not include model numbers RU-150, RU-225, RU-300, RU-600,
17 RU-1000, and MWMGT. Mateel alleges that Settling Defendant marketed Covered Products
18 that utilize leaded brass components without first providing clear and reasonable warnings in
19 compliance with Proposition 65 to such individuals. On or about February 10, 2011, Mateel
20 sent a 60-Day Notice Letter to Wilbur Curtis, the California Attorney General, all California
21 District Attorneys, and all City Attorneys of each California city with a population exceeding
22 750,000, providing notice of these alleged violations ("60 Day Notice Letter"). A copy of that
23 60-Day Notice letter is attached to the Complaint in this action.

24 1.2 Wilbur Curtis, is a business that employs ten or more persons and markets within
25 the State of California Covered Products, which are alleged to contain lead and/or lead
26 compounds.

27 1.3 Lead and lead compounds are chemicals known to the State of California to cause
28 cancer, and lead is a chemical known to the State of California to cause reproductive toxicity

1 pursuant to Health and Safety Code Section 25249.9. Under certain circumstances, products
2 containing lead and/or lead compounds that are sold or distributed in the State of California are
3 subject to Proposition 65's warning requirement. Mateel alleges that the Covered Products
4 manufactured, distributed, sold and/or marketed by the Settling Defendant for use in California
5 require Proposition 65 warnings.

6 **1.4** For purposes of this Consent Judgment, the Parties stipulate that this Court has
7 jurisdiction over the allegations of violations contained in the 60-Day Notice Letter and the
8 Complaint, as well as personal jurisdiction over the Settling Defendant as to the acts alleged in
9 the 60 Day Notice Letter and the Complaint; that venue is proper in the City and County of San
10 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full and final
11 settlement and resolution of the allegations made against the Settling Defendant contained in the
12 60 Day Notice Letter and Complaint and of all claims that were or could have been raised
13 against the Settling Defendant based on the facts alleged therein or arising therefrom.

14 **1.5** This Consent Judgment resolves claims that are denied and disputed. The Parties
15 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
16 between the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment
17 shall not constitute an admission with respect to any allegation made in the 60 Day Notice Letter
18 or Complaint, most of which allegations Settling Defendant denies, nor may this Consent
19 Judgment or compliance with it be used as an admission or evidence of any fact, wrongdoing,
20 misconduct, culpability, violation of law or liability on the part of the Settling Defendant.

21
22 **2. SETTLEMENT PAYMENT**

23 **2.1** The Settling Defendant shall pay a penalty amount of \$10,000 all of which shall
24 be payable to the State of California, Office of Environmental Health Hazard Assessment
25 (OEHHA); as well as an offset payment of \$10,000 to the Ecological Rights Foundation and an
26 offset payment of \$10,000 to the Californians for Alternatives to Toxics for work informing
27 California consumers about the hazards of and exposures to toxic chemicals and for work to
28 reduce exposures to and pollution from toxic chemicals. Ecological Rights Foundation and

1 Californians for Alternatives to Toxics are California non-profit environmental organizations
2 that advocate for consumers' safety, and for awareness and reduction of toxic exposures.

3 **2.2** Wilbur Curtis shall pay \$50,000 to Klamath Environmental Law Center to cover a
4 portion of Mateel's attorneys' fees and costs.

5 **2.3** The above described payments shall be forwarded by Settling Defendant to its
6 counsel so that they are received at least 5 days prior to the hearing date scheduled for approval
7 of this Consent Judgment. Defendant's counsel shall notify via email Klamath Environmental
8 Law Center upon receipt of the funds. If the Consent Judgment is not approved within 120 days
9 of the date scheduled for approval, the above described payments shall be returned and the
10 provisions of this Consent judgment shall become null and void. If the Consent Judgment is
11 approved and entered by the Court, on that day Defendant's counsel shall ensure the above
12 described payments are delivered, via UPS or Fedex for next business day delivery, to Klamath
13 Environmental Law Center. The Parties acknowledge and agree that, except as provided in
14 Section 2.2 of this Consent Judgment, each party shall bear its own costs, expenses, consultant
15 and expert fees, and attorneys' fees.

16
17 **3. ENTRY OF CONSENT JUDGMENT**

18 **3.1** The Parties hereby request that the Court promptly enter this Consent Judgment.
19 Upon entry of this Consent Judgment, the Parties waive their respective rights to a hearing or
20 trial on the allegations of the Complaint.

21
22 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

23 **4.1** As to alleged exposures to lead or lead compounds from Covered Products, this
24 Consent Judgment provides a full release of liability on behalf of the Public Interest to Wilbur
25 Curtis, (as well as its past, present and future parents, subsidiaries affiliates, predecessors,
26 successors, and assigns "Released Entities"), as to all claims and matters raised in the Notice of
27 Violation. Notwithstanding any other provision of this Consent Judgment, no claim or matter is
28

1 released on behalf of the Public Interest unless that claim or matter was raised in the Notice of
2 Violation.

3 4.2 As to alleged exposures to lead or lead compounds from Covered Products, MEJF,
4 by and on behalf of itself and its respective agents, successors and assigns, waives any and all
5 rights to institute any form of legal action, and releases all claims against Wilbur Curtis and the
6 Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their
7 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of
8 doing business, and the successors and assigns of any of them, who may use, maintain,
9 distribute or sell the Covered Products, whether, under Proposition 65 or otherwise, arising out
10 of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
11 Products, including but not limited to any exposure to, or failure to warn with respect to, the
12 Covered Products (referred to collectively in this paragraph as the "Claims"). In furtherance of
13 the foregoing, as to alleged exposures to Covered Products, MEJF hereby waives any and all
14 rights and benefits which it now has, or in the future may have, conferred upon it with respect to
15 the Claims 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 CLAIMS WHICH THE
18 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME
19 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE
20 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

21 4.3 MEJF understands and acknowledges that the significance and consequence of this
22 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising
23 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
24 Products, including but not limited to any exposure to, or failure to warn with respect to
25 exposure to, lead or lead compounds from Covered Products, MEJF will not be able to make
26 any claim for those damages against Wilbur Curtis or the Released Entities. Furthermore, MEJF
27 acknowledges that it intends these consequences for any such Claims as may exist as of the date
28 of this release but which MEJF does not know exist, and which, if known, would materially

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

3 4.4 Notwithstanding the above, to the extent any Downstream Entity, after one year
4 has passed from the entry of this Consent Judgment, sells or distributes beverages or other foods
5 from any Covered Product that does not meet the injunctive relief requirement of paragraph 7
6 and fails to provide an otherwise clear and reasonable Proposition 65 warning, then that
7 Downstream Entity shall not benefit from any release or other protection with respect to the sale
8 and use of the Dispenser or Covered Product that would otherwise be provided by this Consent
9 Judgment. To the extent that a warning is not provided and the Downstream Entity can establish
10 that no warning is required pursuant to the provisions of the statute or this Consent Judgment,
11 the release and protection related to the sale and use of the identified Dispenser shall remain in
12 full force and effect.

13 **5. ENFORCEMENT OF JUDGMENT**

14 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
15 hereto.

16
17 **6. MODIFICATION OF JUDGMENT**

18 6.1 This Consent Judgment may be modified only upon written agreement of the
19 Parties and upon entry of a modified Consent Judgment by the Court, or upon motion of any
20 party as provided by law and upon entry of a modified Consent Judgment by the Court.

21
22 **7. INJUNCTIVE RELIEF**

23 Wilbur Curtis agrees that after June 1, 2012, Wilbur Curtis will not knowingly ship for
24 sale or use in California Covered Products that use leaded brass components or which otherwise
25 cause a detectable amount of lead to be added to the dispensed beverage, including those models
26 specifically identified in the 60 Day Notice letter attached to the Complaint in this action.

1 **8. NOTICE**

2 **8.1** When any party is entitled to receive any notice or report under this Consent
3 Judgment, the notice report shall be made in writing and sent via U.S. Mail or other manner of
4 overnight delivery to the following:

5 (a) for Mateel: William Verick, Esq., Klamath Environmental Justice Foundation,
6 424 First Street, Eureka, CA 95501;

7 (b) for Wilbur Curtis: Joe Laws, Chief Operating Officer, Wilbur Curtis Co. Inc.,
8 6913 Acco Street, Montebello, CA 90640 ; and,

9 Todd Hunt, Esq., Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los
10 Angeles, CA 90067.

11
12 **9. AUTHORITY TO STIPULATE**

13 **9.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
14 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
15 of the party represented and legally to bind that party.

16
17 **10. RETENTION OF JURISDICTION**

18 **10.1** This Court shall retain jurisdiction to implement the Consent Judgment.

19
20 **11. ENTIRE AGREEMENT**

21 **11.1** This Consent Judgment contains the sole and entire agreement and understanding
22 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments and understandings related hereto. No representations, oral or
24 otherwise, express or implied, other than those contained herein have been made by any party
25 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
26 deemed to exist or to bind any of the Parties.

1 **12. GOVERNING LAW**

2 **12.1** The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.
5

6 **13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

7 **13.1** Mateel agrees to comply with Health & Safety Code § 25249.7(f)'s reporting form
8 and approval requirements and as implemented by various regulations.
9

10 **14. EXECUTION IN COUNTERPARTS**

11 **14.1** This Consent Judgment may be executed in counterparts and/or by facsimile,
12 which taken together shall be deemed to constitute one original document.
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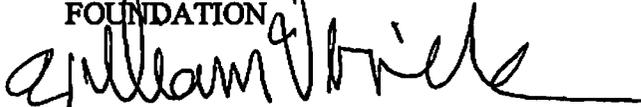
1 **15. COURT APPROVAL**

2 **15.1** If this Consent Judgment is not approved by the Court, it shall be of no force or
3 effect, and cannot be used in any proceeding for any purpose.

4
5 **IT IS SO STIPULATED:**

6 Dated:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

7
8 

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

10
11 Dated:

WILBUR CURTIS CO., INC.,

12
13
14 Joe Laws
COO, Wilbur Curtis Co. Inc.

15 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

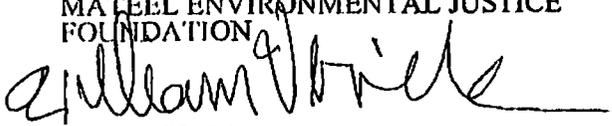
16
17 Dated:

18 JUDGE OF THE SUPERIOR COURT

1 **15. COURT APPROVAL**

2 **15.1** If this Consent Judgment is not approved by the Court, it shall be of no force or
3 effect, and cannot be used in any proceeding for any purpose.

4
5 **IT IS SO STIPULATED:**

6 Dated: MATEEL ENVIRONMENTAL JUSTICE
7 FOUNDATION
8 
9 William Verick
10 CEO Mateel Environmental Justice Foundation,
11 Klamath Environmental Law Center

12 Dated: 5/14/2012 WILBUR CURTIS CO., INC.,
13 
14 Joe Laws
15 COO, Wilbur Curtis Co. Inc.

16 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

17 Dated: JUN 18 2012 JAMES J. MCBRIDE
18 JUDGE OF THE SUPERIOR COURT