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16 MATEEL ENVIRONMENTAL JUSTICE
17 FOUNDATION

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ENDORSED
FILED
San Francisco County Superior Court
SEP 02 2011
CLERK OF THE COURT
BY: ERICKA LARNAUTI
Deputy Clerk

16 MATEEL ENVIRONMENTAL JUSTICE
17 FOUNDATION,

18 Plaintiff,

19 v.

20 NORTHSHORE POWER SYSTEMS, LLC

21 Defendant.

CASE NO. CGC-11-511550

[Proposed] Consent Judgment

22
23 1. INTRODUCTION

24 1.1 On or about February 17, 2011, plaintiff MATEEL ENVIRONMENTAL
25 JUSTICE FOUNDATION ("Mateel"), provided a 60-day notice of violation ("Notice") to the
26 California Attorney General, the District Attorneys of every county in California, the City
27 Attorneys of every California city with a population greater than 750,000, and to
28 Defendant NORTHSHORE POWER SYSTEMS, LLC ("Defendant"), alleging that

1 Defendant, through sales in California of devices (such as generators) powered by small
2 gasoline engines ("small engine-powered devices"), was violating Health & Safety Code
3 section 25249.6. Plaintiff alleged that the engines that power these products emit in their
4 exhaust carbon monoxide, benzene, toluene, benzo(a)pyrene, formaldehyde,
5 acetaldehyde, 1,3 butadiene, benz(a)anthracene, benzo(b)fluoranthene,
6 benzo(k)fluoranthene, benzo(j)fluoranthene, chrysene and indeno[1,2,3-cd] pyrene
7 (collectively hereinafter "engine exhaust components"). These engine exhaust
8 components are all chemicals listed pursuant to Health & Saf. Code § 25249.8 as known
9 to cause cancer or reproductive toxicity. Plaintiff alleged that Defendant exposed
10 Californians to engine exhaust components without first providing those exposed with a
11 clear and reasonable warning. To the extent the aforementioned small engine-powered
12 devices manufactured by Defendant are marketed in California, they are deemed
13 Covered Products for purposes of this Consent Judgment.
14

15
16 1.2 On or about June 8, 2011, plaintiff Mateel, acting in the public interest
17 pursuant to Health and Safety Code section 25249.7(d), filed a Complaint for Civil
18 Penalties and Injunctive Relief in San Francisco County Superior Court, Case No.
19 511550 ("Complaint") against Defendant (and Honeywell, Inc. and Costco Wholesale
20 Corporation) based on the allegations contained in the Notice.
21

22 1.3 For purposes of this Consent Judgment, Mateel and Defendant stipulate
23 that this Court has jurisdiction over the allegations of violations contained in the
24 Complaint and personal jurisdiction over Defendant as to the acts alleged in the
25 Complaint, that venue is proper in the County of San Francisco and that this Court has
26 jurisdiction to enter this Consent Judgment as a full and final settlement and resolution of
27 the allegations contained in the Complaint and of all claims which were or could have
28

1 been raised based on the facts alleged therein or arising therefrom.

2 1.4 Mateel and Defendant enter into this Consent Judgment pursuant to a full
3 and final settlement of disputed claims between the parties for the purpose of avoiding
4 prolonged litigation. This Consent Judgment shall not constitute an admission with
5 respect to any allegation made in the Notice or the Complaint, each and every allegation
6 of which Defendant denies, nor may this Consent Judgment or compliance with it be
7 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of the
8 Defendant.
9

10
11 **2. INJUNCTIVE RELIEF-CLEAR AND REASONABLE WARNINGS**

12 2.1 Clear and reasonable warnings that the use of Covered Products potentially
13 exposes the user to chemicals known to the State of California to cause cancer, birth
14 defects or other reproductive harm, shall be provided under the circumstance, and in the
15 manner provided in this Consent Judgment. Defendant has represented that it has
16 ceased all manufacturing, sales, marketing and distribution of Covered Products as of
17 March 2011. In the event that Defendant restarts its business and sells, markets or
18 distributes any Covered Products in California after the effective date of this Consent
19 Judgment then said clear and reasonable warnings for all existing products and future
20 models of Covered Products shall be provided as described below.
21

22
23 **A. Warnings in the Owner's Manual**

24 A warning may be contained in the owner's manual provided with the Covered
25 Product by the manufacturer, either printed on the manual or on a sticker in the manual,
26 under all of the following conditions:
27

- 28 1. the warning shall be located in one of the following places in the owner's

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1 manual: the outside of the front cover, the inside of the front cover, the first page other
2 than the cover and table of contents, or the outside of the back cover. Unless a different
3 warning is approved by the Attorney General, the warning shall be one of the warnings
4 in Appendix A, except that, at the option of the manufacturer, the reference to the State
5 of California and Proposition 65 may be omitted. The warning shall be of similar shape
6 and a comparable print size to the warnings in Appendix A. The word "Warning" must
7 be in 19 point type. If the words "California Proposition 65" are used in the heading,
8 they must be in 11 or 12 point type to emphasize the word "Warning." The words
9 "California Proposition 65" may appear before the word "Warning" or after the text of the
10 warning. The remaining text must be in 11 or 12 point type.

12 2. the Covered Product contains a durable label or sticker directing the
13 operator's attention to the owner's manual;

14 3. the owner's manual is supplied by the manufacturer and intended by the
15 manufacturer to be provided with the Covered Product by the retailer to the initial
16 consumer/purchaser;

18 4. no statement concerning California Air Resources Board or Environmental
19 Protection Agency requirements for engine exhaust appears directly adjacent to, below,
20 or above the warning;

21 5. at least one other warning appears in the owner's manual; and

23 6. all or a substantial portion of assembly instructions, if any, are contained in the
24 owner's manual.

25 Provided, however, that if the owner's manual does not contain any assembly
26 instructions and all of the assembly instructions are contained in another document (other
27 than a simple parts list), then the warning in Appendix A shall be placed both in the
28

1 owner's manual and the assembly instructions at the locations specified in subparagraph
2 A.1 above.

3 **B. Warnings on the Product or Engine**

4 Alternatively, for any Covered Product, Defendant may satisfy its obligations
5 under this Consent Judgment by providing warnings as specified in this subparagraph.

6 A warning may be provided by affixing a durable label containing a warning with the
7 language contained in Appendix A on the Covered Product or the Covered Product
8 Engine in a location that can be seen by the user of the Covered Product under
9 normal circumstances of operation.
10

11 **2.2 Defendant shall provide warnings indicated above for Covered**
12 **Products as described below:**

13 **A. Warnings in Owner's Manuals or Assembly Instructions**

14 **If Defendant restarts its business operation and chooses to provide warnings in**
15 **the owner's manual or assembly instructions, as provided in subparagraph 2.1.A,**
16 **Defendant shall provide such warnings with the next regularly scheduled printing of the**
17 **owner's manual, engine manual or assembly instructions. Notwithstanding the**
18 **foregoing, all products manufactured for Defendant after February 1, 2012 shall include**
19 **manuals or assembly instructions with the required warnings. Defendant agrees that**
20 **manuals or assembly instructions containing the warning shall be included with the**
21 **manufactured products if Defendant restarts its business operations as soon as such**
22 **revised manuals and assembly instructions are available.**
23
24

25 **B. Warnings on the Covered Products**

26 **Defendant which provides warnings on the Covered Products as provided in**
27 **subparagraph 2.1.C shall do so on all products manufactured no later than one (1)**
28

1 year from the date of entry of this Consent Judgment.

2 2.3. The parties agree that the manufacture, distribution, sale, resale, and/or
3 use of Covered Products by Defendant, Defendant's suppliers, or those who are in their
4 respective chain of distribution (including licensors, licensees, wholesalers, brokers,
5 resellers, dealers, distributors, original equipment manufacturers, and retailers) does not
6 violate Proposition 65 if warnings are provided to consumers in compliance with this
7 Consent Judgment. Provided, however, that this paragraph shall not expand or diminish
8 any duty to comply with any changes made to Proposition 65 or its implementing
9 regulations after the date of this Consent Judgment.

11 2.4. If Defendant has complied with the terms of subparagraph 2.2. of the
12 Consent Judgment, Defendant shall not be found to have violated this Consent Judgment
13 because any other person within its respective chain of distribution (as described above)
14 shall have failed to provide warnings under subparagraphs 2.1. and 2.2.

16 3. MONETARY RELIEF

17 3.1 Within thirty (30) days after entry of this Consent Judgment by the Court,
18 payment shall be made by Defendant or on behalf of Defendant in the sum of twenty
19 thousand dollars (\$20,000) to the Ecological Rights Foundation ("ERF") and five
20 thousand dollars (\$5,000) to California Office of Environmental Health Hazard
21 Assessment ("OEHHA"). ERF is a California non-profit organization that advocates for
22 workers' and consumers' safety and for awareness and reduction of toxic exposures.
23 OEHHA is the California lead state agency for in implementation of Proposition 65. By
24 statute OEHHA is the named recipient of any civil penalties paid pursuant to a
25 Proposition 65 enforcement action. The foregoing settlement payments shall be mailed
26 to the attention of William Verick, Klamath Environmental Law Center, 424 First Street,
27

1 Eureka, California 95501, who shall provide them to the respective organizations within
2 fifteen (15) days of receipt.

3 4. ATTORNEYS' FEES

4 4.1 Within thirty (30) days after entry of this Consent Judgment, Defendant
5 shall pay Thirty thousand dollars (\$30,000) to the Klamath Environmental Law Center to
6 cover plaintiffs' attorneys' fees and costs. The above payment shall be mailed to the
7 attention of William Verick, Klamath Environmental Law Center, 424 First Street, Eureka,
8 California 95501.
9

10 4.2 Except as specifically provided in this Consent Judgment, plaintiff and
11 Defendant shall bear their own costs and attorneys' fees.
12

13 5. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

14 5.1 The terms of this Consent Judgment are enforceable by and among the
15 parties hereto or, with respect to the injunctive relief provided for herein, by the California
16 Attorney General.
17

18 6. MATTERS COVERED BY THIS CONSENT JUDGMENT

19 6.1 This Consent Judgment is a full, final and binding resolution between the
20 Plaintiff acting on behalf of itself and, (as to those matters referenced in the Notice
21 Letters) in the public interest pursuant to Health and Safety Code section 25249.7(d), and
22 Defendant (as well as Honeywell, Inc. and Costco Wholesale Corporation and their
23 affiliates and subsidiaries,) concerning any violation of Proposition 65 regarding any
24 claims made or which could have been made in the Notice and/or the Complaint, or any
25 other statutory or common law claim that could have been asserted against Defendant
26 and/or its licensors, licensees, affiliates, parent or subsidiary corporations, divisions,
27 successors, officers, directors, assigns, distributors, retailers, and/or customers (including
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1 but in no way limited to Honeywell, Inc. and Costco Wholesale Corporation and their
2 affiliates and subsidiaries) for failure to provide clear, reasonable, and lawful warnings of
3 exposure to lead contained in or otherwise associated with Covered Products
4 manufactured, sold or distributed by, for, or on behalf of, Defendant. Compliance with the
5 terms of this Consent Judgment resolves any issue, now and in the future, concerning
6 compliance by Defendant and/or their licensors, licensees, affiliates, parent or subsidiary
7 corporations, divisions, successors, officers, directors, assigns, distributors, retailers,
8 and/or customers (including but in no way limited to Honeywell, Inc. and Costco
9 Wholesale Corporation and their affiliates and subsidiaries) with the requirements of
10 Proposition 65 with respect to the exhaust components from small engine-powered
11 equipment.
12

13 6.2 As to any claims, violations (except violations of this Consent Judgment),
14 actions, damages, costs, penalties or causes of action which may arise or have arisen
15 after the original date of entry of this consent judgment, compliance by Defendant with
16 the terms of this Consent Judgment shall be deemed to be full and complete compliance
17 with Proposition 65 as to claims regarding exposure to engine exhaust components from
18 Covered Products.
19

20 6.3 In furtherance of the foregoing, Plaintiff hereby waives any and all rights
21 and benefits which it now has, or in the future may have, conferred upon it with respect to
22 the Covered Products by virtue of the provisions of Section 1542 of the California Civil
23 Code, which provides as follows:
24

25 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
26 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
27 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
28 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
THE DEBTOR."

1 Plaintiff understands and acknowledges that the significance and consequence of
2 this waiver of California Civil Code Section 1542 is that even if Plaintiff suffers future
3 damages arising out of or resulting from, or related directly or indirectly to, in whole or in
4 part, the Covered Products, they will not be able to make any claim for those damages
5 against Defendant, or its parent, subsidiaries or affiliates, or any of its licensors,
6 licensees, customers, distributors, wholesalers, retailers or any other person in the
7 course of doing business who may manufacture, use, maintain, distribute, market or sell
8 the Covered Products (including but in no way limited to Honeywell, Inc. and Costco
9 Wholesale Corporation and their affiliates and subsidiaries). Furthermore, Plaintiff
10 acknowledges that it intends these consequences for any such claims which may exist as
11 of the date of this release but which Plaintiff does not know exist, and which, if known,
12 would materially affect its decision to enter into this Consent Judgment, regardless of
13 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or
14 any other cause.
15

16
17 **7. APPLICATION OF JUDGMENT**

18 **7.1** The obligations of this Consent Judgment shall apply to and be binding
19 upon any and all plaintiffs, acting in the public interest pursuant to Health and Safety
20 Code section 25249.7(d) and Defendant and the successors or assigns of any of them.
21

22 **8. MODIFICATION OF JUDGMENT**

23 **8.1** This Consent Judgment may be modified only upon written agreement of
24 the parties and upon entry of a modified Consent Judgment by the Court thereon, notice
25 having been provided to the Attorney General, or upon motion of any party as provided
26 by law and upon entry of a modified Consent Judgment by the Court.
27

28 **9. NOTICE**

1 9.1 When any Party is entitled to receive any notice or report under this
2 Consent Judgment, the notice or report shall be sent by U.S. mail or overnight
3 courier service to:

4 (a) For Mateel: William Verick, Esq., Klamath Environmental Law Center, 424 First
5 Street, Eureka, California 95501; and
6

7 (b) For Defendant Northshore Power Systems, LLC: Christopher van den Elzen,
8 4425 N. Port Washington Road, Suite 105, Milwaukee, WI 53212; with a copy to: Michael
9 J. Van Zandt, Esq., Hanson Bridgett LLP, 425 Market Street, 26th Floor, San Francisco,
10 California, 94105;
11

12 9.2 Any Party may modify the person and address to whom notice is to be sent
13 by sending each other Party notice in accordance with this Paragraph.
14

15 10. AUTHORITY TO STIPULATE

16 10.1 Each signatory to this Consent Judgment certifies that he or she is fully
17 authorized by the party he or she represents to enter into this Consent Judgment and to
18 execute it on behalf of the party represented and legally to bind that party.
19

20 11. RETENTION OF JURISDICTION

21 11.1 This Court shall retain jurisdiction over the matters covered herein and the
22 enforcement and/or application of this Consent Judgment.

23 12. ENTIRE AGREEMENT

24 12.1 This Consent Judgment contains the sole and entire, agreement and
25 understanding of the parties with respect to the entire subject matter hereof, and any and
26 all prior discussions, negotiations, commitments and understandings related hereto. No
27 representations, oral or otherwise, express or implied, other than those contained herein
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1 have been made by any party hereto. No other agreements not specifically referred to
2 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

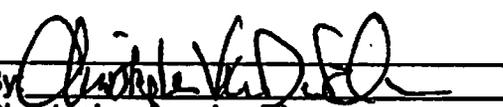
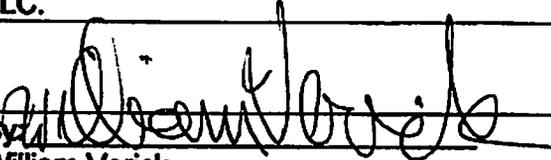
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4 **13. GOVERNING LAW**

5 13.1 The validity, construction and performance of this Consent Judgment shall be
6 governed by the laws of the State of California.

7
8 **14. COURT APPROVAL**

9 14.1 If this Consent Judgment is not approved by the Court, or does not
10 become final either as the result of an appeal or for any other reason, it shall be of no
11 force or effect, and cannot be used in any proceeding for any purpose, and any
12 payments made pursuant to Sections 3.1 and 4.1 shall be promptly reimbursed to the
13 payor(s).

14 **IT IS SO STIPULATED.**

15		
16		
17	Dated: 8/6/2011	By  Christopher Van den Elzen Defendant Northshore Power Systems, LLC.
18		
19		
20		
21	Dated:	By  William Verick Mateel Environmental Justice Foundation
22		

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

24	Dated: SEP 02 2011	LORETTA M. GIORGI
25		Judge of the Superior Court
26		