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19 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF SAN FRANCISCO

22 MATEEL ENVIRONMENTAL JUSTICE
23 FOUNDATION,

24 Plaintiff,

25 vs.

26 MUELLER INDUSTRIES, INC., et al.,

27 Defendants.

CASE NO. CGC-13-531776

[proposed]

ORDER APPROVING SETTLEMENT
(MUELLER INDUSTRIES, INC.)

ENDORSED
FILED
San Francisco County Superior Court

OCT 15 2013

CLERK OF THE COURT
BY: GINA GONZALES
Deputy Clerk

28 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on regular noticed motion on October ~~24~~¹⁵, 2013, at 9:30 a.m., in Department 302. Having reviewed the pleadings and the moving papers, having reviewed the terms of the proposed consent judgment and having considered the arguments of counsel, the Court finds as follows:

1. The reformulation standards and warnings the Consent Judgment requires comply with the requirements of Proposition 65.

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16 Attorneys for Plaintiff
17 **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**

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

20 MATEEL ENVIRONMENTAL
21 JUSTICE FOUNDATION,

22 Plaintiff,

23 v.

24 MUELLER INDUSTRIES, INC.,

25 Defendant.

Case No. CGC-13-531776

CONSENT JUDGMENT
(MUELLER INDUSTRIES, INC.)

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26 **1.0 INTRODUCTION**

27 1.1 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel” or
28 “MEJF”) acting on behalf of itself and the general public, filed a Complaint for civil
penalties and injunctive relief in San Francisco Superior Court, against Defendant
MUELLER INDUSTRIES, INC. (“MUELLER” or “Settling Defendant”). The
Complaint alleges, among other things, that MUELLER violated provisions of the Safe

1 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections
2 25249.5, et seq. (“Proposition 65”). In particular, Mateel alleges that MUELLER
3 knowingly and intentionally exposed persons to leaded brass plumbing and hose products,
4 including fittings, valves, accessories, connectors, nipples, vacuum breakers, drains, hose
5 bibbs and sprinkler heads (“Brass Products”) that are made of or that include a component
6 made 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 January 10, 2013, Mateel sent a Notice of Violation letter (“Notice
10 Letter”) to Mueller, 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 Settling Defendant is a business that employs ten or more persons and
13 manufactures, distributes, and/or markets Brass Products within the State of California.
14 These products are alleged to contain lead and/or lead compounds. Lead and lead
15 compounds are chemicals known to the State of California to cause cancer, and lead is a
16 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.

24 1.4 In the Complaint, Mateel alleges that Settling Defendant violated Cal.
25 Health & Safety Code Section 25249.6 by knowingly and intentionally exposing persons
26 to Brass Products made of brass, or which include a component made of brass that
27 contains lead and/or lead compounds, without first providing a clear and reasonable
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1 warning to such individuals. Lead and lead compounds are chemicals known to the State
2 of California to cause cancer and birth defects or other reproductive harm.

3 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court
4 has jurisdiction over the allegations of violations contained in the Complaint and personal
5 jurisdiction over Mueller as to the acts alleged in the Complaints, that venue is proper in
6 the County of San Francisco and that this Court has jurisdiction to enter this Consent
7 Judgment as a full settlement and resolution of the allegations contained in the Complaint
8 and of all claims that were or could have been raised by any person or entity based in
9 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
10 related thereto. "Covered Products" shall be defined to include Brass Products
11 manufactured, distributed, sold or otherwise marketed by Settling Defendant which are
12 not required to comply with AB 1953 (California Health & Safety Code §116875) or
13 equivalent Federal law. Products which are the subject of AB 1953 or equivalent Federal
14 law are expressly not addressed by this Consent Judgment, and no inference regarding
15 compliance or violation with the requirements of Proposition 65 by such products is
16 intended by this judgment.

17 1.6 This Consent Judgment resolves claims that are denied and disputed. The
18 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
19 all claims between the parties for the purpose of avoiding prolonged litigation. This
20 Consent Judgment shall not constitute an admission with respect to any material allegation
21 of the Complaints, each and every allegation of which Settling Defendant denies, nor may
22 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
23 misconduct, culpability or liability on the part of Settling Defendant.

24 1.7 This Consent Judgment shall be effective on entry by the Court, the
25 "Effective Date." All Covered Products already shipped on or before the "Effective Date"
26 or within 90 days thereafter are deemed to be covered by the waiver and release
27 provisions of Paragraphs 4.1 through 4.3 of this Consent Judgment and shall not be
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1 subject to any enforcement action by Mateel under Paragraph 5 of this Consent Judgment.
2 The reformulation and warning requirements of Paragraph 7 shall apply to any Covered
3 Product shipped later than 90 days after the Effective Date.

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5 **2.0 SETTLEMENT PAYMENTS**

6 2.1 In settlement of all of the claims referred to in this Consent Judgment,
7 Settling Defendant shall collectively pay an aggregate of \$25,000 (twenty-five thousand
8 dollars) in total monetary relief, inclusive of Paragraph 2.2, below. Of the foregoing, a
9 total of \$1,000 (one thousand dollars) shall be paid in civil penalties. Mateel waives its
10 right to receive twenty-five (25%) of this payment, and, accordingly, the entire \$1,000
11 shall be paid to the Office of Environmental Health Hazard Assessment (OEHHA). A
12 total of \$8,000 (eight thousand dollars) shall be paid by Settling Defendant in lieu of, and
13 as an offset for, a larger civil penalty in the form of two equal payments of \$4,000 (four
14 thousand dollars) each, one to the Ecological Rights Foundation and one to Californians
15 for Alternatives to Toxics.

16 2.2 A total amount of \$16,000 (sixteen thousand dollars) shall be paid by the
17 Settling Defendant to the Klamath Environmental Law Center (“KELC”) as
18 reimbursement for attorney’s fees and costs incurred by KELC on behalf of Plaintiff in
19 investigating and prosecuting this matter and in negotiating this Consent Judgment on
20 behalf of itself and in the public interest. The payments described in Paragraphs 2.1 and
21 2.2 above shall be delivered at least 5 days prior to any hearing on a motion to approve
22 this settlement, to counsel for Settling Defendant, and upon entry of this consent
23 judgment, sent within one business day to William Verick, 424 First Street, Eureka, CA
24 95501. If payment has not been confirmed as received by counsel for Settling Defendant
25 as provided in this paragraph, Plaintiff may withdraw any motion to approve and the
26 agreement shall become null and void. If this Consent Judgment has not been approved
27 and entered by the Court within 120 days of the execution of the agreement by the parties,
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1 the payments described above shall be promptly returned to Settling Defendant, and the
2 terms of this agreement shall be null and void.

3 2.3 MEJF and KELC represent and warrant that Californians for Alternatives
4 to Toxics and the Ecological Rights Foundation are tax exempt, section 501(c)(3) non-
5 profit organizations and that funds distributed to these organizations pursuant to this
6 Consent Judgment may only be spent to reduce harm from toxic chemicals, or to increase
7 consumer, worker and community awareness of health hazards posed by lead and other
8 toxic chemicals.

9 2.4 Except as specifically provided in this Consent Judgment, each side shall
10 bear its own costs and attorney's fees.

11 **3.0 ENTRY OF CONSENT JUDGMENT**

12 3.1 The parties hereby request that the Court promptly enter this Consent
13 Judgment which shall constitute a full and final adjudication of all claims asserted or that
14 could have been asserted in Plaintiff's Complaint. Upon entry of the Consent Judgment,
15 Settling Defendant and Mateel waive their respective rights to a hearing or trial on the
16 allegations of the Complaint.

17 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

18 4.1 As to lead and lead compounds from Covered Products, this Consent
19 Judgment provides a full release of liability on behalf of the Public Interest to Settling
20 Defendant (as well as their past, present and future parents, subsidiaries, affiliates,
21 predecessors, successors, assigns, distributors, wholesalers and retailers including but not
22 limited to Home Depot USA, Inc. "Released Entities"), from all claims for violations of
23 Proposition 65 up through the Effective Date of this Consent Judgment based upon
24 exposure to lead from Covered Products as set forth in Mateel's January 10, 2013 Notice
25 of Violation letter.

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

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

27 4.3 Mateel understands and acknowledges that the significance and
28 consequence of this waiver of California Civil Code Section 1542 is that even if Mateel
suffers future damages arising out of or resulting from, or related directly or indirectly to,
in whole or in part, the Covered Products, including but not limited to any exposure to, or

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

13 **5.0 ENFORCEMENT OF JUDGMENT**

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

22 **6.0 MODIFICATION OF JUDGMENT**

23 6.1 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
24 modified only upon written agreement of the parties and upon entry of a modified Consent
25 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
26 entry of a modified Consent Judgment by the Court.
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1 6.2 Notwithstanding any other term or provision of this Consent Judgment, if
2 Plaintiff, or the California Attorney General and another (current or potential) party
3 (“Future Settling Party”) agrees to or is otherwise bound by injunctive relief terms or
4 provisions relating to the reformulation of, or provisions of Proposition 65 warnings for,
5 products of like characteristics and use to those of Covered Products, which are more
6 favorable to the Future Settling Party than this Consent Judgment otherwise provides to
7 Settling Defendant, then Plaintiff stipulates and agrees to not oppose any effort by Settling
8 Defendant to seek amendment or adjustment of injunctive relief terms provided for in
9 Section 7 of this Consent Judgment to be modified to add such more favorable terms or
10 provisions as an option.

11 6.3 Mateel shall give notice to Mueller, per section 12, of all consent
12 judgments entered into by Mateel described in Section 6.2 on or after the date of this
13 Consent Judgment involving similar products to those at issue in this Consent Judgment,
14 unless such consents are posted on the public Proposition 65 web site maintained by the
15 California Attorney General.

16 **7.0 INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

17 7.1 Covered Products’ brass components shall be deemed to comply with
18 current warning requirements of Proposition 65 for lead and lead compounds (H&S Code
19 25249.6) and be exempt from any Proposition 65 warning requirements for these listed
20 chemicals after the Effective Date, if the brass that is part of the Covered Products is made
21 of an alloy which contains no intentionally added lead and no lead content by weight of
22 more than 0.03% (300 parts per million, or “300 ppm”). Covered Products that are
23 reformulated to comply with AB 1953 (or equivalent Federal law) but that do not meet the
24 reformulation standard provided in this section 7.1 are expressly not addressed by this
25 Consent Judgment, and no inference regarding compliance or violation with the
26 requirements of Proposition 65 by such products is intended by this judgment.
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1 7.2 Mateel agrees, on its own behalf only, that for purposes of this Consent
2 Judgment, as to the lead content of the brass components of any reformulated Covered
3 Product, Settling Defendant and any other Released Entities, may rely upon the
4 representations of their or its respective manufacturers, suppliers, distributors, official
5 product certification organizations (such as IAPMO) or any other person in the course of
6 doing business that manufactures, supplies or otherwise distributes the reformulated
7 Covered Product(s) to Mueller, provided that Mueller's reliance is in good faith.
8 Although good faith reliance regarding the brass alloy may also be established by other
9 means, Mateel agrees that obtaining test results showing that the lead content is no more
10 than .0.03% (300 ppm), using a method of sufficient sensitivity to establish a limit of
11 quantification (as distinguished from detection) of less than 300 ppm shall be deemed to
12 establish good faith reliance.

13 7.3 Covered Products that do not meet the warning exemption standard set
14 forth in Section 7.1 of the Consent Judgment shall be accompanied by a warning as
15 described in paragraph 7.4 below no later than 90 days after the Effective Date. The
16 warning requirements set forth in paragraph 7.4, below, apply only to products Settling
17 Defendant manufactures, distributes, markets, sells or ships for distribution 90 days after
18 the Effective Date for sale or use inside the State of California.

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

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

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

24 *Wash your hands after handling this product.*

25 or

26 **WARNING:** This product contains [one or more] chemicals, including
27 lead, known to the State of California to cause cancer and birth defects or
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1 other reproductive harm. *Wash hands after handling.*

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

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

20 Affixed Warnings. Mueller 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.

1 Point of Sale Warnings. Mueller may perform its warning obligation by
2 arranging for the posting of the shelf labeling, signs, menus, warning slips or
3 a combination of thereof as set forth in Health & Safety Code Section
4 25603.1 at retail outlets in the State of California where Covered Products
5 are sold. In such instances, Settling Defendant shall provide the warning
6 specified in Section 7.4, and instructions for its use, with the shipping
7 materials containing the Covered Product or otherwise ensure the
8 installation of fixed adhesive warning placards on the Covered Product
9 display shelves. Such warning and instructions shall be included with or
10 affixed to each package box or other container containing Covered
11 Product(s) or otherwise installed on the Covered Product display shelves
12 with fixed adhesive warning placards. For a Point of Sale Warning to be
13 considered reasonably calculated to be seen by an ordinary individual, the
14 warning shall be posted at (1) each location in the store where the Covered
15 Products are displayed and visible when the Covered Products are being
16 viewed without the Covered Products being moved, or (2) for stores with
17 less than 7,500 square feet retail space, adjacent to each check out counter,
18 sales register, cash stand, cash wrap or similar check out location in the
19 store. All warning signs must be displayed in such a manner that any
20 potential purchaser would reasonably be expected to see the warning and
21 adequately distinguish between brass products for which warnings are
22 required and product which do not cause a lead exposure. If the point of
23 sale warning is not posted in such a manner, or any other manner otherwise
24 agreed to by the Attorney General, the retail entity shall not benefit from the
25 terms of this consent judgment, including the release of claims contained
26 therein.

1 7.6 If after the Effective Date, any Settling Defendant ships Covered Products
2 to a retailer or distributor outside of California that neither provide the warnings specified
3 in this paragraph nor meets the Reformulation Standard specified in paragraph 7.1 of this
4 Consent Judgment (“Non-Conforming Covered Products”), and if the retailer or
5 distributor then offers those Non-Conforming Covered Products for sale in California,
6 then as to those Non-Conforming Covered Products, that retailer or distributor, and their
7 customers, are not released pursuant to Sections 4.1 and 4.2 above.

8 7.7 Except as provided in paragraphs 4.1 and 4.2 hereof, for Covered Products
9 manufactured or distributed prior to the Effective Date, nothing in this Consent Judgment
10 shall create a limitation on a Proposition 65 enforcement action based on future conduct if
11 such future conduct is not in compliance with the injunctive terms of this Consent
12 Judgment.

13
14 **8.0 AUTHORITY TO STIPULATE**

15 8.1 Each signatory to this Consent Judgment certifies that he or she is fully
16 authorized by the party he or she represents to enter into this Consent Judgment and to
17 execute it on behalf of the party represented and legally to bind that party.

18 **9.0 RETENTION OF JURISDICTION**

19 9.1 This Court shall retain jurisdiction of this matter to implement the Consent
20 Judgment.

21 **10.0 ENTIRE AGREEMENT**

22 10.1 This Consent Judgment contains the sole and entire agreement and
23 understanding of the parties with respect to the entire subject matter hereof, and any and
24 all prior discussions, negotiations, commitments and understandings related hereto. No
25 representations, oral or otherwise, express or implied, other than those contained herein
26 have been made by any party hereto. No other agreements not specifically referred to
27 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.
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11.0 GOVERNING LAW

11.1 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.

12.0 NOTICES

12.1 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 Mueller Industries, Inc.:
Ami Kelley, Esq.
Mueller Industries, Inc.
8285 Tournament Drive, Suite 150
Memphis, TN 38125

With a copy to:
M. Taylor Florence
Locke Lord LLP
500 Capitol Mall, Suite 1800
Sacramento, CA 95814

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13.0 COURT APPROVAL

13.1 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:

MUELLER INDUSTRIES, INC.

By: 
Its: V-P/O.C. - Sec

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: **OCT 15 2013**

Leslie C. Nichols
JUDGE OF THE SUPERIOR COURT