

1 WILLIAM VERICK, CSB #140972
KLAMATH ENVIRONMENTAL LAW CENTER
2 FREDRIC EVENSON, CSB #198059
1125 Sixteenth Street, Suite 204
3 Arcata, CA 95521
Telephone: (707) 630-5061
4 Facsimile: (707) 630-5064
Email: wverick@igc.org
5 Email: ecorights@earthlink.net

6 DAVID WILLIAMS, CSB #144479
BRIAN ACREE, CSB #202505
7 1990 N. California Blvd., 8th Floor
Walnut Creek, CA 94596
8 Telephone: (510) 847-2356
Email: davidhwilliams@earthlink.net
9 Email: brianacree@earthlink.net

10 Attorneys for Plaintiff
11 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14 MATEEL ENVIRONMENTAL JUSTICE
15 FOUNDATION,

16 Plaintiff,

17 vs.

18 CCOGHLAN'S LTD., et al.,

19 Defendants.

CASE NO. CGC-16-550722

HK

[PROPOSED] ORDER APPROVING
CONSENT JUDGMENT

Date: June 20, 2016
Time: 9:30 a.m.
Dept. No.: 302

20
21
22 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
23 noticed motion on June 20, 2016. The court finds that:

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

ENDORSED
FILED
Superior Court of California
County of San Francisco

JUN 20 2016

CLERK OF THE COURT
BY: JOSE RIOS MERIDA
Deputy Clerk

(Signature)

1 WILLIAM VERICK, SBN 140972
2 KLAMATH ENVIRONMENTAL LAW CENTER
3 FREDRIC EVENSON, SBN 198059
4 1126 -16th Street, Suite 204
5 Arcata, CA 95521
6 Telephone: (707) 268-8900
7 Facsimile: (707) 268-8901
8 E-mail: wverick@igc.org

9 DAVID WILLIAMS, SBN 144479
10 BRIAN ACREE, SBN 202505
11 1990 N. California Blvd., 8th Fl.
12 Walnut Creek, CA 94596
13 Telephone: (510) 847 2356
14 E-mail: dhwill7@gmail.com

15 Attorneys for Plaintiff
16 MATEEL ENVIRONMENTAL JUSTICE
17 FOUNDATION

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF SAN FRANCISCO
20 UNLIMITED JURISDICTION

21 MATEEL ENVIRONMENTAL JUSTICE
22 FOUNDATION,

23 Plaintiff,

24 v.

25 COGHLAN'S LTD. and INDUSTRIAL
26 REVOLUTION, INC.,

27 Defendants.

28
**ENDORSED
FILED**
Superior Court of California
County of San Francisco

JUN 20 2016

CLERK OF THE COURT
BY: JOSE RIOS MERIDA
Deputy Clerk

Case No. CGC-16-550722

CONSENT JUDGMENT

Complaint Filed: March 1, 2016

1 **1.0 INTRODUCTION**

2 1.1 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel” or “MEJF”)
3 acting on behalf of itself and the general public, previously filed a complaint (“Complaint”) in this
4 action for civil penalties and injunctive relief in San Francisco Superior Court, against Defendants
5 COGHLAN’S LTD. (“Coghlan’s”) and INDUSTRIAL REVOLUTION, INC. (“Industrial
6 Revolution”), collectively hereinafter “Defendants.” Mateel and Defendants are collectively referred
7 to herein as the “parties.” The Complaint alleges, among other things, that Defendants manufacture
8 or sell hexamine fuel tablets (“fuel tablets”). These fuel tablets are used by backpackers, military
9 and relief organizations to heat water and food. Mateel has alleged that fuel tablets may expose
10 people who use them to carbon monoxide in violation of provisions of the Safe Drinking Water and
11 Toxic Enforcement Act of 1986, California Health and Safety Code Sections 25249.5, et seq.
12 (“Proposition 65”). In particular, Mateel alleges that Defendants knowingly and intentionally
13 exposed persons to products which, when used in their intended manner, exposed these people (and
14 other people who are in the vicinity of the burning tablets) to carbon monoxide, without first
15 providing a clear and reasonable warning to such individuals. Carbon Monoxide is a chemical
16 known to the State of California to cause birth defects or other reproductive harm.

17 1.2 On September 30, 2015, Mateel sent a Notice of Violation letter concerning the
18 allegations set forth in Paragraph 1.1 above pursuant to California Health and Safety Code section
19 25249.7(d) (“Notice Letter”) to both Defendants, the California Attorney General, all California
20 District Attorneys, and all City Attorneys of every California city with populations exceeding
21 750,000.

22 1.3 On March 1, 2016, following the expiration of the 60-day period following its
23 issuance of the September 30, 2015 Notice Letter to Defendants without an authorized public
24 prosecutor of Proposition 65 having filed an enforcement action against Defendants for the claims
25 alleged therein, Mateel filed the Complaint against Defendants. In the Complaint, Mateel alleges
26 that Defendants violated California Health & Safety Code Section 25249.6 by knowingly and
27 intentionally exposing people to carbon monoxide, without first providing a clear and reasonable
28 warning to such individuals.

1 1.4 For purposes of settlement and the entry of this Consent Judgment only, the parties
2 stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint
3 and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is
4 proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
5 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of all
6 claims that were or could have been raised by any person or entity based in whole or in part, directly
7 or indirectly, on the facts alleged in, arising from, or related to the Complaint. For purposes of this
8 Consent Judgment, "Covered Products" is defined to include hexamine fuel tablets manufactured,
9 distributed, sold or otherwise marketed for sale or use in California by Defendants.

10 1.5 This Consent Judgment resolves claims that are denied and disputed. The parties
11 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
12 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
13 not constitute an admission with respect to any material allegation of the Complaint, each and every
14 allegation of which Defendants deny, nor may this Consent Judgment or compliance with it be used
15 as evidence of any wrongdoing, misconduct, culpability or liability on the part of Defendants.

16 1.6 This Consent Judgment shall be effective on entry by the Court, the "Effective Date."

17 **2.0 SETTLEMENT PAYMENTS**

18 2.1 In settlement of all of the claims referred to in this Consent Judgment, Defendants
19 shall each pay an aggregate of \$22,500.00 in total monetary relief, inclusive of Paragraph 2.2, below.
20 Of the foregoing, each defendant shall pay a total of \$2,500.00 in civil penalties. Mateel waives its
21 right to receive 25 percent of this payment, and, accordingly, the entire \$2,500 from each defendant
22 shall be paid to the Office of Environmental Health Hazard Assessment ("OEHHA").

23 2.2 A total amount of \$17,500.00 shall be paid by each defendant to the Klamath
24 Environmental Law Center ("KELC") as reimbursement for attorney's fees and costs incurred by
25 KELC on behalf of Mateel in investigating and prosecuting this matter and in negotiating this
26 Consent Judgment on behalf of itself and in the public interest. An additional total of \$2,500 shall
27 be paid by each Defendant in lieu of, and as an offset for, what may have been a larger
28 reimbursement of Mateel's attorney's fees had Mateel filed a motion for attorney's fees under

1 California Civil Procedure Code Section 1021.5. By this settlement, Mateel waives its right to file
2 such a motion. The aforementioned \$2,500 payments in lieu of attorney's fees shall be made to the
3 Ecological Rights Foundation. The payments described in Paragraph 2.1 above and this Paragraph
4 2.2 shall be delivered within 10 court days after the Effective Date to William Verick, 1125 – 16th
5 Street, Suite 204, Arcata, CA 95521.

6 2.3 MEJF and KELC represent and warrant that the Ecological Rights Foundation
7 (“ERF”) is a tax exempt, section 501(c)(3) non-profit organization and that funds distributed to ERF
8 pursuant to this Consent Judgment may only be spent to reduce harm from toxic chemicals, or to
9 increase consumer, worker and community awareness of health hazards posed by lead and other
10 toxic chemicals.

11 2.4 Except as specifically provided in this Consent Judgment, each side shall bear its own
12 costs and attorney's fees.

13 **3.0 ENTRY OF CONSENT JUDGMENT**

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

18 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

19 4.1 As to carbon monoxide exposure from Covered Products, this Consent Judgment
20 provides a full release of liability on behalf of the public interest to both Coghlan's and Industrial
21 Revolution as well as their past, present and future subsidiaries, affiliated entities, their attorneys,
22 agents, shareholders, insurers, successors, assigns, members, officers, directors, employees,
23 distributors, wholesalers, retailers, and any other person in the course of doing business involving
24 the Covered Products, and the successors and assigns of any of them, who may manufacture, use,
25 maintain, distribute or sell the Covered Products or components found in the Covered Products
26 (collectively, “Released Entities”), from all claims for violations of Proposition 65 up through the
27 Effective Date of this Consent Judgment based upon exposure to carbon monoxide from Covered
28 Products as set forth in Mateel's September 30, 2015 Notice of Violation letter. Compliance with the

1 terms of this Consent Judgment by Coghlan's and Industrial Revolution following its entry by the
2 Court shall be deemed to constitute compliance with Proposition 65 as to carbon monoxide exposure
3 from Covered Products, provided, however, that the authority and discretion of the Office of the
4 California Attorney General shall not be restricted in the event it chooses to undertake enforcement
5 action in the future.

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

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

29 4.3 Mateel understands and acknowledges that the significance and consequence of this
30 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages arising

1 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
2 including but not limited to any exposure to, or failure to warn with respect to exposure to carbon
3 monoxide from, the Covered Products, Mateel will not be able to make any claim for those damages
4 against the Released Entities. Furthermore, Mateel acknowledges that it intends these consequences
5 for any such claims and any other claims which may exist as of the date of this release but which
6 Mateel does not know exist, and which, if known, would materially affect its decision to enter into
7 this Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance,
8 oversight, error, negligence, or any other cause.

9 **5.0 ENFORCEMENT OF JUDGMENT**

10 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
11 including on behalf of the Released Entities. The parties may, by noticed motion before the Superior
12 Court of San Francisco County, giving the notice required by law, enforce the terms and conditions
13 of this Consent Judgment. The parties agree that prior to any such enforcement proceeding, they
14 will notify each other of any perceived violation of this Consent Judgment. The parties further agree
15 to meet and confer in good faith in an effort for 30 days before such notice is given to resolve the
16 alleged violation.

17 **6.0 MODIFICATION OF JUDGMENT**

18 6.1 Except as provided for in Paragraph 7.3, this Consent Judgment may be modified
19 only upon written agreement of the parties and upon entry of a modified Consent Judgment by the
20 Court, or upon motion of any party as provided by law and upon entry of a modified Consent
21 Judgment by the Court. The California Attorney General shall be entitled to at least 15 days' notice
22 of any proposed modification before it is presented to the Court for approval.

23 6.2 Notwithstanding any other term or provision of this Consent Judgment, if Mateel, or
24 the California Attorney General, and another (current or potential) defendant ("Future Settling
25 Party") agree to or is otherwise bound by injunctive relief terms or provisions relating provision of
26 Proposition 65 warnings for, products of like characteristics and use to those of Covered Products,
27 which are more favorable to the Future Settling Party than this Consent Judgment otherwise provides
28 to Coghlan's or Industrial Revolution, then Mateel stipulates and agrees to not oppose any effort by

1 either Coghlan's or Industrial Revolution to seek amendment or adjustment of injunctive relief terms
2 provided for in Section 7 of this Consent Judgment to be modified to add such more favorable terms
3 or provisions as an option.

4 6.3 Mateel shall give notice to Defendants, per Section 12, of all consent judgments
5 entered into by Mateel described in Section 6.2 on or after the Effective Date involving similar
6 products to those at issue in this Consent Judgment .

7 **7.0 INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNING**

8 7.1 Covered Products distributed or shipped by or for Defendants 180 days or more
9 following the Effective Date shall be accompanied by either of the following warning statements:

10 **WARNING:** Use of this product can expose you to chemicals known to the State of
11 California to cause birth defects or other reproductive harm

12 or

13 **WARNING:** Use of this product can expose you to carbon monoxide, a chemical
14 known to the State of California to cause birth defects or other reproductive harm.

15 7.2 The word "WARNING" shall be in bold.

16 7.3 Any warning shall be prominently placed with such conspicuousness as compared
17 with other words, statements, designs, or devices as to render it likely to be read by an ordinary
18 individual under customary conditions before purchase or use, such as placing the warning in the
19 same section that states other safety warnings, if any, concerning the use of the product or near the
20 product brand name, displayed price and/or UPC code, or in any other manner reasonably calculated
21 to be seen by an ordinary consumer. Any warning shall be provided in a manner such that the
22 ordinary consumer or user should understand to which specific Covered Product the warning applies.
23 Any warning may be included with, affixed to or printed on each Covered Product or its label,
24 package or container.

25 **8.0 AUTHORITY TO STIPULATE**

26 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
27 the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
28 party represented and legally bind that party.

1 **9.0 RETENTION OF JURISDICTION**

2 9.1 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

3 **10.0 ENTIRE AGREEMENT**

4 10.1 This Consent Judgment contains the sole and entire agreement and understanding of
5 the parties with respect to the Covered Products, and any and all prior discussions, negotiations,
6 commitments and understandings to them. No representations, oral or otherwise, express or implied,
7 other than those contained herein regarding the Covered Products have been made by any party. No
8 other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to
9 bind any of the parties with respect to the Covered Products.

10 **11.0 GOVERNING LAW**

11 11.1 The validity, construction and performance of this Consent Judgment shall be
12 governed by the laws of the State of California, without reference to any conflicts of law provisions
13 of California law. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
14 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
15 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
16 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
17 subject to this Consent Judgment may provide written notice to the California Attorney General of
18 any asserted change in the law, and shall have no further obligations pursuant to this Consent
19 Judgment with respect to, and to the extent that, the Covered Products are so affected. Nothing in
20 this Consent Judgment shall be interpreted to relieve a Defendant from any obligation to comply
21 with any pertinent state or federal law or regulation.

22 **12.0 NOTICES**

23 12.1 Unless specified herein, all correspondence and notices required to be provided
24 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
25 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by
26 the other party at the following addresses:

27 **To Mateel:**
28 William Verick, Esq.
Klamath Environmental Law Center

1 1125 - 16th Street, Suite 204
2 Arcata, CA 95521

3 **To Defendants:**

4 Melissa Jones
5 Stoel Rives, LLP
6 500 Capitol Mall, Suite 1600
7 Sacramento, CA 95814

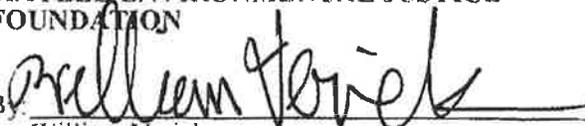
8 **13.0 COURT APPROVAL**

9 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
10 effect, and cannot be used in any proceeding for any purpose.

11 **IT IS SO STIPULATED:**

12 Dated: April 11, 2016

**MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION**

13 By: 

14 William Verick
15 CEO, Mateel Environmental Justice Foundation,
16 Klamath Environmental Law Center

17 Dated: April 11, 2016

COGHLAN'S LTD.

18 By: 

19 Robert N. Coghlan
20 President, Coghlan's Ltd.

21 Dated: April 11, 2016

INDUSTRIAL REVOLUTION, INC.

22 By: _____

23 Keith Jackson
24 Chairman, Industrial Revolution, Inc.

25 **IT IS ORDERED, ADJUDGED AND DECREED:**

26 DATED: _____

27 JUDGE OF THE SUPERIOR COURT

1 1125 – 16th Street, Suite 204
2 Arcata, CA 95521

3 **To Defendants:**

4 Melissa Jones
5 Stoel Rives, LLP
6 500 Capitol Mall, Suite 1600
7 Sacramento, CA 95814

8 **13.0 COURT APPROVAL**

9 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
10 effect, and cannot be used in any proceeding for any purpose.

11 **IT IS SO STIPULATED:**

12 Dated: April 11, 2016

**MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION**

13 By: _____
14 William Verick
15 CEO, Mateel Environmental Justice Foundation,
16 Klamath Environmental Law Center

17 Dated: April 11, 2016

COGHLAN'S LTD.

18 By: _____
19 Robert N. Coghlan
20 President, Coghlan's Ltd.

21 Dated: April 11, 2016

INDUSTRIAL REVOLUTION, INC.

22 By: _____
23 Keith Jackson
24 Chairman, Industrial Revolution, Inc.

25 **IT IS ORDERED, ADJUDGED AND DECREED:**

26 DATED: 6/20/16



27 /s/ HAROLD KAHN
28 JUDGE OF THE SUPERIOR COURT

HON. HAROLD KAHN