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15 Attorneys for Plaintiff,
16 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN FRANCISCO
19 (Unlimited Jurisdiction)

20 MATEEL ENVIRONMENTAL JUSTICE
21 FOUNDATION,

No. 433954

22 PLAINTIFF,

[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT LOWE'S HIW, INC.

23 V.

24 LOWE'S HIW, INC., (erroneously sued as
25 LOWE'S COMPANIES, INC.), et al.,

26 DEFENDANTS.
27
28

1. INTRODUCTION

1.1 On or about April 6, 2004, plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel"), provided a 60-day notice of violation ("Notice") to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and defendant Lowe's HIW, Inc.

1 ("Defendant"), alleging that Defendant, through sales in California of Garden Plus 8" By-Pass
2 Pruning Shears and Task Force Hand Tools 8" Linesman Pliers, the handles for which are coated
3 with polyvinyl chloride ("PVC"), that are sold by Defendant ("Covered Products"), was in
4 violation of certain provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,
5 Health and Safety Code sections 25249.5, et seq. ("Proposition 65"), by knowingly and
6 intentionally exposing persons to chemicals, including lead and lead compounds, lead phosphate,
7 lead acetate and lead subacetate, (collectively, "lead"), known to the State of California to cause
8 cancer and/or birth defects or other reproductive harm, without first providing a clear and
9 reasonable warning.

10 1.2 On or about August 19, 2004, plaintiff Mateel, acting in the public interest
11 pursuant to Health and Safety Code section 25249.7(d) and on behalf of the general public
12 pursuant to Business and Professions Code section 17204 ("Plaintiff"), filed a Complaint for Civil
13 Penalties and Injunctive Relief in San Francisco County Superior Court, Case No. 317279
14 ("Complaint") against Defendant based on the allegations contained in the Notice. In addition to
15 asserting claims directly under Proposition 65, the Complaint also alleges that the violations of
16 Proposition 65 for which Defendant is allegedly responsible constitute separate violations of
17 Business and Professions Code sections 17200 et seq. (the "Unfair Competition Act").

18 1.3 For purposes of this Consent Judgment, the Mateel and Defendant stipulate that
19 this Court has jurisdiction over the allegations of violations contained in the Complaint and
20 personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper
21 in the County of San Francisco and that this Court has jurisdiction to enter this Consent
22 Judgment as a full and final settlement and resolution of the allegations contained in the
23 Complaint and of all claims which were or could have been raised based on the facts alleged
24 therein or arising therefrom.

25 1.4 Mateel and Defendant enter into this Consent Judgment pursuant to a full and
26 final settlement of disputed claims between the parties for the purpose of avoiding prolonged
27 litigation. This Consent Judgment shall not constitute an admission with respect to any
28 allegation made in the Notice or the Complaint, each and every allegation of which Defendant

1 deny, nor may this Consent Judgment or compliance with it be used as evidence of any
2 wrongdoing, misconduct, culpability or liability on the part of Defendant.

3 2. INJUNCTIVE RELIEF-REFORMULATION FOR COVERED PRODUCTS

4 2.1 Within two hundred and seventy (270) days after entry of this Consent
5 Agreement, Defendant shall cease sales of Covered Products with PVC coated handles in
6 California unless the Tools Covered Products meet the following criteria:

7 (a) The formulation of PVC used shall have no intentionally added lead.

8 (b) A random sample of the bulk PVC used to manufacture the Tools Covered
9 Products has been tested for lead content and shown lead content by
10 weight of less than 0.02%, or 200 parts per million ("ppm"), using a test
11 method of sufficient sensitivity to establish a limit of quantification (as
12 distinguished from detection) of less than 200 ppm.

13 2.2 Defendant may comply with the above requirements by relying on information
14 obtained from its suppliers of the tools and PVC utilized on the handles of the Covered Products
15 thereof provided such reliance is in good faith.

16 3. MONETARY RELIEF

17 3.1 Within fifteen (15) days after entry of this Consent Judgment by the Court,
18 Defendant shall pay seven thousand five hundred dollars (\$7,500) to the Ecological Rights
19 Foundation and seven thousand five hundred dollars (\$7,500) to Californians for Alternatives to
20 Toxics. Both groups are California non-profit organizations that advocate for workers' and
21 consumers' safety and for awareness and reduction of toxic exposures. The foregoing settlement
22 payments shall be mailed to the attention of William Verick, Klamath Environmental Law
23 Center, 424 First Street, Eureka, California 95501, who shall provide them to the respective
24 organizations within fifteen (15) days of receipt.

25 4. ATTORNEYS' FEES

26 4.1 Within fifteen (15) days after entry of this Consent Judgment, Defendant shall pay
27 Seventeen thousand five hundred dollars (\$20,000) to the Klamath Environmental Law Center to
28 cover plaintiffs' attorneys' fees and costs. The above payment shall be mailed to the attention of

1 William Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

2 4.2 Except as specifically provided in this Consent Judgment, plaintiff and Defendant
3 shall bear their own costs and attorneys' fees.

4 5. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

5 5.1 The terms of this Consent Judgment are enforceable by and among the parties
6 hereto or, with respect to the injunctive relief provided for herein, by the California Attorney
7 General.

8 6. MATTERS COVERED BY THIS CONSENT JUDGMENT

9 6.1 This Consent Judgment is a full, final and binding resolution between the Plaintiff
10 acting on behalf of itself and, (as to those matters referenced in the Notice Letter) in the public
11 interest pursuant to Health and Safety Code section 25249.7(d), and Defendant concerning any
12 violation of Proposition 65 regarding any claims made or which could have been made in the
13 Notices and/or the Complaint, or any other statutory or common law claim that could have been
14 asserted against Defendant and/or its affiliates, parent or subsidiary corporations, divisions,
15 successors, officers, directors, assigns, distributors, retailers, and/or customers for failure to
16 provide clear, reasonable, and lawful warnings of exposure to lead contained in or otherwise
17 associated with Covered Products manufactured, sold or distributed by, for, or on behalf of,
18 Defendant. Compliance with the terms of this Consent Judgment resolves any issue, now and in
19 the future, concerning compliance by Defendant and/or its affiliates, parent or subsidiary
20 corporations, divisions, successors, officers, directors, assigns, distributors, retailers, and/or
21 customers with the requirements of Proposition 65 with respect to lead contained in or otherwise
22 associated with Covered Products.

23 6.2 As to any claims, violations (except violations of this Consent Judgment), actions,
24 damages, costs, penalties or causes of action which may arise or have arisen after the original
25 date of entry of this consent judgment, compliance by Defendant with the terms of this consent
26 judgment shall be deemed to be full and complete compliance with Proposition 65 as to claims
27 regarding exposure to lead in Covered Products.

28 6.3 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and

1 benefits which it now has, or in the future may have, conferred upon it with respect to the
2 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which
3 provides as follows:

4 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
6 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
7 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
8 DEBTOR.”

9 Plaintiff understands and acknowledges that the significance and consequence of this waiver of
10 California Civil Code Section 1542 is that even if Plaintiff suffers future damages arising out of
11 or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
12 they will not be able to make any claim for those damages against Defendant, or its parent,
13 subsidiaries or affiliates, or any of its customers, distributors, wholesalers, retailers or any other
14 person in the course of doing business who may manufacture, use, maintain, distribute, market or
15 sell the Covered Products. Furthermore, Plaintiff acknowledges that it intends these
16 consequences for any such claims which may exist as of the date of this release but which
17 Plaintiff does not know exist, and which, if known, would materially affect its decision to enter
18 into this Consent Judgment, regardless of whether its lack of knowledge is the result of
19 ignorance, oversight, error, negligence, or any other cause.

20 7. APPLICATION OF JUDGMENT

21 7.1 The obligations of this Consent Judgment shall apply to and be binding upon any
22 and all plaintiffs, acting in the public interest pursuant to Health and Safety Code section
23 25249.7(d) and on behalf of the general public pursuant to Business and Professions Code
24 section 17204, and Defendant and the successors or assigns of any of them.

25 8. MODIFICATION OF JUDGMENT

26 8.1 This Consent Judgment may be modified only upon written agreement of the
27 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
28 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

1 9. NOTICE

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

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

6 (b) For Lowe's HIW, Inc.: Charles D. May/Stephanie Forman, Tharpe &
7 Howell, 12520 Ventura Boulevard, 9th Floor, Sherman Oaks, CA 91403

8 9.2 Any Party may modify the person and address to whom notice is to be sent by
9 sending each other Party notice in accordance with this Paragraph.

10 10. AUTHORITY TO STIPULATE

11 10.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
12 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
13 of the party represented and legally to bind that party.

14 11. RETENTION OF JURISDICTION

15 11.1 This Court shall retain jurisdiction over the matters covered herein and the
16 enforcement and/or application of this Consent Judgment.

17 12. ENTIRE AGREEMENT

18 12.1 This Consent Judgment contains the sole and entire, agreement and understanding
19 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,
20 negotiations, commitments and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any party
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
23 deemed to exist or to bind any of the parties.

24 13. GOVERNING LAW

25 13.1 The validity, construction and performance of this Consent Judgment shall be
26 governed by the laws of the State of California.

1 14. COURT APPROVAL

2 14.1 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.

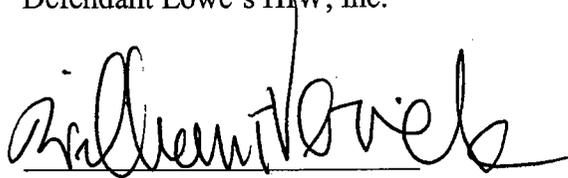
4 IT IS SO STIPULATED:

5 DATED:

By: _____

6 Defendant Lowe's HW, Inc.

7
8 DATED:



9
10 William Verick
Klamath Environmental Law Center

11
12
13 IT IS SO ORDERED, ADJUDGED AND DECREED:

14
15 Dated:

16 _____
17 JUDGE OF THE SUPERIOR COURT