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WMH TOOL GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO
(Unlimited Jurisdiction)

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION, PLAINTIFF, V. LOWES COMPANIES, INC., et al., DEFENDANTS.	No. 433954 [PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT WMH TOOL GROUP, INC.

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 WMH Tool Group, Inc. ("WMH") alleging that WMH, through sales in California of hand tools having handles coated with polyvinyl chloride ("PVC"), including but not limited to spring clamps, that are manufactured, distributed or sold by WMH ("Tools Covered Products"), was in violation of certain provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5, et seq. ("Proposition 65") by knowingly and intentionally exposing persons to chemicals, including lead and lead compounds, lead phosphate, lead acetate and lead subacetate, (collectively, "lead"), known to the State of California to cause cancer and/or birth defects or other reproductive harm, without first providing a clear and reasonable warning.

1.2 On or about August 19, 2004, Mateel, acting in the public interest pursuant to Health and Safety Code section 25249.7(d) and on behalf of the general public pursuant to Business and Professions Code section 17204, filed a Complaint for Civil Penalties and Injunctive Relief in San Francisco County Superior Court, Case No. CGC-04-433954 ("Complaint") against WMH based on the allegations contained in the Notice relating to Tools Covered Products. In addition to asserting claims directly under Proposition 65, the Complaint also alleges that the violations of Proposition 65 for which WMH is allegedly responsible constitute separate violations of Business and Professions Code sections 17200 et seq. (the "Unfair Competition Act").

1.3 On or about January 31, 2005, Mateel and its attorneys, Klamath Environmental Law Center ("KELC") provided Notice to the California Attorney General, all California counties' District Attorneys, and all City Attorneys of California cities with populations

exceeding 750,000, (collectively, "Public Enforcers"), alleging that WMH violated Proposition 65, in their sale of devices that use external wires and cables coated with polyvinyl chloride ("PVC") ("Wires Covered Products"). Specifically, Mateel charged that persons handling the PVC-coated wires and cables were exposed to certain chemicals, listed under Proposition 65, including cadmium, hexavalent compounds of chromium, vinyl chloride, lead and lead compounds, lead acetate, lead phosphate, lead subacetate and di(2ethylhexyl) phthalate.

1.4 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over WMH as to the acts alleged in the Complaint and in the Notice relating to Wires Covered Products, that venue is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full and final settlement and resolution of the allegations contained in the Complaint and in the Notice relating to Wires Covered Products and of all claims which were or could have been raised based on the facts alleged therein or arising therefrom.

1.5 Mateel and WMH enter into this Consent Judgment pursuant to a full and final settlement of disputed claims between the parties as set forth in the Complaint and in the Notice relating to Wires Covered Products for the purpose of avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any allegation made in the Complaint or in the Notice relating to Wires Covered Products, each and every allegation of which WMH denies, nor may this Consent Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability, violation of law or liability on the part of WMH – all of which WMH denies.

2. INJUNCTIVE RELIEF-REFORMULATION FOR TOOLS COVERED PRODUCTS

2.1 Within two hundred and seventy (270) days after entry of this Consent Judgment, all PVC used in the production of Tools Covered Products imported, manufactured, or distributed by WMH for sale in California shall meet the following criteria:

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

(b) Tools Covered Products shall be construed to have no intentionally added lead where a representative sample of the product has been tested for lead content and shown lead content by weight of less than 0.02%, or 200 parts per million ("ppm"), using a test method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 200 ppm.

2.2 WMH may comply with the above requirements by relying on information obtained from its manufacturers or suppliers of the tools and PVC utilized on the handles thereof provided such reliance is in good faith.

3. INJUNCTIVE RELIEF-REFORMULATION FOR WIRES COVERED PRODUCTS

3.1 Wires Covered Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements if the wires and cables coated with PVC ("Cords") that are sold as a part of or in association with those Wires Covered Products meet the following criteria: (a) the surface contact layer of the Cords shall have no lead as an intentionally added constituent; and (b) the surface contact layer of the Cords shall have lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). WMH may comply with the above requirements by relying on information obtained from its manufacturers or suppliers of the product provided such reliance is in good faith. The test protocol and methods described on Exhibit A hereto may be relied on. Nothing in the preceding sentences shall preclude WMH from establishing good faith reliance by alternative means.

3.2 Wires Covered Products manufactured and shipped for distribution to or sale in California on or after the Effective Date that do not meet the warning exemption standard set forth in Section 3.1 of this Consent Judgment and are not exempt pursuant to Section 3.3 shall be accompanied by a warning as described in Section 3.4 below. For purposes of this Section, one year after the entry of this Consent Judgment shall be considered the "Effective Date."

3.3 The following Wires Covered Products are deemed to be exempt from any Proposition 65 warning requirements with respect to the wires and cables coated with PVC ("Cords"): (a) Wires Covered Products which because of their size, weight or function have Cords that are handled only infrequently (such as upon their installation in a setting where they are not typically plugged and unplugged) ("Infrequently Handled Products"); (b) those Wires Covered Products that: (i) are sold at retail before the Effective Date; or (ii) are distributed or shipped for sale outside the State of California; (c) Wires Covered Products that use Cords not normally accessible to the consumer during ordinary use; and/or (d) Wires Covered Products which contain the lead only as part of the inner conductor or other component not normally accessible to the consumer during ordinary use. Mateel has previously provided the California Attorney General's Office and WMH with a list of Wires Covered Products/Product types that are deemed not to meet the criteria for Infrequently Handled Products set forth in this Section 3.3 and therefore are not exempt ("Non-Exempt Products List"). The Non-Exempt Products List may be used as guidance in determining whether other Wires Covered Products meet these criteria. The Parties acknowledge that common usage of the terms "portable" and "non-portable" do not affect the classification of any Wires Covered Products under this Consent Judgment. Wires Covered Products may be considered Infrequently Handled Products regardless of their weight or the likelihood that they may be used while moving, whether that be on a person, in a car, on an airplane or otherwise.

3.4 Should WMH's Wires Covered Products require Proposition 65 warnings under Section 3.2, WMH shall, except as otherwise provided in Section 3.5 below, either provide one of the warnings described below or any other Proposition 65 warning that has been reviewed and approved in writing by the California Attorney General for use with Wires Covered Products regarding their thermoset/thermoplastic-coated wires and/or cables:

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

or

"**WARNING**: Handling the cord on this product will expose you to lead, a chemical known to the State of California to cause [cancer, and] birth defects or other reproductive harm. ***Wash hands after handling.***"

or

"**WARNING**: The power cord on this product contains lead, a chemical known to the State of California to cause [cancer, and] birth defects or other reproductive harm. ***Wash hands after handling.***"

The word "WARNING" shall be in all capital letters and in bold typeface. The hand-washing admonition shall be in bold typeface and italicized. Inclusion of the bracketed words "cancer, and" in the above warning shall be at the WMH's option.

3.5 Unless otherwise indicated herein, the warning required or authorized in Section 3.4 shall be given by having it: (a) affixed to the Wires Covered Product itself or to the unit package of such Wires Covered Product; (b) printed on the Wires Covered Product itself or on the unit package of such Wires Covered Product; (c) displayed on an internet site for those units of Wires Covered Products sold on the internet; (d) included in the owner's manual if the conditions set forth in Section 3.7 below are satisfied ("Owner's Manual Warning"); or, (e) printed on the invoice issued directly to the consumer by WMH to confirm the sale, where WMH sells Wires Covered Products directly to consumers by telephone, mail order, or internet sale, but never has physical possession of the Wires Covered Product or its packaging.

3.6 If the warning is printed on the product, package label, or invoice, then the warning shall be contained in the same section of the label that contains other safety warnings, if any, concerning the use of the Wires Covered Product or near its displayed price and/or UPC

code. Such warning shall be prominently affixed to or printed on each such Wires Covered Product, its label or package or invoice, and displayed with such conspicuousness, as compared with other words, statements, designs, or devices on such Wires Covered Product, its label, package or display or invoice as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. With respect to the preceding sentence, the type size of any warning required by paragraph 3.4 must be legible, but otherwise need not be larger than any other warning language used in conjunction with the Wires Covered Product in question and its relative size may take into account the nature, immediacy, and acuteness of the risks for which other warnings are given. If the size of a Wires Covered Product and its packaging is such that a warning required by this Consent Judgment cannot physically be printed on its non-transparent portion in a legible size, the warning may be printed on a separate piece of paper or cardstock and inserted into the Wires Covered Product's packaging, provided that i) the cardstock or paper containing the warning is not white or uncolored and contains only the warning language, and ii) a substantial portion of the exterior of the packaging material is transparent. If a warning is provided on the internet pursuant to (c) above, the warning message shall be displayed (or, upon the internet site user's identification as a California resident, such as when the user types in a zip code, automatically appear) either: (a) on the same page on which the Wires Covered Product is displayed, (b) on the same page as the order form for the Wires Covered Product, or (c) on the same page as the price for the Wires Covered Product.

3.7 If the warning is given in the owners manual pursuant to Section 3.8 below, it shall be located in one of the following places in the manual: the outside of the front cover; the inside of the front cover; the first page other than the cover; or the outside of the back cover. The warning shall be printed or stamped in the manual or contained in a durable label or sticker affixed to the manual in a font no smaller than the font used for other safety warnings in the manual. Alternatively, the warning may be included in a safety warning section of the owner's manual consistent with specifications issued by Underwriters Laboratories.

3.8 A warning in the owner's manual of a Wires Covered Product may be used to satisfy the warning requirements of this Section 3 only under the following circumstances: the Wires Covered Product (i) may cause serious injury or bodily harm (other than by means of fire or electrocution) unless used as directed; or (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has one or more features a consumer must read about in order to know how to program or use the Wires Covered Product. However, a Wires Covered Product may not utilize an owner's manual warning if it meets the following criteria: (a) the Wires Covered Product is unlikely to cause serious injury or bodily harm other than by means of fire or electrocution; (b) the Wires Covered Product is easily assembled or programmed by an ordinary consumer without need to reference instructions; and (c) fundamental operation of the Wires Covered Product is easily understood and commonly performed by an ordinary consumer without training or need to reference operating instructions. Mateel has previously provided the California Attorney General's Office and WMH with a list of Wires Covered Products/product types for which Owner's Manual Warnings are deemed to be an allowable method of communicating the warnings required by this Section (the "Owner's Manual Product List) and a list of Wires Covered Products/product types for which Owner's Manual Warnings are deemed not to be an allowable method of communicating the warnings required by this Section 2 (the "Non-Owner's Manual Product List"). These lists may be used as guidance in determining whether the criteria for use of owner's manual warnings set forth in this Section are satisfied

3.9 WMH may provide an Owner's Manual Warning on any Wires Covered Products/product types that satisfy the criteria in Section 3.8, except for those listed on the Non-Owner's Manual Product List. Products not existing as of the Effective Date that are introduced for sale after January 1, 2006 may use a owner's manual warning if use of the owner's manual warning has been approved in writing by the California Attorney General's office, following 60 days prior notice to Mateel.

3.10 The requirement for product labeling, set forth herein, is imposed pursuant to the terms of this Consent Judgment. The Parties recognize that product labeling is not the exclusive method of providing a warning under Proposition 65 and its implementing regulations.

4. MONETARY RELIEF

4.1 Within thirty (30) days after entry of this Consent Judgment by the Court, WMH shall pay seven thousand five hundred dollars ($7,500) to the Ecological Rights Foundation and seven thousand five hundred dollars ($7,500) to Californians for Alternatives to Toxics. Mateel represents and warrants that both groups are tax exempt, section 501(c)(3), California non-profit organizations that advocate for workers' and consumers' safety and for awareness and reduction of toxic exposures. The foregoing settlement payments shall be mailed to the attention of William Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501, who shall provide them to the respective organizations within fifteen (15) days of receipt.

4.2 WMH shall not be required to pay a civil penalty pursuant to Health and Safety Code Section 25249.7(b).

5. ATTORNEYS' FEES

5.1 Within thirty (30) days after entry of this Consent Judgment, WMH shall pay Fifteen thousand dollars ($15,000) to the Klamath Environmental Law Center to cover plaintiffs' attorneys' fees and costs. The above payment shall be mailed to the attention of William Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

5.2 Except as set forth in the preceding subsection, Mateel and WMH shall bear their own costs and attorneys' fees.

6. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

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

7. MATTERS COVERED BY THIS CONSENT JUDGMENT

7.1 This Consent Judgment is a full, final and binding resolution between Mateel acting on behalf of itself and in the public interest pursuant to Health and Safety Code section 25249.7(d) and on behalf of the general public pursuant to Business and Professions Code section 17204, and WMH concerning any violation of Proposition 65 and/or the Unfair Competition Act regarding any claims made or which could have been made in the Notices and/or the Complaint, or any other statutory or common law claim that could have been asserted against WMH and/or its past, present or future affiliates, parent or subsidiary corporations, divisions, successors, officers, directors, assigns, distributors, retailers, and/or customers for failure to provide clear, reasonable, and lawful warnings of exposure to lead contained in or otherwise associated with Tools or Wires Covered Products manufactured, sold or distributed by, for, or on behalf of, WMH. Compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by WMH and/or its past, present or future affiliates, parent or subsidiary corporations, divisions, successors, officers, directors, assigns, distributors, retailers, and/or customers with the requirements of Proposition 65 and the Unfair Competition Act with respect to lead contained in or otherwise associated with Tools or Wires Covered Products.

7.2 As to any claims, violations (except violations of this Consent Judgment), actions, damages, costs, penalties or causes of action which may arise or have arisen after the original date of entry of this consent judgment, compliance by WMH with the terms of this consent judgment shall be deemed to be full and complete compliance with Proposition 65 and the Unfair Competition Act as to claims regarding exposure to lead in Tools or Wires Covered Products.

7.3 Nothing in this Consent Judgment shall be deemed to require an out of state manufacturer of Tools and Wires Covered Products to provide a Proposition 65 warning for occupational exposures occurring within the State of California.

7.4 Plaintiff further agrees to notify WMH of any alleged future violations, claims, actions, damages, costs, penalties or causes of action which may arise regarding alleged exposure to lead in any product manufactured, sold or distributed by, for, or on behalf of WMH, whether or not covered by this Consent Judgment for Tools and Wires Covered Products. Such notification shall be made through WMH 's counsel as identified in paragraph 11.1 and shall be made at least 60 days prior to, and separate from, any 60 day notice of violation mandated by Proposition 65. Mateel further agrees that, upon sending such notification to counsel, it will endeavor to work with WMH in good faith to resolve the alleged violations, claims, actions, damages, costs, penalties or causes of action promptly by negotiation and will initiate litigation only in the event such negotiations are unsuccessful.

7.5 In furtherance of the foregoing, Mateel hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it with respect to the Tools and Wires Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

Mateel understands and acknowledges that the significance and 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 Tools and Wires Covered Products, they will not be able to make any claim for those damages against WMH, or

its parent, subsidiaries or affiliates, or any of its customers, distributors, wholesalers, retailers or any other person in the course of doing business who may manufacture, use, maintain, distribute, market or sell the Tools and Wires Covered Products. Furthermore, Mateel acknowledges that it intends these consequences for any such claims which may exist as of the date of this release but which Mateel does not know exist, and which, if known, would materially affect its decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

7.6 In furtherance of the foregoing, and after approval and entry of this Consent Judgment by the Court, Mateel shall execute and file a written Request for Dismissal of the Lawsuit with prejudice as to WMH and will provide WMH with an executed original of this Dismissal with prejudice.

8. SERVICE ON THE CALIFORNIA ATTORNEY GENERAL

8.1 Mateel shall serve a copy of this Consent Judgment, signed by both parties, on the California Attorney General on behalf of the Parties so that the California Attorney General may review this Consent Judgment at least forty five (45) days prior to its submittal to the Court for approval. As soon as is feasible following the forty-fifth (45th) day after the date on which the California Attorney General has been served with the aforementioned copy of this Consent Judgment, and in the absence of any written objection by the California Attorney General to the terms of this Consent Judgment or written request by the California Attorney General for additional time, Mateel shall then submit promptly this Consent Judgment to the Court for approval and entry at a hearing scheduled upon a formally noticed motion to be filed by Mateel. Prior to submittal to the Court for approval, Mateel shall attach a proof of service attesting that this Consent Judgment has been served on the California Attorney General and the manner and date on which that service was made.

9. APPLICATION OF JUDGMENT

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

10. MODIFICATION OF JUDGMENT

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

11. NOTICE

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

(a) For Mateel: William Verick, Esq., Klamath Environmental Law Center,

(b) For WMH Tool Group: Joseph J. Krasovec III, Esq.
Schiff Hardin LLP
6600 Sears Tower
Chicago, IL 60606-6473

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

12. AUTHORITY TO STIPULATE

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

13. RETENTION OF JURISDICTION

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

14. ENTIRE AGREEMENT

16. COURT APPROVAL

16.1 If this Consent Judgment is not approved and entered 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: 10/11/05

By _____ Vice President
Defendant WMH Tool Group

DATED: Oct. 13/2005

_____
William Verick
Klamath Environmental Law Center

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

_____
JUDGE OF THE SUPERIOR COURT