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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN FRANCISCO**

14
15 MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,,

16 Plaintiff,

17 v.

18 EZ-FLO INTERNATIONAL, INC.;
19 HAMPTON PRODUCTS
INTERNATIONAL CORPORATION;
20 HICKORY HARDWARE; MASTER
LOCK COMPANY; ORCHARD
21 SUPPLY HARDWARE
CORPORATION; SEARS, ROEBUCK
22 AND CO.; VARIFLEX, INC., and
DOES 1 through 100 inclusive,

23 Defendants.

Case No. CGC 06456810

**CONSENT JUDGMENT AS TO
DEFENDANT SEARS ROEBUCK &
COMPANY AND ORCHARD SUPPLY
HARDWARE CORPORATION**

24
25 **1. INTRODUCTION**

26 **1.1** On October 10, 2006, the MATEEL ENVIRONMENTAL JUSTICE
27 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a
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1 Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco County
2 Superior Court, Case No.CGC-06-456810, against Defendants Orchard Supply Hardware
3 Corporation and Sears, Roebuck and Co. (collectively, “Sears and OSH” or
4 “Defendants”). The Complaint alleges, among other things, that Defendants violated
5 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
6 Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In particular, Mateel alleges
7 that Defendants have knowingly and intentionally exposed persons to padlocks made of
8 brass containing lead and/or lead compounds (hereinafter “leaded brass”), which are
9 chemicals known to the State of California to cause cancer and birth defects or other
10 reproductive harm, without first providing a clear and reasonable warning to such
11 individuals.

12 **1.2** On July 12, 2006, a 60-Day Notice letter (“Notice Letter”) was sent by
13 Mateel to Sears and OSH, the California Attorney General, all California District
14 Attorneys, and all City Attorneys of each California city with a population exceeding
15 750,000.

16 **1.3** Sears and OSH are both businesses that employ ten or more persons and
17 which market locks, including padlocks, within the State of California. Some of those
18 products are alleged to contain lead and/or lead compounds. Lead and lead compounds
19 are chemicals known to the State of California to cause cancer, and lead is a chemical
20 known to the State of California to cause reproductive toxicity pursuant to Health and
21 Safety Code Section 25249.9. Under specified circumstances, products containing lead
22 and/or lead compounds that are sold or distributed in the State of California are subject to
23 the Proposition 65 warning requirement set forth in Health and Safety Code Section
24 25249.6. Plaintiff Mateel alleges that leaded brass padlocks that Defendants marketed for
25 use in California require a warning under Proposition 65.

26 **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall
27 be defined as locks containing lead and/or lead compounds, such as leaded brass padlocks
28 to the extent such products are distributed and sold within the state of California, that are

1 marketed and/or sold by Sears and OSH, regardless of whether they bear Sears or OSH
2 labels.

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 Defendants as to the acts alleged in the Complaint, that venue is proper
6 in 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.

11 **1.6** This Consent Judgment resolves claims that are denied and disputed. The
12 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
13 all claims between the parties for the purpose of avoiding prolonged litigation. This
14 Consent Judgment shall not constitute an admission with respect to any material allegation
15 of the Complaint, each and every allegation of which Defendants deny, nor may this
16 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
17 misconduct, culpability or liability on the part of Sears or OSH.

18 **2. SETTLEMENT PAYMENT**

19 **2.1** In settlement of all of the claims referred to in this Consent Judgment
20 against the Defendants, within ten (10) business days of notice entry of this Consent
21 Judgment, Defendants shall collectively pay \$20,000 to the Klamath Environmental Law
22 Center ("KELC") to cover Mateel's attorneys' fees and costs.

23 **2.2** Within ten (10) business days of notice of entry of this Consent Judgment,
24 Defendants shall collectively pay \$10,000 to the Ecological Rights Foundation and
25 \$10,000 to Californians for Alternatives to Toxics. Both are California non-profit
26 environmental organizations that advocate for workers' and consumers' safety, and for
27 awareness and reduction of toxic exposures.

1 **3. ENTRY OF CONSENT JUDGMENT**

2 **3.1** The parties hereby request that the Court promptly enter this Consent
3 Judgment. Upon entry of the Consent Judgment, Defendants and Mateel waive their
4 respective rights to a hearing or trial on the allegations of the Complaint.

5 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

6 **4.1** This Consent Judgment is a final and binding resolution between Mateel,
7 acting on behalf of itself and, as to those matters raised in the Notice Letter, the general
8 public, and Defendants, of: (i) any violation of Proposition 65 with respect to the Covered
9 Products, and (ii) any other statutory or common law claim, to the fullest extent that any
10 of the foregoing described in (i) or (ii) were or could have been asserted by any person or
11 entity against Defendants based upon, arising out of or relating to Defendants' compliance
12 with Proposition 65, or regulations promulgated thereunder, with respect to the Covered
13 Products, and any other claim based in whole or part on the facts alleged in the Complaint,
14 whether based on actions committed by Defendants or by any entity within their chains of
15 distribution, including, but not limited to, manufacturers, wholesale or retail sellers or
16 distributors and any other person in the course of doing business. As to alleged exposures
17 to Covered Products, and as to those matters raised in the Notice Letter, compliance with
18 the terms of this Consent Judgment resolves any issue, now and in the future, concerning
19 compliance by Defendants and their parents, subsidiaries or affiliates, predecessors,
20 officers, directors, employees, and all of their manufacturers, customers, distributors,
21 wholesalers, retailers or any other person in the course of doing business, and the
22 successors and assigns of any of these who may manufacture, use, maintain, distribute,
23 market or sell Covered Products, with the requirements of Proposition 65.

24 **4.2** As to alleged exposures to Covered Products, Mateel, acting on behalf of
25 itself and, as to those matters raised in the Notice Letters, the general public, and
26 Mateel's agents, successors and assigns. Mateel waives all rights to institute any form of
27 legal action, and releases all claims against Sears and OSH and their parents, subsidiaries
28 or affiliates, predecessors, officers, directors, employees, and all of their customers,

1 manufacturers, distributors, wholesalers, retailers or any other person in the course of
2 doing business, and the successors and assigns of any of them, who may manufacture, use,
3 maintain, distribute or sell the Covered Products, whether under Proposition 65 or
4 otherwise, arising out of or resulting from, or related directly or indirectly to, in whole or
5 in part, the Covered Products and claims identified in Mateel's Notice Letter. In
6 furtherance of the foregoing, Mateel, acting on behalf of itself and, as to matters raised in
7 the Notice Letter, on behalf of the general public, hereby waives any and all rights and
8 benefits which it now has, or in the future may have, conferred upon it with respect to the
9 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code,
10 which provides as follows:

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

17 Mateel understands and acknowledges that the significance and consequence of this
18 waiver of California Civil Code Section 1542 is that even if Mateel or, as to matters raised
19 in the Notice Letter, if any member of the general public suffers future damages arising
20 out of or resulting from, or related directly or indirectly to, in whole or in part, the
21 Covered Products, it will not be able to make any claim for those damages against
22 Defendants, their parents, subsidiaries or affiliates, predecessors, officers, directors,
23 employees, and all of their customers, manufacturers, distributors, wholesalers, retailers or
24 any other person in the course of doing business, and the successors and assigns of any of
25 them, who may manufacture, use, maintain, distribute or sell the Covered Products.
26 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
27 which may exist as of the date of this release but which Mateel does not know exist, and
28 which, if known, would materially affect its decision to enter into this Consent Judgment,

1 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
2 negligence, or any other cause.

3 **5. ENFORCEMENT OF JUDGMENT**

4 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
5 parties hereto. The parties may, by noticed motion or order to show cause before the
6 Superior Court of San Francisco County, giving the notice required by law, enforce the
7 terms and conditions contained herein.

8 **6. MODIFICATION OF JUDGMENT**

9 Except as provided for in Paragraph 7.2(c), this Consent Judgment may be
10 modified only upon written agreement of the parties and upon entry of a modified Consent
11 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
12 entry of a modified Consent Judgment by the Court.

13 **7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

14 **7.1** As to any Covered Products for which the normally intended function and
15 manner of use of the product involves the gripping or holding of the product by gripping
16 or holding a component made from leaded brass where such brass comes into contact with
17 the user, a warning as described in paragraph 7.2 below shall be provided. The warning
18 requirements set forth in paragraph 7.2 shall apply only to: (1) Covered Products that
19 Defendants ship for distribution after 270 days after entry of this Consent Judgment (“the
20 Effective Date”); and (2) products manufactured, distributed, marketed, sold or shipped
21 for sale or use inside the State of California.

22 **7.2** Defendants shall provide Proposition 65 warnings as follows:

23 (a) Defendants shall provide either of the following warning statements:

24 **WARNING:** This product contains lead, a chemical known to the State of
25 California to cause cancer and birth defects or other reproductive harm. Do
26 not place your hands in your mouth after handling the product. Do not
27 place the product in your mouth. *Wash your hands after touching this*
28 *product.*

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or

WARNING: This product contains one or more chemicals 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 bold. The words “Wash hands after handling” shall be in bold and italicized.

Defendants shall provide such warning with the unit package of the Covered Products. Such warning shall be prominently affixed to or printed on each Covered Product’s label or package. The warning shall be at least the same size as the largest of any other safety warnings, if any, on the product container. If printed on the label itself, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the product.

(b) The requirements for product labeling, set forth in subparagraph (a) above are 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.

(c) If Proposition 65 warnings for lead or lead compounds should no longer be required, Defendants shall have no further warning obligations pursuant to this Consent Judgment. In the event that Defendants cease to implement or if Defendants modify the warnings required under this Consent Judgment (because of a change on the law or otherwise), Defendants shall provide written notice to Mateel (through KELC) of its intent to do so, and of the basis for its intent, no less than thirty (30) days in advance. Mateel shall notify Defendants in writing of any objection within thirty (30) days of its receipt of such notice, or such objection by Mateel shall be waived.

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8. AUTHORITY TO STIPULATE

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.

9. RETENTION OF JURISDICTION

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

10. ENTIRE AGREEMENT

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

11. GOVERNING LAW

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. COURT APPROVAL

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:

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DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

William Verick
CEO Mateel Environmental Justice
Foundation,
Klamath Environmental Law Center

DATED:

SEARS ROEBUCK & COMPANY

MARY TORTORICE
By: *Mary Tortorice*
Its: *Vice President / Deputy General Counsel*

DATED

ORCHARD SUPPLY HARDWARE
CORPORATION

By:
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT