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Center for Environmental Health

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Marvin Engineering Company, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CENTER FOR ENVIRONMENTAL HEALTH, CASE NO. BC360876
a California non-profit corporation

Plaintiff

MARVIN ENGINEERING COMPANY, INC.
and DOES I-X,

Defendants.

**STIPULATION FOR FINAL
JUDGMENT**

**Honorable Judge Jon M. Mayeda
Dept. 72**

I. INTRODUCTION

1.1 On October 25, 2006, Plaintiff Center for Environmental Health (“CEH” or “Plaintiff”) as a private attorney general filed a Complaint for Injunctive and Declaratory

Relief, and Civil Penalties in the Los Angeles County Superior Court against Defendant Marvin Engineering Company, Inc. (“Marvin Engineering” or “Defendant”). CEH and Marvin Engineering shall be referred to collectively as the “Parties.” CEH’s legal action alleges that Marvin Engineering violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5 et seq. (“Proposition 65”).

1.2 CEH’s Complaint is based on allegations contained in its Notice of Violation dated July 28, 2006 relating to Marvin Engineering’s Inglewood, California facility which provided Defendant, the California Attorney General, and the Los Angeles County District Attorney with notice that the facility was allegedly in violation of Health and Safety Code section 25249.6 by knowingly and intentionally exposing persons to perchloroethylene, a chemical known to the State of California to cause cancer, without first providing a clear and reasonable warning to such individuals. A true and correct copy of this Notice is attached hereto as Exhibit A.

1.3 CEH is a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment. Through CEH’s activities, numerous carcinogenic chemicals and reproductive toxicants listed pursuant to Proposition 65 contained in consumer products and emitted into the air from industries have been eliminated. CEH is, and at all times set forth herein has been, acting in the public interest under provisions of Proposition 65, as fully set forth at Health and Safety Code section 25249.7 (d).

1.4 Marvin Engineering is a corporation licensed to do business in the State of California. Marvin Engineering manufactures hardware for military customers and

companies involved in the aerospace and defense industries. Marvin Engineering operates a facility at 251-260 West Beach Ave. in Inglewood, California 90302 that is the subject of this lawsuit. In the complaint, CEH alleged that the operations at Marvin Engineering caused emissions of perchloroethylene into the air in violation of Proposition 65. Marvin Engineering denies all allegations in CEH's complaint.

1.5 Perchloroethylene was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on April 1, 1988.

1.6 The Parties enter into this Stipulation for Final Judgment ("Stipulation") pursuant to a full settlement of disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged litigation and to insure that the objectives of Proposition 65. The Parties seek to protect the public health by reducing or eliminating the public's exposure to toxic chemicals. CEH has diligently prosecuted this matter and is settling this case in the public interest. Plaintiff and Defendant also intend for this Stipulation to provide, to the maximum extent permitted by law, res judicata protection for Defendant against all other claims based on the same or similar allegations contained in CEH's Notice of Violation and CEH's Complaint.

1.7 Nothing in the Stipulation or Judgment shall be construed as an admission by Marvin Engineering of any fact, issue of law or violation of law, nor shall compliance with the Judgment constitute or be construed as an admission by Marvin Engineering of any fact, issue of law or violation of law, at any time, for any purpose. In particular, Defendant contends that no warning is required for the exposures Plaintiff alleges. Nothing in the Stipulation or the Judgment entered by the Court shall prejudice, waive or impair any right, remedy or defense that Marvin Engineering may have in any other or

further legal proceedings. Nothing in the Stipulation or the Judgment entered by the Court, or any document referred to herein, nor any action taken to carry out this Stipulation or Judgment entered by the Court, shall be construed as giving rise to any presumption or inference of admission or concession by Defendant as to any fault, wrongdoing or liability whatsoever. Nothing in this Stipulation or the Judgment entered by the Court, or any of its terms or provisions, nor any of the negotiations or other proceedings connected with it, nor any other action taken to carry out this Stipulation or the Judgment entered by the Court, by any of the Parties hereto, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Stipulation or Judgment entered by the Court, to defend against the assertion of the released claims or as otherwise required by law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of Marvin Engineering under the Stipulation or the Judgment entered by the Court.

1.8 As a result of CEH's legal action, Marvin Engineering stopped using perchloroethylene on or about November 1, 2006 at its Inglewood facility by switching to a safer solvent known as "Simple Green" which contains no Proposition 65 listed chemicals. By eliminating the use of perchloroethylene, Marvin Engineering has no legal obligation to warn anyone of perchloroethylene exposure pursuant to Proposition 65.

II. JURISDICTION AND VENUE

For purposes of this Stipulation, the Parties stipulate that this court has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that venue is proper in the Superior Court of the State of California for the County of Los Angeles,

and that this Court has jurisdiction to enter a Judgment pursuant to the terms of this Stipulation as a resolution of this action.

III. INJUNCTIVE RELIEF

3.1 Perchloroethylene Emissions

Marvin Engineering shall not use perchloroethylene at its Inglewood facility.

IV. PAYMENT

In full and final satisfaction of CEH's costs of litigation, attorney's fees and all other expenses, Marvin Engineering shall make a total payment of \$70,000.00, payable within five (5) business days of receiving the Notice of Entry of Judgment. Said payments shall be for the following:

A. \$26,800.00 payable to the Center for Environmental Health which includes:

a) research into alternatives to the use of toxic chemicals and promotion of those alternatives and b) reimbursement of out of pocket expenses of \$3,326.00. CEH's Tax Identification No. is 94-3169008.

B. \$43,200.00 payable to Michael Freund as reimbursement of CEH's attorney's fees. Marvin Engineering's payments shall be mailed to the Law Office of Michael Freund.

V. RELEASE AND CLAIMS COVERED

This Stipulation and the Judgment entered by the Court is a final and binding resolution between and among, CEH, its officers, directors, agents, employees, attorneys successors and assigns, acting on behalf of the general public, and Marvin Engineering, its parents, subsidiaries, affiliates, divisions, subdivisions, officers, directors,

shareholders, employees, agents, attorneys, successors and assigns, of any and all claims, known or unknown, that have been or could have been asserted by CEH against Marvin Engineering in the Complaint in regard to any violation of Proposition 65, up to and including the date of entry of Judgment arising from the use of perchloroethylene, including, but not limited to, claims arising from environmental and occupational exposures to perchloroethylene, wherever occurring and to whomever occurring, through and including the date upon which the Judgment becomes final. Except for such rights and obligations as have been created under this Stipulation and the Judgment entered by the Court, Plaintiff, on its own behalf and bringing an action “in the public interest” pursuant to California Health and Safety Code Section 25249.7 (d) with respect to the matters alleged in the CEH lawsuit, does hereby fully, completely, finally and forever release, relinquish and discharge Marvin Engineering and its respective parents, subsidiaries, affiliates, division, subdivisions, officers, directors, shareholders, employees, agents, attorneys, successors and assigns (“released parties”) of and from any and all claims, actions, causes of action, demands, rights, debts, agreements, promises, liabilities, damages, accountings, costs and expenses, whether known or unknown, suspected or unsuspected, of every nature whatsoever which Plaintiff has or may have against the said released parties, arising directly or indirectly out of any fact or circumstance occurring prior to the date upon which the Judgment becomes final, relating to alleged violations of Proposition 65 by the Defendant.

It is the intention of the Parties to this release that, upon entry of judgment and conclusion of any litigation relating to (i) this Stipulation and the Judgment entered by the Court and (ii) the CEH lawsuit itself, that this Stipulation and Judgment entered by

the Court shall be effective as a full and final accord and satisfaction and release of each and every released claim. In furtherance of this intention, Plaintiff acknowledges that it is familiar with California Civil Code section 1542, 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.

Plaintiff hereby waives and relinquishes all of the rights and benefits that Plaintiff has, or may have, under California Civil Code section 1542 (as well as any similar rights and benefits which they may have by virtue of any statute or rule of law in any other state or territory of the United States). Plaintiff hereby acknowledges that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true with respect to the subject matter of this Stipulation and the Judgment entered by the Court and the released claims, but that notwithstanding the foregoing, it is Plaintiff's intention hereby to fully, finally, completely and forever settle and release each, every and all released claims, and that in furtherance of such intention, the release herein given shall be and remain in effect as a full and complete general release, notwithstanding the discovery or existence of any such additional or different facts. Plaintiff hereby warrants and represents to Defendant that (a) Plaintiff has not previously assigned any released claim, and (b) Plaintiff has the right, ability and power to release each released claim.

VI. CONTINUING OBLIGATIONS

Nothing herein shall be construed as diminishing Marvin Engineering's continuing

obligations to comply with Proposition 65.

VII. SEVERABILITY OF UNENFORCED PROVISIONS

In the event that any of the provisions hereof are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

VIII. ENFORCEMENT OF JUDGMENT

CEH may, by motion or order to show cause before the Superior Court of Los Angeles County, enforce the terms and conditions contained in the Stipulation and the Judgment entered by the Court.

IX. APPLICATION OF JUDGMENT

This Stipulation and the Judgment entered by the Court shall apply to, be binding upon and inure to the benefit of Marvin Engineering, its parents, subsidiaries, affiliates, divisions, subdivisions, officers, directors, shareholders, employees, agents, attorneys, successors and assigns, and upon CEH on its own behalf and on behalf of the general public, and each and every one of its members, and its directors, officers, employees, agents, successors, attorneys and assigns.

X. MODIFICATION OF JUDGMENT

This Stipulation and the Judgment entered by the Court may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a regularly-noticed motion of any Party to the Stipulation as provided by law and upon entry of a modified Judgment by the Court.

XI. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter to enforce, modify or terminate the

Judgment.

XII. AUTHORITY TO STIPULATE TO THIS JUDGMENT

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

XIII. NON-CONFIDENTIALITY

The terms and conditions of the Stipulation and the Judgment entered by the Court shall not be confidential.

XIV. COURT APPROVAL

The Judgment shall be effective only after it has been executed by the Court. Otherwise, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

XV. EXECUTION IN COUNTERPARTS

This Stipulation may be executed in counterparts and/or by facsimile, which taken together shall be deemed to constitute one document.

XVI. NOTICES

All notices required to be given to either Party to this Stipulation by the other shall be sent to the following agents:

FOR CENTER FOR ENVIRONMENTAL HEALTH:

Michael Green, Executive Director
Center for Environmental Health
528 61st Street, Suite A
Oakland, CA 94609

Michael Bruce Freund
Law Offices of Michael Freund
1915 Addison Street
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

FOR MARVIN ENGINEERING, INC.:

Richard H. Berger
A Law Corporation
261 West Beach Ave.
Inglewood, CA 90302
Telephone: (310) 201-0345
Facsimile: (310) 201-0344

Robert Crandell
Marvin Engineering Company, Inc.
251-260 West Beach Ave.
Inglewood, CA 90302

XVII. GOVERNING LAW

The validity, construction and performance of this Stipulation shall be governed by the laws of the State of California.

XVIII. DRAFTING

The terms of this Stipulation have been reviewed by the respective counsel for the Parties to this settlement prior to its signing, and each Party has had an opportunity to fully discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of this Stipulation or the Judgment entered thereon, the terms and provisions shall not be construed against either Party.

XIX. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

In the event a dispute arises with respect to either party's compliance with the terms of this Stipulation or the Judgment entered by the Court, the Parties shall meet either in

person or by telephone and endeavor to resolve the dispute in an amicable manner. No action may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action is filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

XX. PRECLUSIVE EFFECT OF CONSENT JUDGMENT

Entry of Judgment by the Court pursuant to this Stipulation inter alia:

(i) Constitutes full and fair adjudication of all claims against Defendant and the released parties, including, but not limited to, all claims set forth in the CEH lawsuit, based upon alleged violations of Proposition 65, which arose from the alleged failure to provide warning of exposure to perchloroethylene; and

(ii) Bars any and all other persons, on the basis of res judicata and/or the doctrine of collateral estoppel from prosecuting against Defendant or any of the released parties any claim alleged in the CEH lawsuit, based upon alleged violations of Proposition 65 which arose or arises from the alleged failure to provide warning of exposure to perchloroethylene.

XXI. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF JUDGMENT

This settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this settlement and, being fully informed regarding the matters which are the subject of this action, to:

(1) Find that the terms and provisions of this Stipulation represent a fair and equitable settlement of all matters raised by the allegations of CEH's Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the settlement and enter the Final Judgment Pursuant to Stipulation lodged concurrently herewith.

IT IS SO STIPULATED:

DATED: _____, 2007

CENTER FOR ENVIRONMENTAL HEALTH

By: _____
Michael Green, Executive Director
Center for Environmental Health

DATED: _____, 2007

MARVIN ENGINEERING COMPANY, INC.

By: _____
Gerald M. Friedman
Executive Vice-President
Marvin Engineering Company, Inc.

APPROVED AS TO FORM:

DATED: _____, 2007

LAW OFFICES OF MICHAEL FREUND

By: _____

Michael Freund
Attorney for Center for Environmental Health

DATED: _____, 2007

RICHARD H. BERGER
A LAW CORPORATION

By: _____

Richard H. Berger
Attorney for Marvin Engineering
Company, Inc.

