

1 WILLIAM VERICK, SBN 140972
2 FREDRIC EVENSON, SBN 198059
3 424 First Street
4 Eureka, CA 95501
5 Telephone: (707) 268-8900
6 Facsimile: (707) 268-8901
7 E-mail: wverick@igc.org

8 DAVID WILLIAMS, SBN 144479
9 BRIAN ACREE, SBN 202505
10 370 Grand Avenue, Suite 5
11 Oakland, CA 94610
12 Telephone: (510) 647-1900
13 Facsimile: (510) 647-1905
14 E-mail: davidhwilliams@earthlink.net

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 MATEEL ENVIRONMENTAL
21 JUSTICE FOUNDATION,,

22 Plaintiff,

23 v.

24 CARQUEST PRODUCTS, INC., et al.,
25 Defendants.

26 Case No. CGC-09-488626

27 **CONSENT JUDGMENT AS TO**
28 **CARQUEST PRODUCTS, INC. AND**
GOLDEN STATE SUPPLY, LLC

1 **1. INTRODUCTION**

2 1.1 On August 9, 2009, the MATEEL ENVIRONMENTAL JUSTICE
3 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a
4 Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco County
5 Superior Court, Case No. CGC-09-488626, against Defendants CPI Global Sourcing,
6 Inc., (formerly known as Carquest Products, Inc.), and Golden State Supply, LLC,
7 (hereinafter referred to collectively as “CARQUEST” or “Defendant”). The Complaint
8

1 alleges, among other things, that Defendant violated provisions of the Safe Drinking
2 Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5,
3 *et seq.* (“Proposition 65”). In particular, Mateel alleges that CARQUEST has knowingly
4 and intentionally exposed persons to nozzles and fittings made of brass containing lead
5 and/or lead compounds (hereinafter “leaded brass”), which are chemicals known to the
6 State of California to cause cancer and birth defects or other reproductive harm, without
7 first providing a clear and reasonable warning to such individuals.

8 1.2 On May 21, 2009, a 60-Day Notice letter (“Notice Letter”) was sent by
9 Mateel to CARQUEST, the California Attorney General, all California District
10 Attorneys, and all City Attorneys of every California city with populations exceeding
11 750,000. On October 31, 2009, Carquest Products, Inc., a North Carolina Corporation,
12 was merged into CPI Global Sourcing, Inc., an Ohio cooperative.

13 1.3 Defendants are businesses that employ ten or more persons and distribute,
14 market, and/or offer for sale nozzles and fittings, within the State of California. Some of
15 those products are alleged to contain lead and/or lead compounds. Lead and lead
16 compounds are chemicals known to the State of California to cause cancer, and lead is a
17 chemical known to the State of California to cause reproductive toxicity pursuant to
18 Health and Safety Code Section 25249.9. Under specified circumstances, products
19 containing lead and/or lead compounds that are sold or distributed in the State of
20 California are subject to the Proposition 65 warning requirement set forth in Health and
21 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass nozzles and
22 fittings manufactured, distributed, sold and/or marketed by CARQUEST for use in
23 California require a warning under Proposition 65.

24 1.4 For purposes of this Consent Judgment, the term “Covered Products” shall
25 be defined as nozzles and fittings that utilize leaded brass, whether or not sold as
26 freestanding products or as components of other products to which they are attached, to
27 the extent such products 1) are CARQUEST house brand, i.e. carry a CARQUEST
28

1 private label, 2) are distributed and sold within the State of California, and 3) are
2 distributed, marketed and/or sold by CARQUEST.

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 CARQUEST 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
15 allegation of the Complaint, each and every allegation of which CARQUEST denies; nor
16 may this Consent Judgment or compliance with it be used as evidence of any
17 wrongdoing, misconduct, culpability or liability on the part of CARQUEST or any other
18 person or entity related to the Defendant.

19 **2. SETTLEMENT PAYMENT**

20 2.1 In settlement of all of the claims that are alleged, or could have been
21 alleged, in the Complaint concerning Covered Products, CARQUEST shall pay \$20,000
22 to the Klamath Environmental Law Center (“KELC”) to cover Plaintiff’s attorneys’ fees.
23 Additionally, CARQUEST shall pay \$5,000 to the Ecological Rights Foundation, and
24 \$5,000 to Californians for Alternatives to Toxics, for use toward reducing exposures to
25 toxic chemicals and other pollutants, and toward increasing consumer, worker and
26 community awareness of health hazards posed by lead and other toxic chemicals. The
27 parties agree and acknowledge that the charitable contributions made pursuant to this
28 section shall not be construed as a credit against the personal claims of absent third parties

1 for restitution against the defendant. The above described payment shall be forwarded by
2 CARQUEST so that it is received at least 5 days prior to the hearing date scheduled for
3 approval of this Consent Judgment. If the Consent Judgment is not approved within 120
4 days of the date scheduled for approval, the above described payments shall be returned
5 and the provisions of this Consent judgment shall become null and void.

6 2.2 CARQUEST shall not be required to pay a civil penalty pursuant to Health
7 and Safety Code Section 25249.7(b).

8 **3. ENTRY OF CONSENT JUDGMENT**

9 3.1 The parties hereby request that the Court promptly enter this Consent
10 Judgment. Upon entry of the Consent Judgment, CARQUEST and Mateel waive their
11 respective rights to a hearing or trial on the allegations of the Complaint.

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

13 4.1 This Consent Judgment is a final and binding resolution between Mateel,
14 acting on behalf of itself and, as to those matters raised in the 60 Day Notice of Violation,
15 in the public interest, and CARQUEST of any violation of Proposition 65 with respect to
16 lead exposures allegedly arising from the Covered Products whether based on actions
17 committed by CARQUEST, or by any other person or entity within CARQUEST's chain
18 of distribution of the Covered Products, including, but not limited to, manufacturers,
19 distributors, wholesale or retail sellers, and any other person in the course of doing
20 business. As to lead exposures allegedly arising from the Covered Products, compliance
21 with the terms of this Consent Judgment resolves any issue, now and in the future,
22 concerning compliance by CARQUEST and its parents, subsidiaries or affiliates,
23 predecessors, officers, directors, employees, and all of their manufacturers, customers,
24 distributors, wholesalers, retailers, or any other person in the course of doing business,
25 and the successors and assigns of any of these who may manufacture, use, maintain,
26 distribute, market or sell Covered Products, with the requirements of Proposition 65.

27 4.2 As to lead exposures allegedly arising from the Covered Products, Mateel,
28 acting on behalf of itself and its agents, successors and assigns, waives all rights to

1 institute any form of legal action, and releases all claims against CARQUEST and its
2 parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of
3 its customers, manufacturers, distributors, wholesalers, retailers or any other person in the
4 course of doing business, and the successors and assigns of any of them, who may
5 manufacture, use, maintain, distribute or sell the Covered Products, whether under
6 Proposition 65 or otherwise. In furtherance of the foregoing, Mateel, acting on behalf of
7 itself hereby waives any and all rights and benefits which it now has, or in the future may
8 have, conferred upon it with respect to the Covered Products by virtue of the provisions
9 of Section 1542 of the California Civil Code, which provides as follows:

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

16 Mateel understands and acknowledges that the significance and consequence of this
17 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
18 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
19 Covered Products, it will not be able to make any claim for those damages against
20 CARQUEST, its parents, subsidiaries or affiliates, predecessors, officers, directors,
21 employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or
22 any other person in the course of doing business, and the successors and assigns of any of
23 them, who may manufacture, use, maintain, distribute or sell the Covered Products.

24 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
25 which may exist as of the date of this release but which Mateel does not know exist, and
26 which, if known, would materially affect its decision to enter into this Consent Judgment,
27 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
28 negligence, or any other cause.

2646417

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. ENFORCEMENT OF JUDGMENT

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

6. MODIFICATION OF JUDGMENT

Except as provided for in Paragraph 7.3(c), 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.

7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING

7.1 Covered Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements if the subject brass nozzles or fittings meet the following criteria: (a) the brass alloy from which the brass fittings are made shall have no lead as an intentionally added constituent; and (b) the brass alloy from which the brass fittings are made shall have a lead content by weight of no more than 0.03% (300 parts per million, or “300 ppm”). CARQUEST may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the brass alloy from which the brass fittings are made, provided such reliance is in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish good faith reliance.

7.2 Covered Products that do not meet the warning exemption standard set forth in Section 7.1 of the Consent Judgment, and that are distributed for sale, or sold, in the State of California on or after the ninetieth (90th) day following the court’s entry of this

1 Proposed Consent Judgement, shall be accompanied by a warning that states the
2 following:

3 “WARNING: This product contains lead, a chemical known to the
4 State of California to cause cancer and birth defects or other
5 reproductive harm.

6 7.3 Covered Products that do not meet the warning exemption standard set forth
7 in Section 7.1 of the Consent Judgment, and that are distributed for sale, or sold, in the
8 State of California on or after May 1, 2011 shall carry Proposition 65 warnings as follows:

9 (a) Covered Products that are distributed for sale, or sold, in the State of
10 California on or after May 1, 2011 shall carry either of the following
11 warning statements:

12 **WARNING:** This product contains lead, a chemical known to the
13 State of California to cause birth defects or other reproductive harm.
14 Do not place your hands in your mouth after handling the product.
15 *Wash your hands after touching this product.*

16 or

17 **WARNING:** This product contains one or more chemicals known to
18 the State of California to cause birth defects or other reproductive
19 harm. *Wash hands after handling.*

20 The word “WARNING” shall be in bold. The words “Wash hands after
21 handling” shall be in bold and italicized. CARQUEST shall instruct its
22 suppliers to place such warning directly on or with the unit package of the
23 Covered Products. Such warning shall be prominently affixed to or printed
24 on each Covered Product or its label or package.. If printed on the label
25 itself, the warning shall be contained in the same section that states other
26 safety warnings, if any, concerning the use of the Covered Product.

27 (b) The requirements for product labeling, set forth in subparagraph
28 above are imposed pursuant to the terms of this Consent Judgment. The

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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, CARQUEST shall have no further warning obligations pursuant to this Consent Judgment. Except as provided in section 7.1 above, in the event that CARQUEST ceases to implement or modifies the warnings required under this Consent Judgment (because of a change on the law or otherwise), CARQUEST 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 CARQUEST in writing of any objection within thirty (30) days of its receipt of such notice, or such objection by Mateel shall be waived.

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. GOVERNING LAW

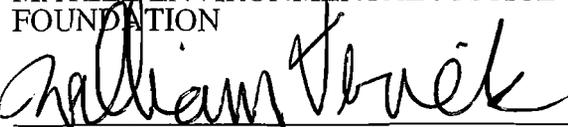
The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.

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:

DATED: 6/9/10

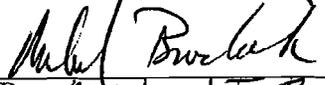
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

William Verick
Mateel Environmental Justice Foundation

DATED:

CPI GLOBAL SOURCING, INC., formerly
known as CARQUEST PRODUCTS, INC.

By: _____

DATED: 6/2/10

GOLDEN STATE SUPPLY, LLC

By: Michael T. Brodnick
President

DATED:

JUDGE OF THE SUPERIOR COURT

