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12 FOUNDATION

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF HUMBOLDT**

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,,

17 Plaintiff,

18 v.

19 WEST MARINE, INC., et al,

20 Defendants.

Case No. DR 090675

**CONSENT JUDGMENT AS TO
DEFENDANT WEST MARINE, INC.**

21
22 **1. INTRODUCTION**

23 **1.1** On August 4, 2009, the MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a
25 Complaint for civil penalties and injunctive relief (“Complaint”) in Humboldt County
26 Superior Court, Case No. DR 090675, against Defendant West Marine, Inc. “Defendant”).
27 The Complaint alleges, among other things, that Defendant violated provisions of the Safe
28 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections

1 25249.5, *et seq.* (“Proposition 65”). In particular, Mateel alleges that West Marine has
2 knowingly and intentionally exposed persons to brass hose fittings and accessories (such
3 as the hoses used on pressure washers and wash down equipment) that are made of brass
4 or have components made of brass that contains lead and/or lead compounds (hereinafter
5 “leaded brass fittings”). Lead compounds are chemicals known to the State of California
6 to cause cancer and birth defects or other reproductive harm, without first providing a
7 clear and reasonable warning to such individuals.

8 **1.2** On May 21, 2009, a Notice of Violation letter (“Notice Letter”) was sent by
9 Mateel to West Marine, the California Attorney General, all California District Attorneys,
10 and all City Attorneys of every California city with a population that exceeds 750,000.

11 **1.3** West Marine is a business that employs ten or more persons and
12 manufactures, distributes, and/or markets leaded brass fittings within the State of
13 California. Some of those products are alleged to contain lead and/or lead compounds.
14 Lead and lead compounds are chemicals known to the State of California to cause cancer,
15 and lead is a chemical known to the State of California to cause reproductive toxicity
16 pursuant to Health and Safety Code Section 25249.9. Under specified circumstances,
17 products containing lead and/or lead compounds that are sold or distributed in the State of
18 California are subject to the Proposition 65 warning requirement set forth in Health and
19 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass fittings,
20 components and accessories that are manufactured, distributed, sold and/or marketed by
21 West Marine for use in California require a warning under Proposition 65.

22 **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall
23 be defined as the products identified in the 60-Day Notice, and will include all products
24 manufactured by Ocean Equipment, Inc. (“Vendor”) encompassing hoses for air, gas,
25 pressure wash equipment and/ or wash down equipment, and the fittings, components and
26 accessories of that equipment to the extent these products are made from, or that have
27 components made from, leaded brass, insofar as such products are manufactured by
28

1 Vendor and distributed and sold within the State of California by West Marine, regardless
2 of whether they bear West Marine 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 West Marine as to the acts alleged in the Complaint, that venue is proper
6 in the County of Humboldt 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 West Marine denies, 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 West Marine or any other Defendant.

18 **2. SETTLEMENT PAYMENT**

19 **2.1** In settlement of all of the claims referred to in this Consent Judgment
20 against the Settling Defendant, within five (5) calendar days of entry of this Consent
21 Judgment, West Marine shall pay \$15,000 to the Klamath Environmental Law Center
22 (“KELC”) to cover Mateel’s attorneys’ fees and costs.

23 **2.2** Within five (5) calendar days of notice of entry of this Consent Judgment,
24 West Marine shall pay \$5,000 to Californians for Alternatives to Toxics. CATs is a
25 California non-profit environmental organization that advocates for workers’ and
26 consumers’ safety, and for awareness and reduction of toxic exposures.
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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, West Marine 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** As to exposure to lead caused by Covered Products, this Consent Judgment
7 is a final and binding resolution between Mateel, acting on behalf of itself and the public
8 interest, and West Marine, of: (i) any violation of Proposition 65 with respect to the
9 Covered Products, and (ii) any other statutory or common law claim, to the fullest extent
10 that any of the foregoing described in (i) or (ii) were or could have been asserted by any
11 person or entity against West Marine based upon, arising out of or relating to West
12 Marine’s compliance with Proposition 65, or regulations promulgated thereunder, with
13 respect to the Covered Products, and any other claim based in whole or part on the facts
14 alleged in the Complaint, whether based on actions committed by West Marine, or by any
15 other Defendant or entity within the chain of distribution, including, but not limited to,
16 manufacturers, wholesale or retail sellers or distributors and any other person in the course
17 of doing business. As to lead exposures alleged to have been caused by Covered
18 Products, compliance with the terms of this Consent Judgment resolves any issue, now
19 and in the future, concerning compliance by West Marine and its parents, subsidiaries or
20 affiliates, predecessors, officers, directors, employees, and all of their manufacturers,
21 customers, distributors, wholesalers, retailers or any other person in the course of doing
22 business, and the successors and assigns of any of these who may manufacture, use,
23 maintain, distribute, market or sell Covered Products, with the requirements of
24 Proposition 65.

25 **4.2** As to lead exposures alleged to have been caused by Covered Products,
26 Mateel, acting on behalf of itself and the public interest, and its agents, successors and
27 assigns, waives all rights to institute any form of legal action, and releases all claims
28 against West Marine and its parents, subsidiaries or affiliates, predecessors, officers,

1 directors, employees, and all of its customers, manufacturers, distributors, wholesalers,
2 retailers or any other person in the course of doing business, and the successors and
3 assigns of any of them, who may manufacture, use, maintain, distribute or sell the
4 Covered Products, whether under Proposition 65 or otherwise, arising out of or resulting
5 from, or related directly or indirectly to, in whole or in part, the Covered Products and
6 claims identified in Mateel's Notice Letter. In furtherance of the foregoing, Mateel,
7 acting on behalf of itself, hereby waives any and all rights and benefits which it now has,
8 or in the future may have, conferred upon it with respect to the Covered Products by
9 virtue of the provisions of Section 1542 of the California Civil Code, which provides as
10 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 suffers future damages
19 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
20 Covered Products, it will not be able to make any claim for those damages against West
21 Marine, its parents, subsidiaries or affiliates, predecessors, officers, directors, employees,
22 and all of its customers, manufacturers, distributors, wholesalers, retailers or any other
23 person in the course of doing business, and the successors and assigns of any of them,
24 who may manufacture, use, maintain, distribute or sell the Covered Products.

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

1 negligence, or any other cause.

2 **5. ENFORCEMENT OF JUDGMENT**

3 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
4 parties hereto. The parties may, by noticed motion or order to show cause before the
5 Superior Court of Humboldt County, giving the notice required by law, enforce the terms
6 and conditions contained herein.

7 **6. MODIFICATION OF JUDGMENT**

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

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

13 **7.1** As to any Covered Products for which the normally intended function and
14 manner of use of the product involves the gripping or holding of the product by gripping
15 or holding a component made from leaded brass where such brass comes into contact with
16 the user, a warning as described in paragraph 7.2 below shall be provided. The warning
17 requirements set forth in paragraph 7.2 shall apply only to: (1) Covered Products that
18 West Marine ships for distribution after 180 days after entry of this Consent Judgment
19 (“the Effective Date”); and (2) products manufactured, distributed, marketed, sold or
20 shipped for sale or use inside the State of California.

21 **7.2** West Marine shall provide Proposition 65 warnings as follows:

22 (a) Defendant West Marine shall provide either of the following warning
23 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: Brass and bronze fasteners, valves and fittings contain lead, which is known to the state of California to cause birth defects and other reproductive harm. *Wash hands after handling.*

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.

West Marine 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, West Marine shall have no further warning obligations pursuant to this Consent Judgment. In the event that West Marine ceases to implement or modifies the warnings required under this Consent Judgment (because of a change on the law or otherwise), West Marine 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

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notify West Marine 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.

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.

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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:

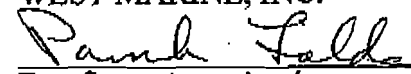
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED:

WEST MARINE, INC.



By: Pamela Fields
Its: Vice President & General Counsel

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT