

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

5 DAVID WILLIAMS, SBN 144479
BRIAN ACREE, SBN 202505
6 370 Grand Avenue, Suite 5
Oakland, CA 94610
7 Telephone: (510) 647-1900
Facsimile: (510) 647-1905
8 E-mail: davidhwilliams@earthlink.net

9 Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE
10 FOUNDATION

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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 DAISO CALIFORNIA, LLC,

19 Defendant.

Case No. CGC-09-488988

CONSENT JUDGMENT

20
21 **1. INTRODUCTION**

22 1.1 On June 3, 2009, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
23 (“Mateel” or “MEJF”) acting on behalf of itself and the general public, filed a Complaint for civil
24 penalties and injunctive relief (“Complaint”) in San Francisco County Superior Court, Case No.
25 CGC-09-488988, against Defendant Daiso California, LLC, (“Daiso” or “Defendant”). The
26 Complaint alleges, among other things, that Daiso violated provisions of the Safe Drinking Water
27 and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.*
28

1 (“Proposition 65”). In particular, Mateel alleges that Daiso has knowingly and intentionally
2 exposed persons to products that are or that incorporate thermoset/thermoplastic coated tool
3 handles in which the coating material contains lead and lead compounds, chemicals known to the
4 State of California to cause cancer and birth defects or other reproductive harm, without first
5 providing a clear and reasonable warning to such individuals. For purposes of this Consent
6 Judgment “Covered PVC-Handled Tools” means ratchet handles, wrenches, hammers, and
7 screwdrivers with thermoset/thermoplastic coated handles.

8 1.2 On December 4, 2008, a 60-Day Notice letter, alleging Proposition 65 violations
9 from PVC-Handled Tools, was sent by Mateel to Daiso, the California Attorney General, all
10 California District Attorneys, and all City Attorneys of every California city with populations
11 exceeding 750,000. On May 7, 2009, a 60-Day Notice letter, alleging Proposition 65 violations
12 regarding lead exposures from leaded brass padlocks (“Brass Padlocks”), was sent by Mateel to
13 Daiso, the California Attorney General, all California District Attorneys, and all City Attorneys of
14 every California city with populations exceeding 750,000. On May 21, 2009, a 60-Day Notice
15 letter, alleging Proposition 65 violations regarding lead exposures from leaded brass hose nozzles,
16 quick connects, and other brass sprayer nozzles and air hose fittings (“Brass Nozzles and
17 Fittings”), was sent by Mateel to Daiso, the California Attorney General, all California District
18 Attorneys, and all City Attorneys of every California city with populations exceeding 750,000.

19 1.3 Daiso is a business that employs ten or more persons and manufactures,
20 distributes, markets, and/or offers for sale PVC-Handled Tools, Brass Padlocks and Brass
21 Nozzles and Fittings, within the State of California. Those products are alleged to contain lead
22 and/or lead compounds. Lead and lead compounds are chemicals known to the State of
23 California to cause cancer, and lead is a chemical known to the State of California to cause
24 reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under specified
25 circumstances, products containing lead and/or lead compounds that are sold or distributed in the
26 State of California are subject to the Proposition 65 warning requirement set forth in Health and
27 Safety Code Section 25249.6. Plaintiff Mateel alleges that PVC-Handled Tools, Brass Padlocks
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1 and Brass Nozzles and Fittings manufactured, distributed, sold and/or marketed by Daiso for use
2 in California require a warning under Proposition 65.

3 1.4 For purposes of this Consent Judgment, the term “Covered Products” shall be
4 defined as Covered PVC-Handled Tools, Brass Padlocks and Brass Nozzles and Fittings, whether
5 or not sold as freestanding products or as components of other products to which they are
6 attached, to the extent such products are distributed and sold within the State of California, and
7 that are manufactured, distributed, marketed and/or sold by Daiso, regardless of whether they
8 bear Daiso labels.

9 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court has
10 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
11 over Daiso as to the acts alleged in the Complaint, that venue is proper in the County of San
12 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
13 and resolution of the allegations contained in the Complaint and of all claims that were or could
14 have been raised by any person or entity based in whole or in part, directly or indirectly, on the
15 facts alleged therein or arising therefrom or related thereto.

16 1.6 This Consent Judgment resolves claims that are denied and disputed. The parties
17 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
18 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
19 shall not constitute an admission with respect to any material allegation of the Complaint, each
20 and every allegation of which Daiso denies; nor may this Consent Judgment or compliance with it
21 be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Daiso
22 or any other person or entity related to the Defendant.

23 **2. SETTLEMENT PAYMENT**

24 2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the
25 Complaint concerning Covered Products, Daiso shall pay \$45,000 to the Klamath Environmental
26 Law Center (“KELC”) to cover Plaintiff’s attorneys’ fees and costs. Additionally, Daiso shall
27 pay \$13,000 to the Ecological Rights Foundation, and \$10,000 to Californians for Alternatives to
28 Toxics, for use toward reducing exposures to toxic chemicals and other pollutants, and toward

1 increasing consumer, worker and community awareness of health hazards posed by lead and other
2 toxic chemicals. The parties agree and acknowledge that the charitable contributions made
3 pursuant to this section shall not be construed as a credit against the personal claims of absent
4 third parties for restitution against the defendant. The above described payments shall be made as
5 follows: 1) A check in the amount of \$30,000, made payable to Klamath Environmental Law
6 Center, shall be forwarded by Daiso so that it is received at least 5 days prior to the hearing date
7 scheduled for approval of this Consent Judgment. 2) A check in the amount of \$15,000, made
8 payable to Klamath Environmental Law Center, a check in the amount of \$13,000 made payable
9 to Ecological Rights Foundation, and a check in the amount of \$10,000 made payable to
10 Californians for Alternatives to Toxics, shall be forwarded by Daiso so that they are received
11 within thirty days of the Court's entry of this Consent Judgment. All payments shall be delivered
12 to Klamath Environmental Law Center, 424 First Street, Eureka, CA 95501. If the Consent
13 Judgment is not approved within 120 days of the date scheduled for approval, the above described
14 payments shall be returned and the provisions of this Consent Judgment shall become null and
15 void.

16 2.2 Daiso shall not be required to pay a civil penalty pursuant to Health and Safety
17 Code Section 25249.7(b). Other than the payments described above, each party shall bear its own
18 attorneys' fees and costs of suit.

19 **3. SERVICE ON ATTORNEY GENERAL AND ENTRY OF CONSENT**
20 **JUDGMENT**

21 3.1 KELC shall serve a copy of this Consent Judgment, signed by both parties,
22 on the California Attorney General on behalf of the parties so that the Attorney General
23 may review this Consent Judgment prior to its submittal to the Court for approval. No
24 sooner than forty five (45) days after the Attorney General has received the
25 aforementioned copy of this Consent Judgment, and in the absence of any written
26 objection by the Attorney General to the terms of this Consent Judgment, the parties may
27 then submit it to the Court for approval. Upon entry of the Consent Judgment, Daiso and
28 Mateel waive their respective rights to a hearing or trial on the allegations of the Complaint.

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4. MATTERS COVERED BY THIS CONSENT JUDGMENT

4.1 This Consent Judgment is a final and binding resolution between Mateel, acting on behalf of itself and the public interest, and Daiso of any violation of Proposition 65 with respect to lead exposures allegedly arising from the Covered Products whether based on actions committed by Daiso, or by any other person or entity within Daiso’s chain of distribution of the Covered Products, including, but not limited to, manufacturers, distributors, wholesale or retail sellers, and any other person in the course of doing business. As to lead exposures allegedly arising from the Covered Products, compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by Daiso and its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their manufacturers, customers, distributors, wholesalers, retailers, or any other person in the course of doing business, and the successors and assigns of any of these who may manufacture, use, maintain, distribute, market or sell Covered Products, with the requirements of Proposition 65.

4.2 As to lead exposures allegedly arising from the Covered Products, Mateel, acting on behalf of itself and its agents, successors and assigns, waives all rights to institute any form of legal action, and releases all claims against Daiso and its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or any other person in the course of doing business, and the successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the Covered Products, whether under Proposition 65 or otherwise. In furtherance of the foregoing, Mateel, acting on behalf of itself 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 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

1 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
2 DEBTOR.”

3 Mateel understands and acknowledges that the significance and consequence of this waiver of
4 California Civil Code Section 1542 is that even if Mateel suffers future damages arising out of or
5 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, it
6 will not be able to make any claim for those damages against Daiso, its parents, subsidiaries or
7 affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers,
8 distributors, wholesalers, retailers or any other person in the course of doing business, and the
9 successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the
10 Covered Products. Furthermore, Mateel acknowledges that it intends these consequences for any
11 such claims which may exist as of the date of this release but which Mateel does not know exist,
12 and which, if known, would materially affect its decision to enter into this Consent Judgment,
13 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
14 negligence, or any other cause.

15 **5. ENFORCEMENT OF JUDGMENT / ONE-TIME NOTICE AND CURE**

16 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
17 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
18 San Francisco County, giving the notice required by law, enforce the terms and conditions
19 contained herein.

20 5.2 At any time more than 30 days after the Effective Date, MEJF may provide
21 Daiso with a Notice of Violation, alleging that a Covered Product sold by Daiso in
22 California is alleged to contain lead in excess of an applicable reformulation standard in
23 this Consent Judgment and/or does not comply with the applicable warning requirement in
24 this Consent Judgment (“Noncompliant Covered Product”).

25 (a) A Notice of Violation may be based on “swipe” testing which Mateel
26 believes establishes that lead is present on the surface of the
27 Noncompliant Covered Product. The Notice of Violation shall
28 identify the Noncompliant Covered Product by name, description,

1 SKU, UPC, and any other identifying information available to
2 Mateel. MEJF shall provide with the Notice of Violation copies of
3 all available purchase receipts, product tags, labels, and picture(s) of
4 the Noncompliant Covered Product, and any test results showing lead
5 levels in excess of the applicable reformulation standard, if any.

6 (b) Within 15 business days of receiving such a Notice of Violation,
7 Daiso shall provide notice to MEJF of its election to contest or not to
8 contest the Notice of Violation. If Daiso elects not to contest the
9 Notice of Violation, it shall, within 5 business days after providing its
10 notice of election, either (a) stop sale of the Noncompliant Covered
11 Product in California, or (b) provide with the Noncompliant Covered
12 Product a warning that complies with this Consent Judgment. If
13 Daiso is in compliance with this Consent Judgment within 5 business
14 days after providing its notice of election, there shall be no further
15 actions taken related to the Noncompliant Covered Product and the
16 Notice of Violation, and Daiso shall not be liable for any remedies,
17 including injunctive relief, penalties, sanctions, monetary award,
18 attorney's fees, or costs associated with the Noncompliant Covered
19 Product or the Notice of Violation. In the event that Daiso wishes to
20 contest the allegations contained in any Notice of Violation, Daiso
21 may provide with its notice of election any evidence to MEJF that in
22 Daiso's judgment supports its position. In the event that, upon a
23 good faith review of the evidence, MEJF agrees with Daiso's
24 position, it shall notify Daiso and no further action shall be taken. If
25 MEJF disagrees with Daiso's position, it shall, within 30 days, notify
26 Daiso of such and provide Daiso, in writing, with the reasons for its
27 disagreement. Thereafter, the Parties shall meet and confer to
28 attempt to resolve their dispute on mutually acceptable terms.

1 (c) If either (a) there is no resolution of the meet and confer process
2 required under Section (b) within 45 days, (b) Daiso fails to provide
3 written notice of its election to correct or contest the violations
4 identified in a Notice of Violation within 15 days, or (c) Daiso fails to
5 correct any uncontested violations identified in a Notice of Violation
6 within 30 days, MEJF may seek to enforce the terms and conditions
7 contained in this Consent Judgment in the Superior Court of the State
8 of California, County of San Francisco, or may initiate an
9 enforcement action for new violations pursuant to Health and Safety
10 Code § 25249.7(d).

11 (d) The Notice and Cure provision set forth in this section is only
12 effective and required once for the Covered Products at issue in this
13 matter. Any subsequent allegations from MEJF regarding
14 Proposition 65 violations by Daiso for Covered Products, or any
15 other products, need not follow the Notice and Cure procedure and
16 MEJF may seek whatever fines, costs, penalties or remedies as may
17 be provided by law for any violation of Proposition 65 or this
18 Consent Judgment.

19 **6. MODIFICATION OF JUDGMENT**

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

24 **7. INJUNCTIVE RELIEF: BRASS PADLOCKS, NOZZLES AND FITTINGS**

25 7.1 Brass Padlocks, Nozzles and Fittings shall be deemed to comply with Proposition
26 65 and be exempt from any Proposition 65 warning requirements if the subject Brass Padlocks,
27 Nozzles and Fittings meet the following criteria: (a) the brass alloy from which the Brass
28 Padlocks, Nozzles and Fittings are made shall have no lead as an intentionally added constituent;

1 and (b) the brass alloy from which the Brass Padlocks, Nozzles and Fittings are made shall have a
2 lead content by weight of no more than 0.03% (300 parts per million, or “300 ppm”). Daiso may
3 comply with the above requirements by relying on information obtained from its suppliers
4 regarding the content of the brass alloy from which the Brass Padlocks, Nozzles and Fittings are
5 made, provided such reliance is in good faith. Obtaining test results showing that the lead content
6 is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of
7 quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish
8 good faith reliance. In the event that MEJF enters a consent judgment with any other person
9 which requires a less stringent lead reformulation standard for Brass Padlocks, Nozzles and
10 Fittings, Daiso may seek modification of this Consent Judgment to incorporate the less stringent
11 lead reformulation standard.

12 7.2 Brass Padlocks, Nozzles and Fittings that do not meet the warning exemption
13 standard set forth in Section 7.1 of the Consent Judgment shall be accompanied by a warning as
14 described in paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall
15 apply only to: (1) Brass Padlocks, Nozzles and Fittings that Daiso ships for distribution after 90
16 days after entry of this Consent Judgment (“the Effective Date”); and (2) Brass Padlocks, Nozzles
17 and Fittings manufactured, distributed, marketed, sold or shipped for sale or use inside the State
18 of California.

19 7.3 Daiso shall provide Proposition 65 warnings as follows:

20 (a) Daiso shall provide either of the following warning statements:

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

25 or

26 **WARNING:** This product contains chemicals, including lead, known to
27 the State of California to cause birth defects or other reproductive harm.
28 *Wash hands after handling.*

1 The word “WARNING” shall be in bold. The words “Wash hands after
2 handling” shall be in bold and italicized. Daiso shall provide such warning as
3 follows: 1) directly on or with the unit package of the Brass Padlocks, Nozzles
4 and Fittings. Such warning shall be prominently affixed to or printed on each
5 padlock, nozzle or fitting or its label or package. If printed on the label itself, the
6 warning shall be contained in the same section that states other safety warnings, if
7 any, concerning the use of the product. Or 2) As a point-of-sale warning. If
8 point-of-sale warnings signs are used, a single sign shall be posted at each
9 location where Covered Products are displayed. Warning signs posted at
10 the point of display may be worded in the plural, and may be free-standing,
11 placed on the wall, hung, or displayed in any manner, so long as they are
12 reasonably likely to be seen by customers at or before the time of purchase.

13 (b) The requirements for product labeling or point-of-sale warnings, set forth
14 in subparagraph (a) above are imposed pursuant to the terms of this Consent
15 Judgment. The parties recognize that product labeling is not the exclusive method
16 of providing a warning under Proposition 65 and its implementing regulations.

17 (c) If Proposition 65 warnings for lead or lead compounds should no longer be
18 required, Daiso shall have no further warning obligations pursuant to this Consent
19 Judgment.

20 **8. INJUNCTIVE RELIEF: COVERED PVC-HANDLED TOOLS**

21 8.1 Within one hundred twenty (120) days after entry of this Consent Judgment, PVC
22 used in the production of handles for Covered PVC-Handled Tools distributed for sale by Daiso
23 in California shall meet the following criteria or shall comply with the requirements of Section
24 8.2 below:

- 25 (a) The PVC shall have no lead as an intentionally added constituent;
- 26 (b) A representative sample of the bulk PVC used to manufacture the Covered
27 PVC-Handled Tools shall have been tested for lead, and must have shown
28 lead content by weight of less than 0.02% (200 parts per million “200

1 ppm”), using a test method of sufficient sensitivity to establish a limit of
2 quantification (as distinguished from detection) of less than 200 ppm.

- 3 (c) Daiso may comply with the above requirements by relying on
4 information obtained from its suppliers of the tools and PVC utilized
5 on the handles thereof provided such reliance is in good faith. In the
6 event that MEJF enters a consent judgment with any other person which
7 requires a less stringent lead reformulation standard for Covered PVC-
8 Handled Tools, Daiso may seek modification of this Consent Judgment to
9 incorporate the less stringent lead reformulation standard.

10 8.2 Covered PVC-Handled Tools that do not meet the warning exemption standard set
11 forth in Section 8.1 of the Consent Judgment shall be accompanied by a warning as described in
12 paragraph 8.3 below. The warning requirements set forth in paragraph 8.3 shall apply only to:

13 (1) Covered PVC-Handled Tools that Daiso ships for distribution after 90 days after entry of this
14 Consent Judgment (“the Effective Date”); and (2) Covered PVC-Handled Tools manufactured,
15 distributed, marketed, sold or shipped for sale or use inside the State of California.

16 8.3 Daiso shall provide Proposition 65 warnings as follows:

- 17 (a) Daiso shall provide either of the following warning statements:

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

22 or

23 **WARNING:** This product contains chemicals, including lead, known to
24 the State of California to cause birth defects or other reproductive harm.
25 ***Wash hands after handling.***

26 The word “WARNING” shall be in bold. The words “Wash hands after
27 handling” shall be in bold and italicized. Daiso shall provide such warning as
28 follows: 1) directly on or with the unit package of the Covered PVC-Handled

1 Tools. Such warning shall be prominently affixed to or printed on each Covered
2 PVC-Handled Tools or its label or package. If printed on the label itself, the
3 warning shall be contained in the same section that states other safety warnings, if
4 any, concerning the use of the product. Or 2) As a point-of-sale warning. If
5 point-of-sale warnings signs are used, a single sign shall be posted at each
6 location where Covered Products are displayed. Warning signs posted at
7 the point of display may be worded in the plural, and may be free-standing,
8 placed on the wall, hung, or displayed in any manner, so long as they are
9 reasonably likely to be seen by customers at or before the time of purchase.

10 (b) The requirements for product labeling, set forth in subparagraph (a) above
11 are imposed pursuant to the terms of this Consent Judgment. The parties recognize
12 that product labeling and/or point –of-sale warnings are not the exclusive method
13 of providing a warning under Proposition 65 and its implementing regulations.

14 (c) If Proposition 65 warnings for lead or lead compounds should no
15 longer be required, Daiso shall have no further warning obligations pursuant
16 to this Consent Judgment.

17 **9. AUTHORITY TO STIPULATE**

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

21 **10. RETENTION OF JURISDICTION**

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

24 **11. ENTIRE AGREEMENT**

25 This Consent Judgment contains the sole and entire agreement and understanding
26 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments and understandings related hereto. No representations, oral or
28 otherwise, express or implied, other than those contained herein have been made by any party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
2 deemed to exist or to bind any of the parties.

3 **12. GOVERNING LAW**

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

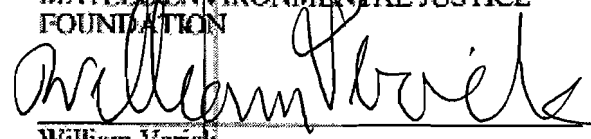
7 **13. COURT APPROVAL**

8 If this Consent Judgment is not approved by the Court, it shall be of no force or
9 effect, and cannot be used in any proceeding for any purpose.

10 **IT IS SO STIPULATED:**

11 DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

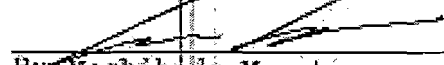


William Verick
CEO Mateel Environmental Justice
Foundation,
Klamath Environmental Law Center

17 DATED:

1/21/11

DAISO CALIFORNIA, LLC


By: Yoshihide Murata
Its: Senior Vice President

22 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

25 DATED:

JUDGE OF THE SUPERIOR COURT