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6 VEYANCE TECHNOLOGIES, INC.

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**
10 **(UNLIMITED JURISDICTION)**

11
12 MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,

13
14 Plaintiff,

15 v.

16 SUPERIOR PRODUCTS, INC.; and
17 VEYANCE TECHNOLOGIES, INC.

18 Defendants.

CASE NO.: CGC-09-486753

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT VEYANCE
TECHNOLOGIES, INC.**

19
20 **1. INTRODUCTION**

21 **1.1** On March 30, 2009, the MATEEL ENVIRONMENTAL JUSTICE
22 FOUNDATION (“Mateel” or “Plaintiff”), acting on behalf of itself and the general public, filed a
23 Complaint for civil penalties and injunctive relief, as may be amended (“Complaint”), in San
24 Francisco County Superior Court, Case No. CGC-09-486753, against Defendant Veyance
25 Technologies, Inc. (“Veyance” or “Defendant”). Mateel and Veyance may be referred to herein
26 individually as “Party” and collectively as the “Parties.” The Complaint alleges, among other
27 things, that Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act
28 of 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). The Complaint
further alleges that Veyance has knowingly and intentionally exposed persons to lead and/or lead

1 compounds ("Lead") contained within brass and/or bronze components that were manufactured,
2 distributed, sold, offered for sale and/or marketed, separately, or as part of brass components of
3 equipment used in connection with torches and welding equipment, or as part of hose products
4 (including but not limited to gas, liquid, and/or multipurpose hoses) ("Products"), without first
5 providing a clear and reasonable warning to such individuals.

6 **1.2** Mateel sent Veyance, the California Attorney General, all California District
7 Attorneys, and all City Attorneys of every California city with populations exceeding 750,000, a
8 60-Day Notice of Violation dated December 4, 2008. Mateel also sent W.W. Grainger, Inc.
9 ("Grainger"), the California Attorney General, all California District Attorneys, and all City
10 Attorneys of every California city with populations exceeding 750,000 a 60-Day Notice of
11 Violation dated February 24, 2009. Mateel also sent to Veyance, The Goodyear Tire & Rubber
12 Company ("Goodyear"), Grainger, the California Attorney General, all California District
13 Attorneys, and all City Attorneys of every California city with populations exceeding 750,000 a
14 60-Day Notice of Violation dated August 27, 2009. The December 4, 2008, February 24, 2009
15 and the August 27, 2009 60-Day Notices shall be collectively referred to herein as the "Notices."

16 **1.3** Mateel subsequently filed a lawsuit alleging violations of Proposition 65 against
17 the entities whose products were identified in the February 24, 2009 notice, including Grainger.
18 See Case No. CGC-09-488626, filed in the Superior Court of the State of California, County of
19 San Francisco on or about May 22, 2009 ("Case 09-488626"). The Parties agree that upon entry
20 of this Consent Judgment, Mateel will dismiss without prejudice its claims against Grainger in
21 Case 09-488626, and also agrees that as to the Covered Products, Grainger and Goodyear are full
22 beneficiaries of all of the releases, *res judicata* and collateral estoppel effects that are provided by
23 this Consent Judgment.

24 **1.4** Veyance is a business that employs ten or more persons and manufactures,
25 distributes, and/or markets Products within the State of California. Veyance's Products are
26 alleged to contain Lead. Lead is a chemical known to the State of California to cause cancer and
27 is a reproductive toxin pursuant to Health and Safety Code Section 25249.9. Under specified
28 circumstances, products containing Lead that are sold or distributed in the State of California are
subject to the Proposition 65 warning requirement set forth in Health and Safety Code Section

1 25249.6. Mateel alleges that Products manufactured, distributed, sold and/or marketed by
2 Veyance for use in California require a warning under Proposition 65. Veyance denies that a
3 warning is required, denies Plaintiff's allegations, and contends that it is not in violation of any
4 aspect of Proposition 65 and denies any liability or wrongdoing whatsoever.

5 1.5 For purposes of this Consent Judgment, the term "Covered Products" shall be
6 defined as those Products containing Lead as described in the Complaint and the Notices, that are
7 or have been manufactured, distributed, marketed, sold or offered for sale, whether by itself or as
8 a component of another product, by Veyance and/or any of its parents and predecessors
9 (specifically including, but not limited to Goodyear), and which are used in or offered for sale in
10 the State of California, regardless of whether they bear labels and/or other identifying information
11 relating to Veyance.

12 1.6 For purposes of this Consent Judgment, the Parties stipulate that this Court has
13 jurisdiction over the allegations of violations contained in the Notices and the Complaint and that
14 it has personal jurisdiction over Veyance as to the acts alleged in the Notices and the Complaint,
15 that venue is proper in the County of San Francisco. For purposes of this Consent Judgment, the
16 Parties further stipulate that this Court has jurisdiction to enter this Consent Judgment as a full
17 settlement and resolution of the allegations contained in the Notices and the Complaint and of any
18 and all claims that were or could have been raised by any person or entity based in whole or in
19 part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

20 1.7 This Consent Judgment resolves all claims that were brought or could have been
21 brought by Mateel concerning Covered Products. The Parties enter into this Consent Judgment
22 pursuant to a full and final settlement of any and all claims between the Parties for the purpose of
23 avoiding litigation. This Consent Judgment is not and shall not constitute an admission with
24 respect to any allegation of the Notices or the Complaint, each and every allegation of which
25 Veyance denies, nor may this Consent Judgment or compliance therewith be used as evidence of
26 any wrongdoing, misconduct, culpability or liability on the part of Veyance or any other
27 Defendant.

28 2. **SETTLEMENT PAYMENT**

2.1 Veyance shall pay \$7,500 to the Ecological Rights Foundation in lieu of any

1 penalty pursuant to Health and Safety Code Section 25249.7(b). The Ecological Rights
2 Foundation shall use such funds to work to protect people from exposures to toxic chemicals.

3 **2.2** Veyance shall pay \$5,000 to Californians For Alternatives To Toxics in lieu of any
4 penalty pursuant to Health and Safety Code Section 25249.7(b). Californians For Alternatives To
5 Toxics shall use such funds to work to protect people from exposures to toxic chemicals.

6 **2.3** Veyance shall pay \$20,000 to reimburse Mateel and its attorneys for their
7 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
8 investigating, litigating and negotiating a settlement in the public interest. The payment required
9 under this Section shall be made payable to the Klamath Environmental Law Center.

10 **2.4** Payments required under Sections 2.1, 2.2, and 2.3 above shall be delivered to the
11 Klamath Environmental Law Center within ten (10) business days after delivery of the fully
12 executed Notice of Entry of the Consent Judgment by Mateel to Veyance, along with completed
13 United States Internal Revenue Service (IRS) 1099 forms for each person or entity specified in
14 Sections 2.1, 2.2, and 2.3, unless the Consent Judgment is entered over an objection filed with the
15 Court in advance of the hearing on the Court's approval of the Consent Judgment. Should the
16 Court enter the Consent Judgment over an objection, the payments required under Sections 2.1,
17 2.2, and 2.3 shall be due within ten (10) business days after delivery of written notice by Mateel
18 that the judgment has become final, including any appeal, along with completed IRS 1099 forms
19 for each person or entity specified in Sections 2.1, 2.2, and 2.3. Delivery of the fully executed
20 Notice of Entry of the Consent Judgment and/or written notice by Mateel that the judgment has
21 become final under this Section may be performed *via* transmission of electronic correspondence
22 to the addresses indicated in Section 14.

23 **3. MATTERS COVERED BY THIS CONSENT JUDGMENT**

24 **3.1** As to exposures to Lead alleged to be caused by the Covered Products, this
25 Consent Judgment is a final and binding resolution in the public interest between Mateel, acting
26 on behalf of itself and the general public, and Veyance of: (a) any violation of Proposition 65
27 (including but not limited to the claims made in the Notice(s) or Complaint); and (b) any other
28 statutory or common law claim to the fullest extent that any of the foregoing described in this
Section were or could have been asserted by any person or entity against Veyance or its officers,

1 directors, employees, parents, predecessors, successors, subsidiaries, affiliates (specifically
2 including, but not limited to Goodyear), and all of their suppliers, customers, distributors,
3 wholesalers, retailers (specifically including, but not limited to Grainger), or any other person in
4 the course of doing business, and the successors and assigns of any of them, who may
5 manufacture, use, maintain, distribute, sell, or offer for sale Covered Products ("Released
6 Entities"), based on its or their exposure of persons to Lead or its or their failure to provide a clear
7 and reasonable warning of exposure to such individuals; and (c) as to alleged exposures to Lead
8 from Covered Products, any other claim based in whole or in part on the facts alleged in the
9 Notice(s) or Complaint, whether based on actions committed by the Released Entities or others.
10 As to alleged exposures to Lead from Covered Products, compliance with the terms of this
11 Consent Judgment resolves any issue, now and in the future, concerning compliance by Veyance
12 and the Released Entities, with the requirements of Proposition 65 with respect to Covered
13 Products and any alleged resulting exposure.

14 **3.2** As to alleged Lead exposures from Covered Products, Mateel, by and on behalf of
15 the public interest, itself and its respective agents, successors and assigns, waives any and all
16 rights to institute any form of legal action, and releases all claims against Veyance and/or any
17 Released Entities, and all of their suppliers, customers, distributors, wholesalers, retailers, and/or
18 any other person in the course of doing business, and the successors and assigns of any of them,
19 who may manufacture, use, maintain, distribute, sell or offer for sale the Covered Products,
20 whether under Proposition 65 or otherwise, arising out of or resulting from, or related directly or
21 indirectly to, in whole or in part, the Covered Products, including but not limited to any exposure
22 to, or failure to warn with respect to, the Covered Products (referred to collectively in this
23 paragraph as the "Claims"). In furtherance of the foregoing, as to alleged exposures to Covered
24 Products, Mateel hereby waives any and all rights and benefits which it now has, or in the future
25 may have, conferred upon it with respect to the Claims by virtue of the provisions of Section
26 1542 of the California Civil Code, which provides as follows:

27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
28 **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

1 Mateel understands and acknowledges that the significance and consequence of this
2 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages arising
3 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
4 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
5 to, Covered Products, Mateel will not be able to make any claim for those damages against
6 Veyance or any Released Entities. Furthermore, Mateel acknowledges that it intends these
7 consequences for any such Claims as may exist as of the date of this release but which Mateel
8 does not know exist, and which, if known, would materially affect their decision to enter into this
9 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
10 oversight, error, negligence, or any other cause.

11 **4. PRESERVATION OF INDUSTRY COMPETITIVENESS**

12 4.1 If, with respect to the Products referenced in Section 1.1 of this Consent Judgment,
13 the Attorney General of the State of California permits any other reformulation standard by way
14 of settlement and compromise with any other person or entity or if the Attorney General, Plaintiff,
15 and/or its respective agents, successors and assigns enter into, or agree in writing relating to: (a)
16 any Product reformulation standards other than those specified in this Consent Judgment; and/or
17 (b) any other Product Proposition 65 warning other than specified in this Consent Judgment, then
18 this Consent Judgment shall be deemed amended to provide Veyance the option of exercising
19 those provisions. Veyance will provide Mateel with written notice of any election made pursuant
20 to this Section.

21 **5. ENFORCEMENT OF JUDGMENT**

22 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
23 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
24 San Francisco County, enforce the terms and conditions contained herein.

25 **6. MODIFICATION OF JUDGMENT**

26 6.1 This Consent Judgment may be modified by: (a) written agreement of the Parties
27 and upon entry of a modified Consent Judgment by the Court thereon; (b) motion of any party as
28 provided by law and upon entry of a modified Consent Judgment by the Court; and/or (c) as
specified in Section 4.1 of this Consent Judgment.

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7. **INJUNCTIVE RELIEF**

7.1 Subject to the provisions of Sections 7.1, 7.2, 7.3, and 7.4, as to any Covered Product that contains a component made from brass and/or bronze that contains lead as an intentionally added ingredient, and where such brass and/or bronze comes into direct contact with the user through the normal, reasonable and anticipated use of the Covered Product, a warning that substantially conforms with one of the following warning statements shall be provided:

(a) **“WARNING:** This product contains chemicals, including lead, known to the State of California to cause birth defects and other reproductive harm. ***Wash hands after handling,***”

(b) **“WARNING:** Handling the brass or bronze parts of this product will expose you to lead, a chemical known to the State of California to cause birth defects and other reproductive harm. ***Wash hands after handling,***” or

(c) **“WARNING:** This product contains 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 text, and the phrase “Wash hands after handling” shall be in bold italic text.

(d) The warning statements required in paragraph 7.1 shall be affixed to or printed on the Covered Product itself or to the Covered Product’s packaging, labeling, or instruction booklet, if any. The warning shall be prominently affixed to or printed on the Covered Product or packaging, labeling, or instruction booklet, and displayed with such conspicuousness, as compared with other words, statements, designs, or devices on the Covered Product, or its packaging, labeling, or instruction booklet, as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this paragraph, a warning may be contained in the same section of the packaging, labeling, or instruction booklet that contains other safety warnings, if any, concerning the use of the Covered Product, or near its displayed price and/or UPC code. The type size of the warning must be legible, but need not be any

1 larger than any other warning provided for the Covered Product, and its relative
2 size may take into account the nature, immediacy, and acuteness of the risks for
3 which other warnings are provided.

4 7.2 The warning requirements specified in Section 7.1 shall only apply to Covered
5 Products that are manufactured, sold, offered for sale and/or distributed by Veyance and/or any
6 Released Entities 180 days after this Consent Judgment becomes final and non-appealable.

7 7.3 The warning requirements of Section 7.1 shall not apply to any Products
8 containing 600 parts per million (ppm) lead content or less. Mateel agrees that as to the lead
9 content of any reformulated Products, Veyance and/or any Released Entities may rely upon the
10 representations of their respective suppliers and/or the parents, predecessors, subsidiaries,
11 affiliates, distributors, wholesalers, and/or retailers, or any other person in the course of doing
12 business, and the successors and assigns of any of them, who supply, distribute or sell the
13 reformulated Products to Veyance, provided Veyance's reliance is in good faith.

14 7.4 If Proposition 65 warnings for Lead should no longer be required, Veyance's
15 warning obligations under this Consent Judgment shall immediately terminate.

16 8. **AUTHORITY TO STIPULATE**

17 Each signatory to this Consent Judgment certifies that (s)he is fully authorized by
18 the Party (s)he represents to enter into this Consent Judgment and to execute it on behalf of the
19 Party (s)he represents and to legally to bind that Party.

20 9. **TERMINATION DATE**

21 This Consent Judgment shall terminate and no longer be of any force or effect as
22 of January 1, 2012, except that Sections 3.1, 3.2, 7.1, and 7.2 shall survive termination unless or
23 until modified per the terms of this Consent Judgment.

24 10. **ENTIRE AGREEMENT**

25 This Consent Judgment contains the sole and entire agreement and understanding
26 of the Parties with respect to the subject matter hereof. No representations, oral or otherwise,
27 express or implied, other than those contained herein have been made by any party hereto. No
28 other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or
to bind any of the Parties.

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11. EXECUTION AND COUNTERPARTS

This Consent Judgment may be executed in counterparts and by means of electronic mail and/or facsimile, which taken together shall be deemed to constitute one document.

12. 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.

13. COURT APPROVAL

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

14. NOTICES

Any notices under this Consent Judgment shall be by personal delivery, electronic mail and/or First Class Mail as provided in this Section.

If to Mateel:

William Verick
(wverick@igc.org)
Klamath Environmental Law Center
424 First Street,
Eureka, CA 95501

If to Veyance:

Teresa M. Sebastian, Esq., Vice President, General Counsel and Corporate Secretary
(teresa_sebastian@veyance.com)
Brooke Brady, Attorney
(brooke_brady@veyance.com)
Veyance Technologies, Inc.
703 S. Cleveland-Massillon Road, 4th Floor
Fairlawn, Ohio 44333-3203.

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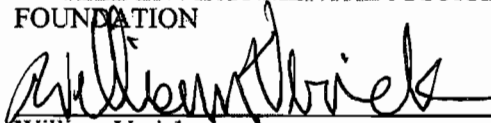
With a copy to:

Malcolm C. Weiss, Esq. (mweiss@hunton.com)
Catherine Allen, Esq. (callen@hunton.com)
Ian Forrest, Esq. (iforrest@hunton.com)
HUNTON & WILLIAMS LLP
550 S. Hope Street, Suite 2000
Los Angeles, California 90071

IT IS SO STIPULATED:

DATED: *Dec. 11, 2009*

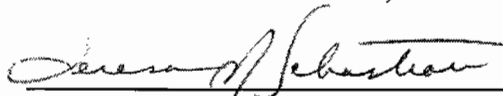
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED: *December 11, 2009*

VEYANCE TECHNOLOGIES, INC.



Teresa M. Sebastian, Esq.
Vice President, General Counsel and Corporate
Secretary

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT