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18 MATEEL ENVIRONMENTAL JUSTICE
19 FOUNDATION

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,,

Plaintiff,

v.

COILHOSE PNEUMATICS, INC. and
LOWE'S HIW, INC.

Defendants.

Case No. CGC-09-495332

CONSENT JUDGMENT

1. INTRODUCTION

1.1 On December 21, 2009, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. CGC-09-495332, against Defendant Lowe's, HIW, Inc. ("Lowe's"). The Complaint alleges, among other things, that Lowe's violated provisions

1 of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
2 Sections 25249.5, *et seq.* (“Proposition 65”). In particular, Mateel alleges that Lowe’s has
3 knowingly and intentionally exposed persons to hand tools that are made of brass or that
4 have brass components that contains lead and/or lead compounds (hereinafter “leaded
5 brass”), without first providing a clear and reasonable warning to such individuals. Lead
6 and lead compounds are chemicals known to the State of California to cause cancer and
7 birth defects or other reproductive harm.

8 1.2 On August 27, 2009, Mateel sent a 60-Day Notice letter (“Notice Letter”) to
9 Lowe’s, the California Attorney General, all California District Attorneys, and all City
10 Attorneys of every California city with populations exceeding 750,000. Subsequently,
11 and pursuant to negotiations regarding settlement of this matter, Mateel sent notices to
12 three additional entities, Jore Corporation, Shining Golden Yida Welding And Cutting
13 Machinery Manufacture Limited , and Plastair Division Of Lubecki Technical Holdings
14 (hereinafter “Settling Defendants”). These notices were also served on the California
15 Attorney General, all California District Attorneys, and all City Attorneys of every
16 California city with populations exceeding 750,000.

17 1.3 The parties stipulate that upon execution of this Consent Judgment, the
18 complaint in this manner is hereby amended to add Jore Corporation, Shining Golden
19 Yida Welding And Cutting Machinery Manufacture Limited, and Plastair Division Of
20 Lubecki Technical Holdings as defendants.

21 1.4 Lowe’s and Settling Defendants are businesses that employ ten or more
22 persons and manufacture, distribute, and/or market brass tools, air hose couplers and
23 fittings, within the State of California. Some of those products are alleged to contain lead
24 and/or lead compounds. Lead and lead compounds are chemicals known to the State of
25 California to cause cancer, and lead is a chemical known to the State of California to
26 cause reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under
27 specified circumstances, products containing lead and/or lead compounds that are sold or
28 distributed in the State of California are subject to the Proposition 65 warning requirement

1 set forth in Health and Safety Code Section 25249.6. Plaintiff Mateel alleges that tools
2 that are made from leaded brass, or that have leaded brass components, are manufactured,
3 distributed, sold and/or marketed by Lowe's and Settling Defendants for use in California
4 and require a warning under Proposition 65.

5 **1.5** For purposes of this Consent Judgment, the term "Covered Products" shall
6 be defined as tools, air hoses, and couplers that are made from leaded brass or that have
7 leaded brass components that a consumer touches while using the tools in their normally
8 intended manner, to the extent such products are distributed and sold within the state of
9 California, and that are manufactured, distributed and marketed by Settling Defendants,
10 regardless of whether they bear Lowe's' labels.

11 **1.6** For purposes of this Consent Judgment, the parties stipulate that this Court
12 has jurisdiction over the allegations of violations contained in the Complaint and personal
13 jurisdiction over Lowe's and Settling Defendants as to the acts alleged in the Complaint,
14 that venue is proper in the County of San Francisco and that this Court has jurisdiction to
15 enter this Consent Judgment as a full settlement and resolution of the allegations
16 contained in the Complaint and of all claims that were or could have been raised by any
17 person or entity based in whole or in part, directly or indirectly, on the facts alleged
18 therein or arising therefrom or related thereto.

19 **1.7** This Consent Judgment resolves claims that are denied and disputed. The
20 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
21 all claims between the parties for the purpose of avoiding prolonged litigation. This
22 Consent Judgment shall not constitute an admission with respect to any material allegation
23 of the Complaint, each and every allegation of which Lowe's and the Settling Defendants
24 deny, nor may this Consent Judgment or compliance with it be used as evidence of any
25 wrongdoing, misconduct, culpability or liability on the part of Lowe's or the Settling
26 Defendants.

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2. SETTLEMENT PAYMENT

2.1 In settlement of all of the claims referred to in this Consent Judgment against the Lowe's and Settling Defendants, Settling Defendants Jore Corporation, Shining Golden Yida Welding And Cutting Machinery Manufacture Limited , and Plastair Division Of Lubecki Technical Holdings shall make payments totaling \$40,000 to Lowe's in a manner such that Lowe's may make payments, at least ten (10) days or more prior to the hearing for the motion to enter this Consent Judgment, as follows: (i) \$20,000 made payable to the Klamath Environmental Law Center ("KELC") to cover Mateel's attorneys' fees and costs, (ii) \$10,000 made payable to the Ecological Rights Foundation, (iii) \$10,000, made payable to Californian's Against Toxics. This payment described in (ii) and (iii) are to be used by the Ecological Rights Foundation and Californian's Against Toxics to inform Californians, both of which are California non-profit tax exempt organizations, about toxic chemicals or to eliminate or reduce exposures to toxic chemicals.

2.2 The payments described above shall be delivered to William Verick, 424 First Street, Eureka, CA 95501. If payment has not been received as provided in this paragraph, Plaintiff may withdraw any motion to approve and enter the agreement and the agreement shall become null and void. If this Consent Judgment has not been approved and entered by the Court within 120 days of the execution of the agreement by the parties, the payments described above shall be promptly returned to the Lowe's, and the terms of this agreement shall be null and void.

2.3 At the time that the payments referenced in Section 2.1 are delivered as provided in Section 2.2., Lowe's HIW, Inc. will be dismissed from this action with prejudice, effective as to the Covered Products that Settling Defendants shipped before the "Effective Date" as defined in paragraph 7.2.

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, Lowe's, Settling Defendants and Mateel
4 waive their respective rights to a hearing or trial on the allegations of the Complaint.

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

6 **4.1** Upon entry of this Consent Judgment, Lowes shall be deemed to have been
7 dismissed from the complaint with prejudice.

8 **4.2** As to lead exposures caused by Covered Products, this Consent Judgment is
9 a final and binding resolution between Mateel, acting on behalf of itself and, as to those
10 matters raised in the Notice Letter, the general public, and Settling Defendants, of:

11 (i) any violation of Proposition 65 with respect to the Covered Products, and (ii) any other
12 statutory or common law claim, to the fullest extent that any of the foregoing described in

13 (i) or (ii) were or could have been asserted by Mateel against Settling Defendants based
14 upon those matters raised in the Notice Letter and arising out of or relating to Settling
15 Defendants' compliance with Proposition 65, or regulations promulgated thereunder, with
16 respect to the Covered Products, and any other claim based in whole or part on the facts
17 alleged in the Complaint, whether based on actions committed by Settling Defendants or
18 any entity within Settling Defendants' chain of distribution, including, but not limited to,
19 manufacturers, wholesale or retail sellers or distributors and any other person in the course
20 of doing business. As to those matters raised in the Notice Letter, compliance with the
21 terms of this Consent Judgment resolves any issue, now and in the future, concerning
22 compliance by Settling Defendants and its parents, subsidiaries or affiliates, predecessors,
23 officers, directors, employees, and all of their manufacturers, customers, distributors,
24 wholesalers, retailers or any other person in the course of doing business, and the
25 successors and assigns of any of these who may manufacture, use, maintain, distribute,
26 market or sell Covered Products, with the requirements of Proposition 65.

27 **4.3** As to those alleged exposures to Covered Products raised in the Notice
28 Letter, Mateel, acting on behalf of itself and the general public, and Mateel's agents,

1 successors and assigns, waive all rights to institute any form of legal action, and release
2 all claims against Settling Defendants and their parents, subsidiaries or affiliates,
3 predecessors, officers, directors, employees, and all of its customers, manufacturers,
4 distributors, wholesalers, retailers or any other person in the course of doing business, and
5 the successors and assigns of any of them, who may manufacture, use, maintain, distribute
6 or sell the Covered Products, whether under Proposition 65 or otherwise, arising out of or
7 resulting from, or related directly or indirectly to, in whole or in part, the Covered
8 Products and claims identified in Mateel's Notice Letter. In furtherance of the foregoing,
9 Mateel, acting on behalf of itself hereby waives any and all rights and benefits which it
10 now has, or in the future may have, conferred upon it with respect to the Covered Products
11 by virtue of the provisions of Section 1542 of the California Civil Code, which provides
12 as follows:

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

19 Mateel understands and acknowledges that the significance and consequence of this
20 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
21 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
22 Covered Products, it will not be able to make any claim for those damages against Settling
23 Defendants, its parents, subsidiaries or affiliates, predecessors, officers, directors,
24 employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or
25 any other person in the course of doing business, and the successors and assigns of any of
26 them, who may manufacture, use, maintain, distribute or sell the Covered Products.
27 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
28 which may exist as of the date of this release but which Mateel does not know exist, and

1 which, if known, would materially affect its decision to enter into this Consent Judgment,
2 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
3 negligence, or any other cause.

4 **5. ENFORCEMENT OF JUDGMENT**

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

9 **6. MODIFICATION OF JUDGMENT**

10 Except as provided for in paragraph 7.3(c), this Consent Judgment may be
11 modified only upon written agreement of the parties and upon entry of a modified Consent
12 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
13 entry of a modified Consent Judgment by the Court.

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

15 7.1 Covered Products shall be deemed to comply with Proposition 65 and be
16 exempt from any Proposition 65 warning requirements if Settling Defendants choose to
17 comply with one of the following Warning Exemption Standards:

18 (a) Warning Exemption Standard A ("All Materials") - Covered Products
19 shall be deemed to comply with Proposition 65 and be exempt from any
20 Proposition 65 warning requirements if the materials of the Covered Products meet
21 the following criteria: all the materials that comprise all surfaces of the Covered
22 Products that would normally be touched by a consumer during normal use shall
23 have a lead content by weight of no more than 0.03% (300 parts per million, or
24 "300 ppm"). Settling Defendants may comply with the above requirement by
25 relying on information obtained from their suppliers regarding materials content,
26 provided such reliance is in good faith. Obtaining test results showing that the lead
27 content is no more than 0.03%, using a method of sufficient sensitivity to establish
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1 a limit of quantification (as distinguished from detection) of less than 300 ppm
2 shall be deemed to establish good faith reliance.

3
4 (b) Warning Exemption Standard B (“Brass Only”) - Covered Products shall
5 be deemed to comply with Proposition 65 and be exempt from any Proposition 65
6 warning requirements if the brass that is part of the Covered Products meets the
7 following criteria: the brass alloy from which the brass fittings are made shall have
8 a lead content by weight of no more than 0.03% (300 parts per million, or “300
9 ppm”). Settling Defendants may comply with the above requirements by relying
10 on information obtained from their suppliers regarding the content of the brass
11 alloy from which the brass fittings are made, provided such reliance is in good
12 faith. Obtaining test results showing that the lead content is no more than 0.03%,
13 using a method of sufficient sensitivity to establish a limit of quantification (as
14 distinguished from detection) of less than 300 ppm shall be deemed to establish
15 good faith reliance. If Settling Defendants choose to exercise this Warning
16 Exemption Standard B, notwithstanding any other provisions of this Consent
17 Judgment, the releases contemplated herein shall apply only as to the brass
18 components of any Covered Products.

19 7.2 Covered Products that do not meet the Warning Exemption Standards set
20 forth in Section 7.1 of the Consent Judgment shall be accompanied by a warning as
21 described in paragraph 7.3 below. The warning requirements set forth in paragraph 7.3
22 shall apply only to: (1) Covered Products that Settling Defendants ship for distribution
23 after 120 days after entry of this Consent Judgment (the “Effective Date”); and (2)
24 products manufactured, distributed, marketed, sold or shipped for sale or use inside the
25 State of California.

26 7.3 Settling Defendants shall provide Proposition 65 warnings as follows:

27 (a) Settling Defendants shall provide either of the following warning
28 statements:

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

or

WARNING: This product contains one or more chemicals, including lead, 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.

Settling Defendants 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, Settling Defendants shall have no further warning obligations pursuant to this Consent Judgment. In the event that Settling Defendants cease to implement or modify the warnings required under this Consent Judgment (because of a change in the law or otherwise), Settling Defendants shall provide written notice to Mateel (through KELC) of their intent to do so, and of the basis for its intent, no less than thirty (30) days in

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advance. Mateel shall notify Settling Defendants in writing of any objection within thirty (30) days of its receipt of such notice, or such objection by Mateel shall be waived.

(d) If after the Effective Date, Settling Defendants ships Covered Products to a retailer or distributor outside of California that neither provide the warnings specified in this paragraph nor meet the Reformulation Standard specified in paragraphs 7.1 through 7.3 of this Consent Judgment (“Non-Conforming Covered Products”), and if the retailer or distributor then offers those Non-Conforming Covered Products for sale in California, then as to those Non-Conforming Covered Products, that retailer or distributor, and their customers, are not released pursuant to Sections 4.1 and 4.2 above.

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

1 be governed by the laws of the State of California, without reference to any conflicts of
2 law provisions of California law.

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4 **12. NOTICES**

5 Any notices called for under the terms of the consent judgment shall be
6 addressed to the following parties:

7 For Mateel:

8 William Verick
9 Klamath Environmental Law Center
10 424 First Street, Eureka, CA 95501

11 For Lowe's:

12 CHARLES D. MAY
13 THARPE & HOWELL
14 15250 Ventura Boulevard, Ninth Floor
15 Sherman Oaks, California 91403-3221

16 For Settling Defendants:

17 Shining Golden Yida Welding and Cutting Machinery Manufacture Limited
18 c/o Donald Ornelas Jr., Esq.
19 Agajanian, McFall, Weiss, Tetreault & Crist LLP
20 346 N. Larchmont Blvd.
21 Los Angeles, CA 90004
22 Phone: (323) 993-0198; Fax: (323) 993-9509

23 Mick Cheff, Vice President
24 Jore Corporation
25 34837 Innovation Dr.
26 Ronan, MT 59864
27 Phone (406) 528-4350
28 Fax: (406) 676-8415

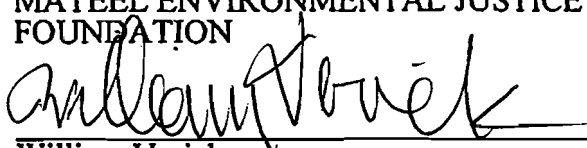
Mr. Thomas Ashcroft, President
Plastair, Div. of Lubecki Technical Holdings
435 St. Valier
Granby, Quebec Canada J2G 8Y4
Phone: (450) 375-9129
Fax: (450) 777-1751

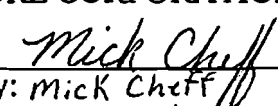
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13. COURT APPROVAL

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: JORE CORPORATION

By: Mick Cheff
Its: President

DATED: SHINING GOLDEN YIDA WELDING AND CUTTING MACHINERY MANUFACTURE LIMITED
By: _____
Its: _____

DATED: PLASTAIR DIVISION OF LUBECKI TECHNICAL HOLDINGS
By: _____
Its: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____
JUDGE OF THE SUPERIOR COURT

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13. 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: JORE CORPORATION

By:
Its:

DATED: SHINING GOLDEN YIDA WELDING AND CUTTING MACHINERY MANUFACTURE LIMITED

By: *[Signature]*
Its: PRESIDENT & CEO

DATED: PLASTAIR DIVISION OF LUBECKI TECHNICAL HOLDINGS

By:
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JUDGE OF THE SUPERIOR COURT

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13. 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: JORE CORPORATION

By:
Its:

DATED: SHINING GOLDEN YIDA WELDING AND CUTTING MACHINERY MANUFACTURE LIMITED

By:
Its:

DATED: Aug 10th, 2010 PLASTAIR DIVISION OF LUBECKI TECHNICAL HOLDINGS

Thomas Ashcroft
By: THOMAS ASHCROFT.
Its: PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JUDGE OF THE SUPERIOR COURT