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12 FOUNDATION

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

16 MATEEL ENVIRONMENTAL
17 JUSTICE FOUNDATION,,

18 Plaintiff,

19 v.

20 GATES CORPORATION: GENUINE
21 PARTS COMPANY and NATIONAL
22 AUTOMOTIVE PARTS ASSOCIATION,
23 INC.,

24 Defendants.

Case No. CGC-010-501271

[PROPOSED] CONSENT JUDGMENT

24 **1. INTRODUCTION**

25 1.1 On July 6, 2010, the MATEEL ENVIRONMENTAL JUSTICE
26 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a
27 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco County
28 Superior Court, Case No. CGC-010-501271, against Defendants Genuine Parts Company

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

10 1.2 On August 27, 2009, a 60-Day Notice letter (“Notice Letter”) was sent by
11 Mateel to NAPA, the California Attorney General, all California District Attorneys, and
12 all City Attorneys of every California city with a population exceeding 750,000.

13 1.3 NAPA is a business that employs ten or more persons and manufactures,
14 distributes, markets, and/or offers for sale brass hose nozzles, within the State of
15 California. Some of those products are alleged to contain lead and/or lead compounds.
16 Lead and lead compounds are chemicals known to the State of California to cause cancer,
17 and lead is a chemical known to the State of California to cause reproductive toxicity
18 pursuant to Health and Safety Code Section 25249.9. Under specified circumstances,
19 products 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 tools and accessories,
22 including leaded brass nozzles, manufactured, distributed, sold and/or marketed by NAPA
23 for use in 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 tools and accessories, including hose nozzles, that utilize leaded brass,
26 whether or not sold as freestanding products or as components of other products to which
27 they are attached, to the extent such products are distributed and sold within the State of
28

1 California, and that are manufactured, distributed, marketed and/or sold by NAPA,
2 regardless of whether they bear NAPA 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 NAPA as to the acts alleged in the Complaint, that venue is proper in the
6 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 allegation
15 of the Complaint, each and every allegation of which NAPA denies; nor may this Consent
16 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct,
17 culpability or liability on the part of NAPA or any other person or entity related to the
18 Defendant.

19 1.7 All products already received or offered for sale by NAPA on or before 120
20 days after entry of this Consent Judgment (the "Effective Date") are deemed to be covered
21 by the waiver and release provisions of Paragraphs 4 of this Consent Judgment and shall
22 not be subject to any enforcement action by Mateel under Paragraph 5 of this Consent
23 Judgment. The reformulation and warning requirements of Paragraph 7 of this Consent
24 Judgment shall apply to products received or offered for sale by NAPA after the Effective
25 Date.

26 **SETTLEMENT PAYMENT**

27 2.1 In settlement of all of the claims that are alleged, or could have been
28 alleged, in the Complaint concerning Covered Products, NAPA shall pay \$25,000 to the

1 Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees.
2 Additionally, NAPA shall pay \$10,000 to the Ecological Rights Foundation for use
3 toward reducing exposures to toxic chemicals and other pollutants, and toward increasing
4 consumer, worker and community awareness of health hazards posed by lead and other
5 toxic chemicals. The parties agree and acknowledge that the charitable contributions
6 made pursuant to this section shall not be construed as a credit against the personal claims
7 of absent third parties for restitution against the defendant. The above described payment
8 shall be forwarded by NAPA so that it is received at least 5 days prior to the hearing date
9 scheduled for approval of this Consent Judgment. If the Consent Judgment is not
10 approved with 120 days of the date scheduled for approval, the above described payments
11 shall be returned and the provisions of this Consent judgment shall become null and void.

12 2.2 NAPA shall not be required to pay a civil penalty pursuant to Health and
13 Safety Code Section 25249.7(b).

14 **3. ENTRY OF CONSENT JUDGMENT**

15 3.1 The parties hereby request that the Court promptly enter this Consent
16 Judgment. Upon entry of the Consent Judgment, NAPA and Mateel waive their
17 respective rights to a hearing or trial on the allegations of the Complaint.

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

19 4.1 This Consent Judgment is a final and binding resolution between Mateel,
20 acting on behalf of itself and the public interest, and NAPA of any violation of
21 Proposition 65 with respect to lead exposures allegedly arising from the Covered Products
22 whether based on actions committed by NAPA, or by any other person or entity within
23 NAPA's chain of distribution of the Covered Products, including, but not limited to
24 Balkamp, Inc., International Specialty Services, Inc and, manufacturers, distributors,
25 wholesale or retail sellers, and any other person in the course of doing business. As to
26 lead exposures allegedly arising from the brass components of the Covered Products,
27 compliance with the terms of this Consent Judgment resolves any issue, now and in the
28 future, concerning compliance by NAPA and its parents, subsidiaries or affiliates,

1 predecessors, officers, directors, employees, including but not limited to Balkamp, Inc.,
2 and all of their manufacturers, customers, distributors, wholesalers, retailers, including but
3 not limited to International Specialty Services, Inc., or any other person in the course of
4 doing business, and the successors and assigns of any of these who may manufacture, use,
5 maintain, distribute, market or sell Covered Products, with the requirements of
6 Proposition 65.

7 4.2 As to lead exposures allegedly arising from the brass components of the
8 Covered Products, Mateel, acting on behalf of itself and its agents, successors and assigns,
9 waives all rights to institute any form of legal action, and releases all claims against
10 NAPA and its parents, subsidiaries or affiliates, predecessors, officers, directors,
11 employees, and all of its customers, manufacturers, distributors, wholesalers, retailers,
12 including, but not limited to Balkamp, Inc., International Specialty Services, Inc., or any
13 other person in the course of doing business, and the successors and assigns of any of
14 them, who may manufacture, use, maintain, distribute or sell the Covered Products,
15 whether under Proposition 65 or otherwise. In furtherance of the foregoing, Mateel,
16 acting on behalf of itself hereby waives any and all rights and benefits which it now has,
17 or in the future may have, conferred upon it with respect to the Covered Products by
18 virtue of the provisions of Section 1542 of the California Civil Code, which provides as
19 follows:

20 “A GENERAL RELEASE DOES NOT EXTEND TO
21 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
22 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
23 EXECUTING THE RELEASE, WHICH IF KNOWN BY
24 HIM MUST HAVE MATERIALLY AFFECTED HIS
25 SETTLEMENT WITH THE DEBTOR.”

26 Mateel understands and acknowledges that the significance and consequence of this
27 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
28 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the

1 Covered Products, it will not be able to make any claim for those damages against NAPA,
2 its parents, subsidiaries or affiliates, predecessors, officers, directors, employees,
3 including but not limited to Balkamp, Inc., and all of its customers, manufacturers,
4 distributors, wholesalers, retailers, including but not limited to International Specialty
5 Services, Inc., or any other person in the course of doing business, and the successors and
6 assigns of any of them, who may manufacture, use, maintain, distribute or sell the
7 Covered Products. Furthermore, Mateel acknowledges that it intends these consequences
8 for any such claims which may exist as of the date of this release but which Mateel does
9 not know exist, and which, if known, would materially affect its decision to enter into this
10 Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance,
11 oversight, error, negligence, or any other cause.

12 **5. ENFORCEMENT OF JUDGMENT**

13 5.1 The terms of this Consent Judgment shall be enforced exclusively by the
14 parties hereto. The parties may, by noticed motion or order to show cause before the
15 Superior Court of San Francisco County, giving the notice required by law, enforce the
16 terms and conditions contained herein.

17 **6. MODIFICATION OF JUDGMENT**

18 6.1 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
19 modified only upon written agreement of the parties and upon entry of a modified Consent
20 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
21 entry of a modified Consent Judgment by the Court.

22
23 6.2 Notwithstanding any other term or provision of this Consent Judgment, if
24 Plaintiff agrees to or is otherwise bound by injunctive relief terms or provisions relating to
25 the reformulation of, or provisions of Proposition 65 warnings for, Covered Products,
26 which are more favorable to the Future Settling Party than this Consent Judgment
27 otherwise provides to Settling Defendant, then the terms of injunctive relief provided for
28 in Section 7 of this Consent Judgment shall automatically be deemed to have been

1 modified to add such more favorable terms or provisions as an option, which the Settling
2 Defendant may elect for compliance with this Consent Judgment.

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

4 7.1 The brass components of the Covered Products shall be deemed to comply
5 with Proposition 65 and be exempt from any Proposition 65 warning requirements if the
6 subject Covered Products meet the following criteria on or after the Effective Date: (a)
7 the brass alloy from which the Covered Products are made shall have no lead as an
8 intentionally added constituent; and (b) the brass alloy from which the Covered Products
9 are made shall have a lead content by weight of no more than 0.03% (300 parts per
10 million, or "300 ppm").

11 7.2 Mateel agrees that as to the lead content of the brass components of any
12 reformulated Covered Product, NAPA and any other Released Entities, may rely upon the
13 representations of their or its respective manufacturers, suppliers, distributors, or any other
14 person in the course of doing business that manufactures, supplies or otherwise distributes
15 the reformulated Covered Product(s) to NAPA, provided that NAPA's reliance is in good
16 faith. Mateel agrees that obtaining test results showing that the lead content is no more
17 than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification
18 (as distinguished from detection) of less than 300 ppm shall be deemed to establish good
19 faith reliance.

20 7.3 Covered Products that do not meet the warning exemption standard set forth
21 in Section 7.1 of the of the Consent Judgment shall be accompanied by a warning as of the
22 Effective Date as described below. The warning requirements set forth below shall
23 apply only to Covered Products that are manufactured on or after the Effective Date and
24 distributed, marketed, sold or shipped for sale or use inside the State of California." The
25 warning requirements set forth below shall apply only to Covered Products that are
26 manufactured 120 days after the date of entry of this Consent Judgment ("the Effective
27 Date").
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7.4 For Covered Products that do not meet the reformulation requirements of Section 7.1, Settling Defendant shall provide Proposition 65 warnings as of the Effective Date as follows:

(a) NAPA shall provide either of the following warning statements:
WARNING: This product contains lead, a chemical known to the State of California to cause 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 known to the State of California to cause 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.

7.5 Any warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Any warning shall be provided in a manner such that the ordinary and competent consumer or user understands to which specific Covered Product the warning applies. NAPA may provide warnings as specified in Section 7.4 as follows:

(a) **Affixed Warnings.** NAPA may provide such warning on or attached to Covered Product or with the unit package of the Covered Products as packaged by Settling Defendant. Such warning shall be included with, affixed to, or printed on each Covered Product or its label, package or container in the same section that states other safety warnings, if any, concerning the use of the product or near the

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product brand name, or displayed price and/or UPC code, in a manner reasonably calculated to be seen by an ordinary individual.

(b) Point of Sale Warnings. NAPA may perform its warning obligation by arranging for the posting of shelf labeling, signs, menus, warning slips, or a combination thereof as set forth in Health & Safety Code Section 25603.1 at retail outlets in the State of California where Covered Products are sold. In such instances, Settling Defendant shall provide the warning specified in Section 7.4, and instructions for its use, with the shipping materials containing the Covered Product. Such warning and instructions shall be included with or affixed to each package, box or other container containing Covered Product(s). For a Point of Sale Warning to be considered reasonably calculated to be seen by an ordinary individual, the warning shall be posted at (1) each location in the store where the Covered Products are displayed and visible when the Covered Products are being viewed without the Covered Products being moved, or (2) for stores with less than 7,500 square feet retail space, adjacent to each check out counter, sales register, cash stand, cash wrap or similar check out location in the store. All warning signs must be displayed in such a manner that any potential purchaser would reasonably be expected to see the warning and adequately distinguish between brass products for which warnings are required and product which do not cause a lead exposure. If the point of sale warning is not posted in such a manner, or any other manner otherwise agreed to by the Attorney General, the retail entity shall not benefit from the terms of this consent judgment, including the release of claims contained therein.

(c) Other Approved Warning Methods. NAPA may perform its warning obligation via any method specifically approved in writing by

1 California's Office of the Attorney General.

2 (d) The requirements for product labeling, set forth in subparagraph (a),
3 (b) and (c) above are imposed pursuant to the terms of this Consent
4 Judgment. The parties recognize that product labeling is not the
5 exclusive method of providing a warning under Proposition 65 and
6 its implementing regulations.

7 (e) If Proposition 65 warnings for lead or lead compounds should no
8 longer be required, NAPA shall have no further warning obligations
9 pursuant to this Consent Judgment. Except as provided in section 7.1 above,
10 in the event that NAPA ceases to implement or modifies the warnings
11 required under this Consent Judgment (because of a change on the law or
12 otherwise), NAPA shall provide written notice to Mateel (through KELC) of
13 its intent to do so, and of the basis for its intent, no less than thirty (30) days
14 in advance. Mateel shall notify NAPA in writing of any objection within
15 thirty (30) days of its receipt of such notice, or such objection by Mateel
16 shall be waived.

17 **8. AUTHORITY TO STIPULATE**

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

21 **9. RETENTION OF JURISDICTION**

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

24 **10. ENTIRE AGREEMENT**

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

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

3 **11. GOVERNING LAW**

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

7 **12. NOTICES**

8 Unless specified herein, all correspondence and notices required to be
9 provided pursuant to this Consent Judgment shall be in writing and personally delivered
10 or sent by: (i) first-class, (registered or certified mail) return receipt requested; or
11 (ii) overnight courier on any party by the other party at the following addresses:

12 To Mateel:
13 William Verick, Esq.
14 Klamath Environmental Law Center
15 424 First Street
16 Eureka, CA 95501

17 To: NAPA:

18 To: ISS:
19 Keith Giddens
20 International Specialty Services, Inc.
21 315 Hawkins Road
22 Travelers Rest, SC 29690

23 With a copy to:

24 Michael Van Zandt, Esq.
25 Hanson Bridgett, LLP
26 425 Market Street, 26th Floor
27 San Francisco, California 94105

28 **12. COURT APPROVAL**

If this Consent Judgment is not approved by the Court, it shall be of no force

1 or effect, and cannot be used in any proceeding for any purpose. In the event the Consent
2 Judgment is not approved by the Court, any monies paid shall be returned to Michael J.
3 Van Zandt, Esq., Hanson Bridgett LLP, 425 Market Street, 26th Floor, San Francisco, CA
4 94105.

5

6 **IT IS SO STIPULATED:**

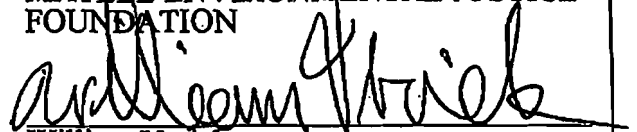
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8 DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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

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14 DATED:

GENUINE PARTS COMPANY and
NATIONAL AUTOMOTIVE PARTS
ASSOCIATION

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By: Marvin Aaron
Its:

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IT IS SO ORDERED, ADJUDGED AND DECREED:

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DATED:

JUDGE OF THE SUPERIOR COURT

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1 or effect, and cannot be used in any proceeding for any purpose. In the event the Consent
2 Judgment is not approved by the Court, any monies paid shall be returned to Michael J.
3 Van Zandt, Esq., Hanson Bridgett LLP, 425 Market Street, 26th Floor, San Francisco, CA
4 94105.

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6 **IT IS SO STIPULATED:**

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8 **DATED:** **MATEEL ENVIRONMENTAL JUSTICE**
9 **FOUNDATION**

10
11 William Verick
12 **CEO Mateel Environmental Justice**
13 **Foundation,**
14 **Klamath Environmental Law Center**

15 **DATED:** **GENUINE PARTS COMPANY and**
16 **NATIONAL AUTOMOTIVE PARTS**
17 **ASSOCIATION**
18 
19 **By: Marvin Aaron Katulger**
20 **Its: Associate**
21 **Counsel**

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

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24 **DATED:** **JUDGE OF THE SUPERIOR COURT**