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17 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION,,

Plaintiff,

v.

ACE HARDWARE CORPORATION and  
ASHBY LUMBER CO.,

Defendants.

Case No. CGC-11-511553

**[PROPOSED] CONSENT JUDGMENT AS  
TO ASHBY LUMBER CO.**

**1. INTRODUCTION**

1.1 On June 9, 2011, 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 County Superior Court, Case No. CGC-11-511553, against Defendant Ashby Lumber Co. (“ASHBY” or “Defendant”). The Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition

1 65”). In particular, Mateel alleges that ASHBY has knowingly and intentionally exposed persons  
2 to lead by selling lead wool (like steel wool except made from lead), without first providing a  
3 clear and reasonable warning to such individuals pursuant to the requirements of Proposition 65  
4 Lead is listed as a chemical known to the State of California to cause cancer and birth defects or  
5 other reproductive harm

6 1.2 On February 17, 2011, a 60-Day Notice letter (“Notice Letter”) was sent by Mateel  
7 to ASHBY, the California Attorney General, all California District Attorneys, and all City  
8 Attorneys of every California City with a population exceeding 750,000.

9 1.3 ASHBY is a business that employs ten or more persons and manufactures,  
10 distributes, markets, and/or offers for sale lead wool, within the State of California. Lead wool  
11 contains and/or is made from material containing lead. Lead and lead compounds are listed as  
12 chemicals known to the State of California to cause cancer, and lead is listed as a chemical known  
13 to the State of California to cause reproductive toxicity pursuant to Health and Safety Code  
14 Section 25249.9. Plaintiff Mateel alleges that lead wool sold by ASHBY for use in California  
15 requires a warning under Proposition 65 pursuant to Health and Safety Code Section 25249.6.

16 1.4 For purposes of this Consent Judgment, the term “Covered Product” shall be  
17 defined as lead wool, to the extent lead wool is distributed and sold within the State of California,  
18 and is marketed and/or sold by ASHBY, regardless of whether the lead wool bears ASHBY  
19 labels.

20 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court has  
21 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
22 over ASHBY as to the acts alleged in the Complaint, that venue is proper in the County of San  
23 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement  
24 and resolution of the allegations contained in the Complaint and of all claims that were or could  
25 have been raised by any person or entity based in whole or in part, directly or indirectly, on the  
26 facts alleged therein or arising therefrom or related thereto.

27 1.6 This Consent Judgment resolves claims that are denied and disputed. The parties  
28 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims

1 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment  
2 shall not constitute an admission with respect to any material allegation of the Complaint, each  
3 and every allegation of which ASHBY denies; nor may this Consent Judgment or compliance  
4 with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of  
5 ASHBY or any other person or entity related to the Defendant.

6 1.7 All products already received or offered for sale by ASHBY on or before the date  
7 on which the court enters this Consent Judgment (“Effective Date”) are deemed to be covered by  
8 the waiver and release provisions of Paragraphs 4 of this Consent Judgment and shall not be  
9 subject to any enforcement action by Mateel under Paragraph 5 of this Consent Judgment. The  
10 warning requirements of Paragraph 7 of this Consent Judgment shall apply to lead wool received  
11 or offered for sale by ASHBY after the Effective Date.

## 12 **SETTLEMENT PAYMENT**

13 2.1 In settlement of all of the claims that are alleged, or could have been alleged in the  
14 Complaint and/or Notice Letter concerning the Covered Product, ASHBY shall pay \$5,000 to the  
15 Klamath Environmental Law Center (“KELC”) to cover Plaintiff’s attorneys’ fees. The above  
16 described payment shall be forwarded by ASHBY to its attorney of record in this case so that it is  
17 received by its attorney at least 5 days prior to the hearing date scheduled for approval of this  
18 Consent Judgment. On the same day on which ASHBY’s attorney of record receives the above-  
19 described payment, Ashby’s attorney shall notify Mateel by e-mail at [wverick@igc.org](mailto:wverick@igc.org) that the  
20 attorney has such payment in his or her possession. No later than the day the court enters this  
21 Consent Judgment, ASHBY’s attorney of record shall deliver to Mateel, by overnight next  
22 business day delivery, the above described payment. Delivery shall be made to the Klamath  
23 Environmental Law Center, 424 First Street, Eureka, California, 95501. If the Consent Judgment  
24 is not approved within 120 days of the date scheduled for approval, the above described payments  
25 shall be returned and the provisions of this Consent judgment shall become null and void.

26 2.2 ASHBY shall not be required to pay a civil penalty pursuant to Health and Safety  
27 Code Section 25249.7(b).  
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1           **3. ENTRY OF CONSENT JUDGMENT**

2           3.1     The parties hereby request that the Court promptly enter this Consent Judgment.  
3     Upon entry of the Consent Judgment, ASHBY and Mateel waive their respective rights to a  
4     hearing or trial on the allegations of the Complaint.

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

6           4.1     "With respect to those matters raised in the Notice, this Consent Judgment is a  
7     final and binding resolution between Mateel, acting on behalf of itself and the public interest, and  
8     ASHBY of any violation of Proposition 65 with respect to lead exposures allegedly arising from  
9     the Covered Product whether based on actions committed by ASHBY, or by any other person or  
10    entity within ASHBY's chain of distribution of the Covered Product, including, but not limited to  
11    manufacturers, distributors, wholesalers or retail sellers, and any other person in the course of  
12    doing business. With respect to the matters raised in the Notice as to lead exposures allegedly  
13    arising from the lead content of the Covered Product, compliance with the terms of this Consent  
14    Judgment resolves any issue, now and in the future, concerning compliance by ASHBY and its  
15    parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its  
16    customers, manufacturers, distributors, wholesalers, and retailers, including but not limited to any  
17    other person in the course of doing business, and the successors and assigns of any of these who  
18    may manufacture, use, maintain, distribute, market or sell the Covered Product, with the  
19    requirements of Proposition 65. With respect to those matters raised in the Notice, this Consent  
20    Judgment also is a full, final and binding resolution between Plaintiff, acting on behalf of itself  
21    and the public interest, and ASHBY as to any other claims that could have been asserted against  
22    ASHBY or any of its affiliates, parent or subsidiary corporations, divisions, successors, officers,  
23    directors, shareholders, attorneys, representatives, agents, assigns, distributors, manufacturers,  
24    retailers, or customers for failure to disclose the presence of lead (or lead compounds) in or  
25    associated with use of the Covered Product.

26           4.2     As to lead exposures allegedly arising from the Covered Product, Mateel, acting  
27    on behalf of itself and its agents, attorneys, successors and assigns, waives all rights to institute  
28    any form of legal action, and releases all claims against ASHBY and its parents, subsidiaries or

1 affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers,  
2 distributors, wholesalers, and retailers, including, but not limited to any other person in the course  
3 of doing business, and the successors and assigns of any of them, who may manufacture, use,  
4 maintain, distribute or sell the Covered Product, whether under Proposition 65 or otherwise. In  
5 furtherance of the foregoing, Mateel, acting on behalf of itself hereby waives any and all rights  
6 and benefits which it now has, or in the future may have, conferred upon it with respect to the  
7 Covered Product by virtue of the provisions of Section 1542 of the California Civil Code, which  
8 provides as follows:

9           “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
10           WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
11           EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE  
12           RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
13           MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
14           DEBTOR.”

15 Mateel understands and acknowledges that the significance and consequence of this waiver of  
16 California Civil Code Section 1542 is that even if Mateel suffers future damages arising out of or  
17 resulting from, or related directly or indirectly to, in whole or in part, the Covered Product, it will  
18 not be able to make any claim for those damages against ASHBY, its parents, subsidiaries or  
19 affiliates, predecessors, officers, directors, employees, or any of its customers, manufacturers,  
20 distributors, wholesalers, or retailers, including but not limited to any other person in the course  
21 of doing business, and the successors and assigns of any of them, who may manufacture, use,  
22 maintain, distribute or sell the Covered Product. Furthermore, Mateel acknowledges that it  
23 intends these consequences for any such claims which may exist as of the date of this release but  
24 which Mateel does not know exist, and which, if known, would materially affect its decision to  
25 enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of  
26 ignorance, oversight, error, negligence, or any other cause.

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**5. ENFORCEMENT OF JUDGMENT**

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

**6. MODIFICATION OF JUDGMENT**

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

6.2 Notwithstanding any other term or provision of this Consent Judgment, if Plaintiff agrees to or is otherwise bound by injunctive relief terms or provisions relating to the reformulation of, or provisions of Proposition 65 warnings for, the Covered Product, which are more favorable to another settling party than this Consent Judgment otherwise provides to ASHBY, then the terms of injunctive relief provided for in Section 7 of this Consent Judgment shall automatically be deemed to have been modified to add such more favorable terms or provisions as an option, which the Defendant may elect for compliance with this Consent Judgment.

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

7.1 The Covered Product shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements if each package of the Covered Product offered for sale in California provides the warning specified in paragraph 7.2.

7.2 Settling Defendant shall provide Proposition 65 warnings as of the Effective Date affixed to the outside packaging of each package of Covered Product ASHBY offers for sale in California. The warning shall state the following and shall be provided in the format described below:

ASHBY shall provide the following warning statement:

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**“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.”***

The word “WARNING” shall be in bold. The words “Wash hands after handling” shall be in bold and italicized.

**8. AUTHORITY TO STIPULATE**

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

**9. RETENTION OF JURISDICTION**

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

**10. ENTIRE AGREEMENT**

This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

**11. GOVERNING LAW**

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

**12. NOTICES**

Unless specified herein, all correspondence and notices required to be provided

1 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
2 class registered or certified mail return receipt requested; or (ii) overnight courier on any party  
3 by the other party at the following addresses:

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5 To Mateel: William Verick, Esq.  
6 Klamath Environmental Law Center  
7 424 First Street  
8 Eureka, CA 95501

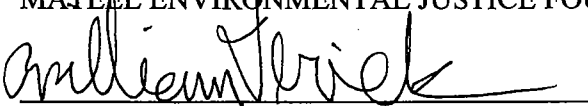
9 To: ASHBY: Jeffrey O Hogan, CEO  
10 Ashby Lumber Company  
11 5818 McAndrew  
12 Oakland, CA 94611

13 With a copy to: J. Robert Maxwell  
14 ROGERS JOSEPH O'DONNELL  
15 311 California Street, 10th Floor  
16 San Francisco, CA 94104

17 **12. COURT APPROVAL**

18 If this Consent Judgment is not approved by the Court, it shall be of no force or effect,  
19 and cannot be used in any proceeding for any purpose. In the event the Consent Judgment is not  
20 approved by the Court, any monies paid shall be returned to Jeffrey O Hogan, CEO Ashby  
21 Lumber Company 5818 McAndrew, Oakland, CA 94611

22 **IT IS SO STIPULATED:**

23 DATED: MATEEL ENVIRONMENTAL JUSTICE FOUNDATION  
24   
25 William Verick  
26 CEO Mateel Environmental Justice Foundation,  
27 Klamath Environmental Law Center  
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DATED:

ASHBY LUMBER CO.

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By:  
Its:

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

DATED:

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JUDGE OF THE SUPERIOR COURT