

1 WILLIAM VERICK, SBN 140972
2 FREDRIC EVENSON, SBN 198059
3 **KLAMATH ENVIRONMENTAL LAW CENTER**
4 424 First Street
5 Eureka, CA 95501
6 Telephone: (707) 268-8900
7 Facsimile: (707) 268-8901
8 E-mail: wverick@igc.org

9 DAVID WILLIAMS, SBN 144479
10 BRIAN ACREE, SBN 202505
11 370 Grand Avenue, Suite 5
12 Oakland, CA 94610
13 Telephone: (510) 271-0826
14 Facsimile: (510) 271-0829
15 E-mail: dhwill7@gmail.com

16 Attorneys for Plaintiff
17 **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**

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

20 MATEEL ENVIRONMENTAL
21 JUSTICE FOUNDATION,

22 Plaintiff,

23 v.

24 ORGILL, INC., et al.,

25 Defendants.

Case No. CGC-11-509101

CONSENT JUDGMENT
(As to FAIRVIEW FITTINGS
AND MANUFACTURING LIMITED)

26 **1. INTRODUCTION**

27 **1.1** On March 11, 2011, MATEEL ENVIRONMENTAL JUSTICE
28 FOUNDATION (“Mateel”) acting on behalf of itself and, pursuant to Health & Safety
Code §25249.7, acting in the public interest, filed a Complaint for civil penalties and
injunctive relief in San Francisco Superior Court, Case No. 509101. On November 4,
2011, Mateel filed a First Amended Complaint naming Defendant Fairview Fittings and
Manufacturing Limited (“Fairview” or “Settling Defendant”). The First Amended

1 Complaint alleges, among other things, that Fairview violated provisions of the Safe
2 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections
3 25249.5, et seq. (“Proposition 65”). In particular, Mateel alleges that Fairview knowingly
4 and intentionally exposed persons to leaded brass products used with propane gas
5 equipment such as gas grills, including connecting hose fittings (“brass products”) that are
6 made of or that include a component made of leaded brass, without first providing a clear
7 and reasonable warning to such individuals. Lead and lead compounds are chemicals
8 known to the State of California to cause cancer and birth defects or other reproductive
9 harm.

10 **1.2** On October 27, 2010, Mateel sent a Notice of Violation letter (“Notice
11 Letter”) to West Marine, Inc., a retail seller of brass products, the California Attorney
12 General, all California District Attorneys, and all City Attorneys of every California city
13 with populations exceeding 750,000 concerning the brass products described in paragraph
14 1.1 above.

15 **1.3** On May 19, 2011, Mateel sent a Notice of Violation letter (“Notice
16 Letter”) to Fairview, the California Attorney General, all California District Attorneys,
17 and all City Attorneys of every California city with populations exceeding 750,000
18 concerning the brass products described in paragraph 1.1 above.

19 **1.4** Settling Defendant is a business that employs ten or more persons and
20 manufactures, distributes or markets brass products or components which are sold at retail
21 within the State of California.

22 **1.5** For purposes of this Consent Judgment, the term “Covered Products” shall
23 be defined as all products included in the October 27, 2010, 60 Day Notice Letter, and the
24 May 19, 2011 60 Day Notice Letter, including brass products, such as brass hose
25 couplings, and brass couplings, which are or were manufactured, distributed or otherwise
26 marketed by Settling Defendant.
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1 **1.6** For purposes of this Consent Judgment, the parties stipulate that this Court
2 has jurisdiction over the allegations of violations contained in the Complaint and personal
3 jurisdiction over Fairview as to the acts alleged in the Complaints, that venue is proper in
4 the County of San Francisco and that this Court has jurisdiction to enter this Consent
5 Judgment as a full settlement and resolution of the allegations contained in the Complaint
6 and of all claims that were or could have been raised by any person or entity based in
7 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
8 related thereto.

9 **1.7** This Consent Judgment resolves claims that are denied and disputed. The
10 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
11 all claims between the parties for the purpose of avoiding prolonged litigation. This
12 Consent Judgment shall not constitute an admission with respect to any material allegation
13 of the Complaints, each and every allegation of which Settling Defendant denies, nor may
14 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
15 misconduct, culpability or liability on the part of Settling Defendant.

16 **2. SETTLEMENT PAYMENTS**

17 **2.1** In settlement of all of the claims referred to in this Consent Judgment,
18 Settling Defendant shall collectively pay an aggregate of \$34,000 (thirty-four thousand
19 dollars) in total monetary relief. Of the foregoing, a total of \$2,000 (two thousand
20 dollars) shall be paid in civil penalties. A total of \$8,000 (eight thousand dollars) shall be
21 paid by Settling Defendant in lieu of, and as an offset for, a larger civil penalty in the form
22 of two equal payments, one to the Ecological Rights Foundation, and one to Californians
23 for Alternatives to Toxics.

24 **2.2** In addition, a total amount of \$24,000 (twenty-four thousand dollars) shall
25 be paid by the Settling Defendant to the Klamath Environmental Law Center (“KELC”) as
26 reimbursement for attorneys’ fees and costs incurred by KELC on behalf of Plaintiff in
27 investigating and prosecuting this matter and in negotiating this Consent Judgment on
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1 behalf of itself and in the public interest. The payments described in Paragraphs 2.1 and
2 2.2 shall be made payable to the recipient, and lodged with counsel for Settling
3 Defendants at least 5 court days prior to any hearing on a motion to approve this
4 settlement, and sent by overnight mail on the day the settlement is approved, to William
5 Verick, 424 First Street, Eureka, CA 95501. If this Consent Judgment has not been
6 approved and entered by the Court within 120 days of the execution of the agreement by
7 the parties, the payments described above shall be promptly returned to Settling
8 Defendant and the terms of this agreement shall be null and void.

9 **2.3** MEJF and KELC represent and warrant that recipients of the offset
10 payments are tax exempt, section 501(c)(3) non-profit organizations and that funds
11 distributed to these organizations pursuant to this Consent Judgment may only be spent to
12 reduce harm from toxic chemicals, or to increase consumer, worker and community
13 awareness of health hazards posed by lead and other toxic chemicals.

14 **2.4** Except as specifically provided for in this Consent Judgment, each side
15 shall bear its own costs and attorney's fees.

16 **3. ENTRY OF CONSENT JUDGMENT**

17 **3.1** The parties hereby request that the Court promptly enter this Consent
18 Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive
19 their respective rights to a hearing or trial on the allegations of the Complaints.

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

21 **4.1** As to alleged exposure to lead or lead compounds from Covered Products,
22 this Consent Judgment provides a full release of liability on behalf of the Public Interest,
23 as referenced in California Health & Safety Code §25249.7(d) to Fairview, as well as its
24 past, present and future parents, subsidiaries, affiliates, predecessors, successors, and
25 assigns ("Released Entities"), as to all claims and matters raised in or covered by the
26 Notice of Violation. Notwithstanding any other provision of this Consent Judgment, no
27 claim or matter is released on behalf of the Public Interest unless that claim or matter was
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1 raised in or covered by the October 27, 2010, 60 Day Notice Letter, or the May 19, 2011
2 60 Day Notice Letter.

3 **4.2** As to alleged lead and lead compound exposures associated with Covered
4 Products, Mateel, acting on behalf of itself, and its agents, attorneys, representatives,
5 successors and assigns, waives all rights to institute or participate in, directly, or
6 indirectly, any form of legal action, and releases all claims as between Mateel and Settling
7 Defendant, including, without limitation, all actions, and causes of action, in law or in
8 equity, suits, liabilities, demands, obligations, agreements, promises, royalties,
9 accountings, damages, costs, fines, penalties, losses, or expenses (including, but not
10 limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever,
11 whether known or unknown, fixed or contingent (collectively "claims"), against Settling
12 Defendant and its parents, subsidiaries or affiliates, predecessors, officers, directors,
13 shareholders, attorneys, representatives, agents, employees, and all customers,
14 manufacturers, distributors, wholesalers, retailers, or any other person in the course of
15 doing business involving the Covered Products, and the successors and assigns of any of
16 them, who may manufacture, use, maintain, distribute or sell the Covered Products or
17 components found in the Covered Products, including, but not limited to, any claims
18 regarding exposure to, and/or failure to warn with respect to, the Covered Products. In
19 furtherance of the foregoing, Mateel on its own behalf hereby waives any and all rights
20 and benefits which it now has, or in the future may have respecting the Covered Products,
21 conferred upon it with respect to claims involving Covered Products by virtue of the
22 provisions of Section 1542 of the California Civil Code, which provides as follows:

23 "A GENERAL RELEASE DOES NOT EXTEND TO
24 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
25 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
26 TIME OF EXECUTING THE RELEASE, WHICH IF
27 KNOWN BY HIM OR HER MUST HAVE MATERIALLY
28 AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR."

27 Mateel understands and acknowledges that the significance and consequence of

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

16 **4.3** Upon entry of this Consent Judgment by the Court, Mateel shall file a
17 dismissal with prejudice as to West Marine, Inc.

18 **5. ENFORCEMENT OF JUDGMENT**

19 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
20 parties hereto. The parties may, by noticed motion or order to show cause before the
21 Superior Court of San Francisco County, giving the notice required by law, enforce the
22 terms and conditions contained herein. The parties hereto agree that prior to any such
23 enforcement action, they will notify each other of any perceived violation of this Consent
24 Judgment. The parties further agree to take no enforcement action for 30 days after such
25 notice is given, in order to allow the parties to meet and confer in good faith in an effort to
26 resolve the alleged violation.

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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 Mateel shall give notice to Fairview, per section 12, of all consent judgments entered into by Mateel described in Section 6.2 on or after the date of this Consent Judgment involving similar products to those at issue in this Consent Judgment, unless such consents are posted on the public Proposition 65 web site maintained by the California Attorney General.

7. INJUNCTIVE RELIEF - REFORMULATION

7.1 Covered Products’ brass components shall be deemed to comply with the warning requirements of Proposition 65 for lead and lead compounds (H&S Code 25249.6), and be exempt from any Proposition 65 warning requirements for these listed chemicals after the Effective Date, if the brass that is part of the Covered Products is made of an alloy which contains no intentionally added lead and no lead content by weight of more than 0.03% (“300 parts per million,” or “300 ppm”). Settling Defendant may comply with this requirement by relying in good faith on information obtained from its suppliers regarding the content of the brass alloy from which the brass fittings are made. Although good faith reliance regarding the brass alloy may also be established by other means, Mateel agrees that obtaining test results showing that the lead content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish good faith reliance.

1 **7.2** Beginning no later than the Effective Date, for Covered Products that do not
2 meet the warning exemption standard set forth in Section 7.1, the following requirements
3 shall apply:

4 (a) Where Fairview, itself, ships the Covered Products into California for
5 retail sale or distribution, Fairview shall provide a warning as described in Section 7.3;

6 (b) Where Fairview does not itself ship directly into California, Fairview
7 shall inform its recipient distributors and retail sellers that any such Covered Product
8 sold in or distributed for use in California must be accompanied by a warning as described
9 in paragraph 7.3.

10 (c) No distributor or retail seller of Covered Products shall be released by or
11 benefit from the releases of Sections 4.1 and 4.2 for Covered Products sold in or
12 distributed for use in California that do not meet the warning exemption standard of
13 section 7.1 or the warning requirements of Section 7.3. The warning requirements set
14 forth in paragraph 7.3 shall apply only to Covered Products that Settling Defendant
15 manufactures, distributes, markets, sells or ships after the Effective Date and which are
16 sold for use inside the State of California.

17 **7.3** Proposition 65 warnings shall be as follows:

18 (a) Either of the following warning statements shall be provided:

19 **WARNING:** This product contains lead, a chemical known to the State of
20 California to cause cancer and birth defects or other reproductive harm
21 ***Wash your hands after handling this product.***

22 or

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

26 Bracketed language may be omitted. Additional listed chemicals
27 may be added to the warning unless the Attorney General advises that the
28 inclusion of such additional chemicals would render the warning

1 misleading or constitute an over warning. The word “WARNING” shall be
2 in bold, and may be preceded by the word “CALIFORNIA”, “PROP 65”, or
3 “CALIFORNIA PROP 65” provided such words are also in bold. The
4 words “Wash your hands after touching this product” or “Wash hands after
5 handling” in either warning above may be replaced by “Wash hands after
6 use”, and in any case such words shall be underlined, in bold or italicized.

7 The warning shall be provided such that the warning is on or
8 attached to Covered Product or with the unit package of the Covered
9 Products. Such warning shall be included with, affixed to or printed on
10 each Covered Product or its label, package or container in the same section
11 that states other safety warnings, if any, concerning the use of the product
12 or near the product brand name, or displayed price and/or UPC code, in a
13 manner reasonably calculated to be seen by an ordinary individual.

14 (b) If after the Effective Date, any Covered Products is received by a
15 retailer or distributor outside of California that neither provides the warnings
16 specified in this paragraph nor meets the Reformulation Standard specified
17 in paragraph 7.1 of this Consent Judgment (“Non-Conforming Covered
18 Products”), and if the retailer or distributor then offers those Non-
19 Conforming Covered Products for sale in California, then as to those Non-
20 Conforming Covered Products, that retailer or distributor, and their
21 customers, are not released pursuant to Sections 4.1 and 4.2 above.

22 (c) Except as provided in paragraphs 4.1 and 4.2 hereof for Covered
23 Products manufactured or distributed prior to the Effective Date, nothing in
24 this Consent Judgment shall create a limitation on a Proposition 65
25 enforcement action based on future conduct if such future conduct is not in
26 compliance with the injunctive terms of this Consent Judgment.

1 **7.4** Any warning shall be prominently placed with such conspicuousness as
2 compared with other words, statements, designs, or devices as to render it likely to be read
3 and understood by an ordinary individual under customary conditions before purchase or
4 use. Any warning shall be provided in a manner such that the ordinary competent
5 consumer or user understands to which specific Covered Product the warning applies.
6 Fairview may provide warnings as specified in Section 7.4 as follows:

7 (a) Affixed Warnings. Warnings may be provided on or attached to
8 Covered Products or with the unit package of the Covered Products. Such
9 warning shall be included with, affixed to or printed on each Covered
10 Product or its label, package or container in the same section that states
11 other safety warnings, if any, concerning the use of the product or near the
12 product brand name, or displayed price and/or UPC code, in a manner
13 reasonably calculated to be seen by an ordinary individual.

14 (b) Point of Sale Warnings. A retail seller may perform its warning
15 obligation by arranging for the posting of the shelf labeling, signs, menus,
16 warning slips or a combination of thereof as set forth in Health & Safety
17 Code Section 25603.1 at retail outlets in the State of California where
18 Covered Products are sold. For a Point of Sale Warning to be considered
19 reasonably calculated to be seen by an ordinary individual, the warning shall
20 be posted at (1) each location in the store where the Covered Products are
21 displayed and visible when the Covered Products are being viewed without
22 the Covered Products being moved, or (2) for stores with less than 7,500
23 square feet retail space, adjacent to each check out counter, sales register,
24 cash stand, cash wrap or similar check out location in the store. All warning
25 signs must be displayed in such a manner that any potential purchaser would
26 reasonably be expected to see the warning and adequately distinguish
27 between brass products for which warnings are required and product which
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1 do not cause a lead exposure. If the point of sale warning is not posted in
2 such a manner, or any other manner otherwise agreed to by the Attorney
3 General, the retail entity shall not benefit from the terms of this consent
4 judgment, including the release of claims contained therein.

5 (c) News Media Notices. Settling Defendant may perform its warning
6 obligation by placing notices in public news media per Health & Safety
7 Code section 25249.11 so long as the Attorney General has agreed, upon
8 review, that the size, location and frequency of any such warning(s) meets
9 with the Proposition 65's "clear and reasonable" warning requirements.

10 (d) Other Approved Warning Methods. Settling Defendant may perform
11 its warning obligations via any method specifically approved in writing by
12 California's Office of Attorney General.

13
14 **8. AUTHORITY TO STIPULATE**

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

18 **9. RETENTION OF JURISDICTION**

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

21 **10. ENTIRE AGREEMENT**

22 Other than any agreement between Fairview and West Marine and/or its
23 indemnitors regarding distribution of payments, this Consent Judgment contains the sole
24 and entire agreement and understanding of the parties with respect to the entire subject
25 matter hereof, and any and all prior discussions, negotiations, commitments and
26 understandings related hereto. No representations, oral or otherwise, express or implied,
27 other than those contained herein have been made by any party hereto. No other
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1 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist
2 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:

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13 To Mateel:

14 William Verick, Esq.
15 Klamath Environmental Law Center
16 424 First Street
Eureka, CA 95501

17 To Fairview:

18 Leslie Woodward
19 President
Fairview Fittings & Manufacturing, Inc.
20 3777 Commerce Court
Wheatfield, NY 14120

21 With a copy to:

22 George Gigounas
23 DLA Piper LLP (US)
24 555 Mission Street, Suite 2400
San Francisco, CA 94105

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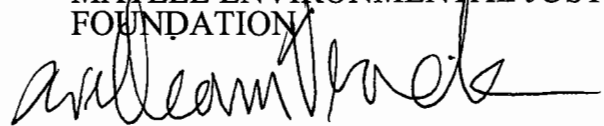
13. COURT APPROVAL

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:

FAIRVIEW FITTINGS AND
MANUFACTURING, INC.

By: Leslie Woodward
Its: President

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT