

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Mateel Environmental Justice Foundation & International Mulch Company

This Settlement Agreement is entered into by and between Mateel Environmental Justice Foundation ("Mateel") and International Mulch Company ("International Mulch"). Together, Mateel and International Mulch are collectively referred to as the "Parties." Mateel is an organization with its principle place of business in the State of California. International Mulch is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. ("Proposition 65").

1.2 General Allegations

Mateel alleges that International Mulch has imported, distributed and/or sold in the State of California shredded or crumbled recycled vehicle tires (the "Products") that contain chemicals known to the State of California to cause cancer or reproductive toxicity. For purposes of this Settlement Agreement, "Products" means shredded or crumbled recycled vehicle tires to the extent they have been, are or will be marketed by International Mulch.

1.3 Notice of Violation

On August 13, 2015 Mateel served International Mulch, and various public enforcement agencies with a letter entitled "PROPOSITION 65 ENFORCEMENT REPORTING" (the "Notice"). The Notice provided International Mulch and others, including public enforcers, with notice that alleged that International Mulch was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers that the Products may expose users in California to certain chemicals. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.4 No Admission

International Mulch denies the material factual and legal allegations contained in the Notice. Nothing in this Settlement Agreement shall be construed as an admission by International Mulch of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by International Mulch of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by International Mulch. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, International Mulch maintains that it has not knowingly manufactured, or caused to be manufactured, or distributed, the Products for sale in California in violation of Proposition 65.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which both parties have signed this Settlement Agreement.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

Commencing no later than ninety (90) days after the Effective Date, International Mulch shall provide a clear and reasonable Proposition 65 warning for any of the Products that it ships, sells, or offers to ship or sell in California. International Mulch shall provide the warning affixed to the packaging or labeling with the following statement:

CALIFORNIA PROPOSITION 65 WARNING:

This product contains chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm.

The warning shall be 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.

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different from those set forth above, International Mulch shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

3. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Mateel and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. International Mulch shall reimburse Mateel's counsel for \$27,500 in fees and costs incurred as a result of investigating and bringing this matter to International Mulch's attention, and negotiating a settlement in the public interest. Payment shall be by check(s) made payable to Klamath Environmental Law Center and delivered to the following address:

William Verick, Esquire
Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

3.1 Payment Procedure

Half of the payment identified above shall be made by December 1, 2015. The remainder of the payment identified above shall be made by January 15, 2016. Payment shall be sent by overnight mail to the address listed in Section 3 above. The EIN for the Klamath Environmental Law Center is 68-0437699.

4. RELEASE OF ALL CLAIMS

4.1 Release of International Mulch and Downstream Customers and Entities

Mateel acting on his own behalf, releases International Mulch, and its respective parents, subsidiaries, affiliated entities, marketplaces directors, officers, agents, employees, attorneys and each entity to whom International Mulch directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, including but not limited to Lowe's (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn about alleged exposures to chemicals contained in the Products, and was distributed, sold and/or offered for sale by International Mulch to customers and consumers in the State of California. This settlement is a full, final and binding resolution of all claims that were or could have been asserted against International Mulch, and/or the Releasees for failure to provide warnings for alleged exposures to chemicals contained in the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, Mateel, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands against International Mulch and/or any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemicals in the Products.

4.2 International Mulch's Release of Mateel

International Mulch, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Mateel, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Mateel and/or its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Mateel on behalf of itself only, on one hand, and International Mulch, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

Mateel and International Mulch each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, International Mulch shall provide written notice to Mateel of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

7. NOTICES

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

For International Mulch:

Ryan Landis
Polsinelli PC, Polsinelli LLP in California
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
T: 310.203.2313

For Mateel:

William Verick, Esquire
Klamath Environmental Law Center
424 First Street
Eureka, CA 95501
T: 707.268.8900

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Mateel agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

11. AUTHORIZATION

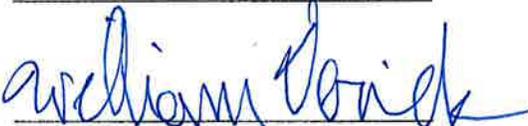
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

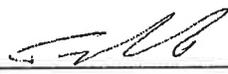
AGREED TO:

AGREED TO:

Date: 11-20-15

Date: 11-20-15

By: 
Mateel Environmental Justice Foundation

By: 
International Mulch Company