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ENDORSED
FILED
San Francisco County Superior Court

JAN 03 2008

GORDON PARK-LI, Clerk
BY: GINA GONZALES
Deputy Clerk

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF SAN FRANCISCO

21 MATEEL ENVIRONMENTAL
22 JUSTICE FOUNDATION,,

23 Plaintiff,

24 v.

25 EZ-FLO INTERNATIONAL, INC.;
26 HAMPTON PRODUCTS
27 INTERNATIONAL CORPORATION;
28 HICKORY HARDWARE; MASTER
LOCK COMPANY; ORCHARD
SUPPLY HARDWARE
CORPORATION; SEARS, ROEBUCK
AND CO.; VARIFLEX, INC., and
DOES 1 through 100 inclusive,

Defendants.

Case No. CGC 06456810

CONSENT JUDGMENT AS TO
DEFENDANT MASTER LOCK
COMPANY

1. INTRODUCTION

1.1 On October 10, 2006, the MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a

1 Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco County
2 Superior Court, Case No.CGC-06-456810, against Defendant MASTER LOCK
3 COMPANY (“Defendant”). The Complaint alleges, among other things, that Defendant
4 violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,
5 Health and Safety Code Sections 25249.5, et seq. (“Proposition 65”). In particular,
6 Mateel alleges that Defendant has knowingly and intentionally exposed persons to locks
7 with coatings containing lead and/or lead compounds (hereinafter “coatings”), which are
8 chemicals known to the State of California to cause cancer and birth defects or other
9 reproductive harm, without first providing a clear and reasonable warning to such
10 individuals.

11 **1.2** On July 12, 2006, a 60-Day Notice letter (“Notice Letter”) was sent by
12 Mateel to Defendant, the California Attorney General, all California District Attorneys,
13 and all City Attorneys of each California city with a population exceeding 750,000.

14 **1.3** Defendant is a business that employs ten or more persons and which
15 markets locks within the State of California. Some of those products are alleged to
16 contain lead and/or lead compounds. Lead and lead compounds are chemicals known to
17 the State of California to cause cancer, and lead is a chemical known to the State of
18 California to cause reproductive toxicity pursuant to Health and Safety Code Section
19 25249.9. Under specified circumstances, products containing lead and/or lead compounds
20 that are sold or distributed in the State of California are subject to the Proposition 65
21 warning requirement set forth in Health and Safety Code Section 25249.6. Plaintiff
22 Mateel alleges that leaded coatings on certain locks that Defendant marketed for use in
23 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 locks containing lead and/or lead compounds, such as coated locks, to the
26 extent such products are distributed and sold within the state of California, that are
27 marketed and/or sold by Defendant, regardless of whether they bear Defendant’s label.

1 **1.5** 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 Defendant as to the acts alleged in the Complaint, 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 **1.6** 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 Complaint, each and every allegation of which Defendant denies, nor may this
14 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
15 misconduct, culpability or liability on the part of Defendant.

16 **2. SETTLEMENT PAYMENT**

17 **2.1** In settlement of all of the claims referred to in this Consent Judgment
18 against the Defendant, within ten (10) business days of notice entry of this Consent
19 Judgment, Defendant shall pay \$20,000 to the Klamath Environmental Law Center
20 (“KELC”) to cover Mateel’s attorneys’ fees and costs.

21 **2.2** Within ten (10) business days of notice of entry of this Consent Judgment,
22 Defendant shall collectively pay \$10,000 to the Ecological Rights Foundation, a
23 California non-profit environmental organization that advocates for workers’ and
24 consumers’ safety, and for awareness and reduction of toxic exposures.

25 **3. ENTRY OF CONSENT JUDGMENT**

26 **3.1** The parties hereby request that the Court promptly enter this Consent
27 Judgment. Upon entry of the Consent Judgment, Defendant and Mateel waive their
28 respective rights to a hearing or trial on the allegations of the Complaint.

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

2 **4.1 This Consent Judgment is a final and binding resolution between Mateel,**
3 **acting on behalf of itself and, as to those matters raised in the Notice Letter, the general**
4 **public, and Defendant, of: (i) any violation of Proposition 65 with respect to the Covered**
5 **Products, and (ii) any other statutory or common law claim, to the fullest extent that any**
6 **of the foregoing described in (i) or (ii) were or could have been asserted by any person or**
7 **entity against Defendant based upon, arising out of or relating to Defendant's compliance**
8 **with Proposition 65, or regulations promulgated thereunder, with respect to the Covered**
9 **Products, and any other claim based in whole or part on the facts alleged in the Complaint,**
10 **whether based on actions committed by Defendant or by any entity within its chain of**
11 **distribution, including, but not limited to, manufacturers, wholesale or retail sellers or**
12 **distributors and any other person in the course of doing business. As to alleged exposures**
13 **to Covered Products, and as to those matters raised in the Notice Letter, compliance with**
14 **the terms of this Consent Judgment resolves any issue, now and in the future, concerning**
15 **compliance by Defendant and its parent, subsidiaries or affiliates, predecessors, officers,**
16 **directors, employees, and all of their manufacturers, customers, distributors, wholesalers,**
17 **retailers or any other person in the course of doing business, and the successors and**
18 **assigns of any of these who may manufacture, use, maintain, distribute, market or sell**
19 **Covered Products, with the requirements of Proposition 65.**

20 **4.2 As to alleged exposures to Covered Products, Mateel, acting on behalf of**
21 **itself and, as to those matters raised in the Notice Letters, the general public, and**
22 **Mateel's agents, successors and assigns, waives all rights to institute any form of legal**
23 **action, and releases all claims against Defendant and its parent, subsidiaries or affiliates,**
24 **predecessors, officers, directors, employees, and all of their customers, manufacturers,**
25 **distributors, wholesalers, retailers or any other person in the course of doing business, and**
26 **the successors and assigns of any of them, who may manufacture, use, maintain, distribute**
27 **or sell the Covered Products, whether under Proposition 65 or otherwise, arising out of or**
28 **resulting from, or related directly or indirectly to, in whole or in part, the Covered**

1 Products and claims identified in Mateel's Notice Letter. In furtherance of the foregoing,
2 Mateel, acting on behalf of itself and, as to matters raised in the Notice Letter, on behalf
3 of the general public, hereby waives any and all rights and benefits which it now has, or in
4 the future may have, conferred upon it with respect to the Covered Products by virtue of
5 the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

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

26 **5. ENFORCEMENT OF JUDGMENT**

27 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
28 parties hereto. The parties may, by noticed motion or order to show cause before the

1 Superior Court of San Francisco County, giving the notice required by law, enforce the
2 terms and conditions contained herein.

3 **6. MODIFICATION OF JUDGMENT**

4 Except as provided for in Paragraph 7.2(c), this Consent Judgment may be
5 modified only upon written agreement of the parties and upon entry of a modified Consent
6 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
7 entry of a modified Consent Judgment by the Court.

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

9 **7.1** As to any Covered Products for which the normally intended function and
10 manner of use of the product involves the gripping or holding of the product by gripping
11 or holding a component made from leaded coatings where the coating contains more than
12 300 parts per million (“ppm”) lead and such coating comes into contact with the user, a
13 warning as described in paragraph 7.2 below shall be provided. The warning
14 requirements set forth in paragraph 7.2 shall apply only to: (1) Covered Products that
15 Defendant ships for distribution after 270 days after entry of this Consent Judgment (“the
16 Effective Date”); and (2) products manufactured, distributed, marketed, sold or shipped
17 for sale or use inside the State of California.

18 **7.2** Defendant shall provide Proposition 65 warnings as follows:

19 (a) Defendant shall provide either of the following warning statements:

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

25 or

26 **WARNING:** This product contains one or more chemicals known to the
27 State of California to cause cancer and birth defects or other reproductive
28 harm. *Wash hands after handling.*

1 The word "WARNING" shall be in bold. The words "Wash hands
2 after handling" shall be in bold and italicized.

3 Defendant shall provide such warning with the unit package of the
4 Covered Products. Such warning shall be prominently affixed to or printed
5 on each Covered Product's label or package. The warning shall be at least
6 the same size as the largest of any other safety warnings, if any, on the
7 product container. If printed on the label itself, the warning shall be
8 contained in the same section that states other safety warnings, if any,
9 concerning the use of the product.

10 (b) The requirements for product labeling, set forth in subparagraph (a)
11 above are imposed pursuant to the terms of this Consent Judgment. The
12 parties recognize that product labeling is not the exclusive method of
13 providing a warning under Proposition 65 and its implementing regulations.

14 (c) If Proposition 65 warnings for lead or lead compounds should no
15 longer be required, Defendant shall have no further warning obligations
16 pursuant to this Consent Judgment. In the event that Defendant ceases to
17 implement or if Defendant modifies the warnings required under this
18 Consent Judgment (because of a change on the law or otherwise),
19 Defendant shall provide written notice to Mateel (through KELC) of its
20 intent to do so, and of the basis for its intent, no less than thirty (30) days in
21 advance. Mateel shall notify Defendant in writing of any objection within
22 thirty (30) days of its receipt of such notice, or such objection by Mateel
23 shall be waived.

24 8. **AUTHORITY TO STIPULATE**

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

28 9. **RETENTION OF JURISDICTION**

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

3 **10. ENTIRE AGREEMENT**

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

10 **11. GOVERNING LAW**

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

14 **12. COURT APPROVAL**

15 If this Consent Judgment is not approved by the Court, it shall be of no force
16 or effect, and cannot be used in any proceeding for any purpose.

17 **IT IS SO STIPULATED:**

18 DATED: *Nov-6, 2007*

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

William Verick

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

24 DATED: October 18, 2007

MASTER LOCK COMPANY

Paul R. Peot
By: Paul R. Peot
Its: Vice President, Intellectual Property
and Collaborative Innovation

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The parties having stipulated to the foregoing Consent Judgment.

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JAN 03 2008

PATRICK J. MAHONEY,

JUDGE OF THE SUPERIOR COURT

456810
Matell V. EzFlo

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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO
12

13 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

14 Plaintiff,

15 vs.

16 EZ-FLOW INTERNATIONAL, INC., et al.,

17 Defendants.
18 _____/

CASE NO. 456810

~~[PROPOSED]~~ ORDER APPROVING
CONSENT JUDGMENT AS TO
DEFENDANT MASTER LOCK
COMPANY

Date: January 3, 2008
Time: 9:30 a.m.
Dept. No.: 302

19 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
20 noticed motion on January 3, 2008. The court finds that:

21 1. The warnings and reformulation the Consent Judgment requires comply with the
22 requirements of Proposition 65.
23
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25
26

ENDORSED
FILED
San Francisco County Superior Court

JAN 03 2008

GORDON PARK-LI, Clerk
BY: GINA GONZALES
Deputy Clerk

1 2. The payments in lieu of civil penalties specified in the Consent Judgment are
2 reasonable and conform to the criteria of Health & Safety Code § 25249.7(b)(2).

3 3. The attorneys fees awarded under the Consent Judgment are reasonable as are the
4 rates awarded the attorneys.

5 Based on these findings, the settlement and the Consent Judgment are approved.

6 IT IS SO ORDERED.

7 Dated: JAN 03 2008

 PATRICK J. MAHONEY
Judge of the Superior Court