

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 Email: wverick@igc.org
9 Email: ecorights@earthlink.net

6 DAVID WILLIAMS, SBN 144479
7 BRIAN ACREE, SBN 202505
8 370 Grand Avenue, Suite 5
9 Oakland, CA 94610
10 Telephone: (510) 271-0826
11 Facsimile: (510) 271-0829
12 Email: davidhwilliams@earthlink.net
13 Email: brianacree@earthlink.net

11 Attorneys for Plaintiff, MATEEL
12 ENVIRONMENTAL JUSTICE FOUNDATION

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

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,,

17 Plaintiff,

18 v.

19 ENERCO GROUP, INC., ET AL

20 Defendants.

Case No. CGC 06- 456753

**CONSENT JUDGMENT AS TO
DEFENDANT WEBER-STEPHEN
PRODUCTS, CO.**

21 Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Plaintiff”),
22 on the one hand, and Defendant, WEBER-STEPHEN (“WEBER”) on the other hand,
23 enter into, and request that the Court approve the following settlement, and order it to be
24 entered as a stipulated Consent Judgment.

26 **1. RECITALS**

ENDORSED
FILED
San Francisco County Superior Court

JAN 22 2008

GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

1 1.1 On November 3, 2006, the MATEEL ENVIRONMENTAL JUSTICE
2 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a
3 complaint for civil penalties and injunctive relief in San Francisco County Superior Court,
4 Case No.CGC-06-456753. The complaint, as amended, (hereafter referenced as "First
5 Amended Complaint") names, *inter alia*, defendant Weber Stephen Products, Co.
6 ("Settling Defendant"). For purposes of this Consent Judgment, Settling Defendant shall
7 include Weber Stephen Products Co. and its parents, subsidiaries or affiliates. The First
8 Amended Complaint alleges, among other things, that Settling Defendant violated
9 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
10 Safety Code Sections 25249.5, *et seq.* ("Proposition 65"). In particular, Mateel alleges
11 that Settling Defendant has knowingly and intentionally exposed persons to the leaded
12 brass components of hoses designed to be used with portable propane or natural gas
13 devices such as barbeque grills, camp stoves, camp lanterns, and portable heaters, that
14 these components are made of brass containing lead and/or lead compounds without first
15 providing a clear and reasonable warning to such individuals. Lead and lead compounds
16 are chemicals known to the State of California to cause cancer and birth defects or other
17 reproductive harm.

18 1.2 On July 27, 2006, a 60-Day Notice letter ("Notice Letter") was sent by
19 Mateel to Settling Defendant, the California Attorney General, all California District
20 Attorneys, and all City Attorneys of every California City with populations exceeding
21 750,000.

22 1.3 On or about June 28, 2007, Plaintiff previously settled and resolved all of its
23 claims in this action relating to 4 to 40 lb. propane cylinders equipped with overfill
24 protection devices (OPDs), including any valves and valve Hand Wheels that are
25 incorporated with such cylinders (collectively the "Propane Tank Claims") that are or
26 were manufactured by defendants Fiesta Gas Grills, LLC, Manchester Tank & Equipment
27 Co., Wolfedale Engineering Limited, and Worthington Cylinder Corporation (collectively
28 the "Propane Tank Settling Defendants"), regardless of whether they bear their labels.

1 The parties agree that any and all Propane Tank Claims that plaintiff asserted or could
2 have asserted against Weber Stephen Products, Co. and its parents, subsidiaries or
3 affiliates have already been fully and finally resolved pursuant to the terms of the
4 settlement with the Propane Tank Settling Defendants because as far as Mateel is aware
5 any and all Weber Propane Tank products were manufactured by one or more of the
6 Propane Tank Settling Defendants.

7 1.4 The Settling Defendant is a business that employs ten or more persons and
8 manufactures, distributes, and/or markets products within the State of California. Some of
9 those products are alleged to contain lead and/or lead compounds. Lead and lead
10 compounds are chemicals known to the State of California to cause cancer, and lead is a
11 chemical known to the State of California to cause reproductive toxicity pursuant to
12 Health and Safety Code Section 25249.9. Under specified circumstances, products
13 containing lead and/or lead compounds that are sold or distributed in the State of
14 California are subject to the Proposition 65 warning requirement set forth in Health and
15 Safety Code Section 25249.6. Plaintiff Mateel alleges that the Leaded Brass valve hose
16 ends of the adaptor hoses manufactured, distributed, sold and/or marketed by Settling
17 Defendant for use in California require a warning under Proposition 65.

18 1.5 For purposes of this Consent Judgment, the term "Covered Products" shall
19 be defined as hoses, and their component parts, designed to be used with portable propane
20 or natural gas operated devices, such as barbeque grills, heaters, stoves, and lamps, to the
21 extent such products are distributed and sold within the state of California, which are
22 manufactured, distributed, marketed and/or sold by the Settling Defendant, regardless of
23 whether they bear the label of the Settling Defendant.

24 1.6 For purposes of this Consent Judgment, the parties stipulate that this Court
25 has jurisdiction over the allegations of violations contained in the First Amended
26 Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the
27 First Amended Complaint, that venue is proper in the County of San Francisco and that
28 this Court has jurisdiction to enter this Consent Judgment as a full settlement and

1 defects and other reproductive harm. *Wash hands after handling this product*¹

2
3 2.3 PLACEMENT OF WARNING:

4 (i) Unless the Covered Product is sold as described in subsection (ii)
5 below, the warning shall be contained in the same section of the label that
6 contains other safety warnings, if any, concerning the use of the Covered
7 product, near the displayed price and/or UPC code, or on its own label.
8 Such warning shall be prominently affixed to or printed on each such
9 Covered Product, its label or package, and displayed with such
10 conspicuousness, as compared to other words, statements or designs on the
11 label(s) or package as to render it likely to be read and understood by an
12 ordinary individual under customary conditions of purchase and use. With
13 respect to the preceding sentence, the type size of the warning must be
14 legible, but otherwise need not be larger than the other warning language
15 used in conjunction with the Covered Products in question and its relative
16 size may take into account the nature, immediacy, and acuteness of the risks
17 for which other warnings are given. The word "WARNING" shall be in
18 bold. The words "Wash hands after handling this product" shall be
19 italicized.

20 (ii) OWNERS MANUAL WARNING:

21 If the Covered Product is sold to be used with and as part of the same
22 packaging and single purchase of a product that (a) may cause serious injury
23 or bodily harm unless used as directed; or (b) is sophisticated, difficult to
24 understand or install, set-up, or assemble; or (c) has one or more features a
25 consumer must read about in order to know how to use the product, the
26 warning may be placed in the owner's manual for the larger inclusive
27 product. The parties agree that a propane operated barbecue would be an

28 ¹ A reference in the warnings to cancer is at the option of Settling Defendant.

1 example of the type of product that would meet the criteria set forth above
2 and if the Covered Product is sold in conjunction with a propane operated
3 barbecue, the warning may be placed in the owner's manual for the
4 barbecue.

5 **3. MONETARY PAYMENT**

6 **3.1** In settlement of all of the claims referred to in this Consent Judgment
7 against the Settling Defendant, within five (5) business days of receiving notice
8 that the Court has entered this Consent Judgment, Settling Defendant shall pay
9 \$20,000 to the Klamath Environmental Law Center ("KELC") to cover a portion of
10 Mateel's attorneys' fees and costs. The payment shall be sent by confirmed
11 delivery to Klamath Environmental Law Center, 424 First Street, Eureka,
12 California 95501.

13 **3.2** Within five (5) business days of entry of this Consent Judgment by
14 the Court, Settling Defendant shall pay \$7,500 to the Ecological Rights Foundation
15 and \$7,500 to Californians for Alternatives to Toxics for work informing the
16 California Consumers about the hazards of and exposures to toxic chemicals and
17 for work to reduce exposures to and pollution from toxic chemicals. Both are
18 California non-profit environmental organizations that advocate for workers' and
19 consumers' safety, and for awareness and reduction of toxic exposures. Both
20 payments shall be sent by confirmed delivery to Klamath Environmental Law
21 Center, 424 First Street, Eureka, California 95501. Klamath shall within a
22 commercially reasonable time forward the payments to the identified entities along
23 with an instruction as to the limitations on the use of the funds.

24 **4. ENTRY OF CONSENT JUDGMENT**

25 The parties hereby request that the Court promptly enter this Consent
26 Judgment. Plaintiff shall expeditiously prepare and file the papers to request that
27 the Court approve of, sign, and enter this Consent Judgment. Upon entry of the
28

1 Consent Judgment, Settling Defendant and Mateel waive their respective rights to a
2 hearing or trial on the allegations of the First Amended Complaint.

3 **5. RELEASES AND MATTERS COVERED BY THIS CONSENT**
4 **JUDGMENT**

5 **5.1** This Consent Judgment is a final and binding resolution between
6 Mateel, acting on behalf of itself and, as to those matters included in the 60 Day
7 Notice Letter, on behalf of the general public, and Settling Defendant, of: (i) any
8 violation of Proposition 65 with respect to the Covered Products, and (ii) any other
9 statutory or common law claim, to the fullest extent that any of the foregoing
10 described in (i) or (ii) were or could have been asserted by Mateel (or as to those
11 matters included in and chemicals identified in the 60 Day Notice Letter were or
12 could have been asserted any person or entity) against the Settling Defendant based
13 upon, arising out of or relating to Settling Defendant's compliance or lack of
14 compliance with Proposition 65, or regulations promulgated thereunder, with
15 respect to the Covered Products, and any other claim based in whole or part on the
16 facts alleged in the First Amended Complaint, whether based on actions committed
17 by Settling Defendant, or by (a) any other entity within the chain of distribution of
18 the Covered Products, including, but not limited to, manufacturers, wholesale or
19 retail sellers or distributors and any other person in the course of doing business, or
20 (b) any entity that manufactured, sold, or distributed the Covered Products. As to
21 those chemicals identified in the 60 Day Notice Letter, compliance with the terms
22 of this Settlement resolves any issue, now and in the future, concerning compliance
23 or lack of compliance with the requirements of Proposition 65 by Settling
24 Defendant and its parents, subsidiaries or affiliates, predecessors, officers,
25 directors, employees, and all manufacturers, customers, distributors, wholesalers,
26 retailers or any other person in the course of doing business involving the Covered
27 Products, and the successors and assigns of any of these who may manufacture,
28 use, maintain, distribute, market or sell Covered Products.

1 **5.2** As to alleged exposures to Covered Products, Mateel, acting on
2 behalf of itself and its agents, successors and assigns, and as to those matters
3 included in the 60 Day Notice Letters on behalf of the general public, forever
4 waives and relinquishes all rights to institute any form of legal action, and forever
5 waives and releases all claims against Settling Defendant and its parents,
6 subsidiaries, affiliates, predecessors, officers, directors, employees, and all
7 customers, manufacturers, distributors, wholesalers, retailers and all other persons,
8 and the successors and assigns of any of them, who, in the course of doing business
9 involving the Covered Products, may manufacture, use, maintain, distribute or sell
10 the Covered Products, whether such claims arise under Proposition 65 or
11 otherwise, arising out of or resulting from, or related directly or indirectly to, in
12 whole or in part, the Covered Products and claims identified in Mateel's 60 Day
13 Notice Letter and/or the First Amended Complaint. In furtherance of the
14 foregoing, Mateel, acting on behalf of itself and the general public, hereby waives
15 any and all rights and benefits which it now has, or in the future may have,
16 conferred upon it with respect to the Covered Products by virtue of the provisions
17 of Section 1542 of the California Civil Code, which provides as follows:

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

24 Mateel understands and acknowledges that the significance and consequence of this
25 waiver of California Civil Code Section 1542 is that even if Mateel or any member of the
26 general public suffers future damages arising out of or resulting from, or related directly
27 or indirectly to, in whole or in part, the claims raised in the 60 Day Notice or the First

28 Amended Complaint regarding the Covered Products, neither Mateel nor any member of

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

11 **6. ENFORCEMENT OF JUDGMENT**

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

16 **7. MODIFICATION OF JUDGMENT**

17 This Consent Judgment may be modified only upon written agreement of the
18 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon
19 motion of any party as provided by law and upon entry of a modified Consent Judgment
20 by the Court.

21 **8. AUTHORITY TO STIPULATE**

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

25 **9. RETENTION OF JURISDICTION**

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

28 **10. ENTIRE AGREEMENT**

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

7 **11. GOVERNING LAW**

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

11 **12. FEES AND EXPENSES**

12 The parties acknowledge and agree that, except as set provided in Section 3.1 of
13 this Consent Judgment, each party shall bear all of its own costs, expenses, consultant and
14 expert fees, and attorney's fees arising out of and/or in connection with the litigation, the
15 negotiation, drafting and execution of this Consent Judgment, and all matters arising out
16 of and/or connected therewith.

17 In the event any action or proceeding is brought to enforce this Consent Judgment,
18 the prevailing party shall be entitled to reasonable and necessary attorney's fees, expenses,
19 and costs incurred in such subsequent action or proceeding, in addition to all other relief
20 to which that party may be entitled.

21 **13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION**
22 **25249.7(F)**

23 Mateel agrees to comply with the reporting form and approval requirements referenced in
24 Health & Safety Code Section 25249.7(f) and as implemented by various regulations.


25 **14. COURT APPROVAL**

26 If this Consent Judgment is not approved by the Court, it shall be immediately rescinded
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

without further action by the parties, shall be of no force or effect, and may not be used in any proceeding for any purpose.

IT IS SO STIPULATED AND AGREED:

DATED: MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

DATED: WEBER-STEPHEN PRODUCTS, CO.,

By:
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: **JAN 22 2008**

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

without further action by the parties, shall be of no force or effect, and may not be used in any proceeding for any purpose.

IT IS SO STIPULATED AND AGREED:

DATED: MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

DATED: WEBER-STEPHEN PRODUCTS, CO.,

11/5/2007

By: JAMES C. STEPHEN
Its: PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

(SEE PREVIOUS PG.)

JUDGE OF THE SUPERIOR COURT