

ENDORSED  
FILED  
San Francisco County Superior Court

DEC 05 2008

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15 ENVIRONMENTAL JUSTICE FOUNDATION

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 FOR THE COUNTY OF SAN FRANCISCO

18 MATEEL ENVIRONMENTAL  
19 JUSTICE FOUNDATION,

20 Plaintiff,

21 vs.

22 BRIGGS & STRATTON  
23 CORPORATION, INC., et al., ,

24 Defendants.

Case No. CGC 08-475481

CONSENT JUDGMENT  
(As to Defendant Briggs & Stratton  
Corporation)

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27  
28 Mateel v. Briggs & Stratton Corporation  
Case No 475481

CONSENT JUDGMENT (BRIGGS & STRATTON CORPORATION)

1     **1.     INTRODUCTION**

2           **1.1     On or about May 19, 2008, MATEEL ENVIRONMENTAL JUSTICE**  
3 **FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a**  
4 **complaint for civil penalties and injunctive relief in the above captioned matter in San**  
5 **Francisco County Superior Court, against several defendants, including Briggs & Stratton**  
6 **Corporation, ("Briggs & Stratton" or "Settling Defendant"). The Complaint alleges,**  
7 **among other things, that Settling Defendant violated the provisions of the Safe Drinking**  
8 **Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5 et**  
9 **seq. ("Proposition 65"), by failing to give clear and reasonable warnings to those residents**  
10 **in California who handle brass air hose connectors, brass hose couplings, or brass quick**  
11 **connects (collectively "brass hose couplings") made from leaded brass alloys that**  
12 **handling and use of these products causes those residents to be exposed to lead and/or**  
13 **lead compounds, chemicals known to the State of California to cause cancer and birth**  
14 **defects or other reproductive harm, as required by Health and Safety Code Section**  
15 **25249.6. For purposes of this Consent Judgment, Covered Products shall include those**  
16 **brass hose couplings listed in Exhibit A, not packaged for sale in combination with a**  
17 **product which uses a small combustion engine.**

18           **1.2     Settling Defendant is a business that employs ten or more persons and**  
19 **manufactures, distributes supplies and/or otherwise markets brass products, including**  
20 **accessories, such as accessories for use with air compressors, including Covered Products.**  
21 **Many Covered Products contain components manufactured from brass that contains lead**  
22 **and/or lead compounds. Pursuant to Health and Code Section 25249.8, lead and lead**  
23 **compounds are chemicals known to the State of California to cause cancer and**  
24 **reproductive toxicity. Under specified circumstances, products containing lead and/or**  
25 **lead compounds that are sold or distributed in the State of California are subject to the**  
26 **Proposition 65 warning requirement set forth in Health and Safety Code Section 25249.6.**  
27 **Plaintiff Mateel alleges that the Covered Products sold and/or marketed by Settling**  
28 **Defendant for use in California require a warning under Proposition 65.**

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1           **1.3** For purposes of this Consent Judgment, the parties stipulate that this Court  
2 has jurisdiction over the allegations of violations contained in the Complaints, and  
3 personal jurisdiction over Settling Defendant as to the acts alleged in the Complaints, and  
4 that venue is proper in the County of San Francisco and that this Court has jurisdiction to  
5 enter this Consent Judgment as a full settlement and resolution of the allegations  
6 contained in the Complaints, and of all claims that were or could have been raised by  
7 Mateel, or as to those matters included in the 60 Day Notice Letters, raised by a member  
8 of the general public.

9           **1.4** 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 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 PAYMENT**

17           **2.1** Within five (5) calendar days of entry of this Consent Judgment Settling  
18 Defendant shall pay \$7,500 to the Ecological Rights Foundation and \$7,500 to  
19 Californians for Alternatives to Toxics for use toward reducing exposures to toxic  
20 chemicals and other pollutants, and toward increasing consumer, worker and community  
21 awareness of health hazards posed by lead and other toxic chemicals. Both are California  
22 non-profit, tax-exempt organizations.

23           **2.2** Within ten (10) calendar days of entry of this Consent Judgment, Settling  
24 Defendant shall pay \$20,000 to the Klamath Environmental Law Center ("KELC") to  
25 cover a portion of Mateel's attorneys' fees and costs.

26           **2.3** All payments shall be made by check, payable to the above specified payee  
27 and mailed, or sent by other overnight delivery, to William Verick, Esq., Klamath  
28 Environmental Justice Foundation, 424 First Street, Eureka, CA 95501, to be distributed

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1 by Mr. Verick to the ultimate recipients within a commercially reasonable time. Mr.  
2 Verick shall provide to Briggs & Stratton any information that Briggs & Stratton may  
3 reasonably determine to be necessary or convenient to make the required payments,  
4 including but not limited to a completed IRS Form 1099 for each payee,

5 **3. ENTRY OF CONSENT JUDGMENT**

6 3.1 The parties hereby request that the Court promptly enter this Consent  
7 Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive  
8 their respective rights to a hearing or trial on the allegations of the Complaint.

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

10 4.1 This Consent Judgment is a final and binding resolution between Mateel,  
11 acting on behalf of itself and, as to those matters raised in the 60 Day Notice Letters, the  
12 general public, and Settling Defendant, of any violation of Proposition 65, or the  
13 regulations promulgated thereunder, to the fullest extent that it could have been asserted  
14 by Mateel against the Settling Defendant based upon, arising out of, or relating to Settling  
15 Defendant's compliance with Proposition 65, or regulations promulgated thereunder, with  
16 respect to the Covered Products, whether based on actions committed by Settling  
17 Defendant, or by any other entity within the chain of distribution of the Covered Products,  
18 including, but not limited to, manufacturers, wholesale or retail sellers or distributors and  
19 any other person in the course of doing business that manufactured, sold, or distributed the  
20 Covered Products. As to alleged exposures to chemicals listed in the 60 Day Notice  
21 Letter from Covered Products, compliance with the terms of this Consent Judgment  
22 resolves any issue, now and in the future, concerning compliance by Settling Defendant  
23 and its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and  
24 all manufacturers, customers, distributors, wholesalers, retailers or any other person in the  
25 course of doing business involving the Covered Products, and the successors and assigns  
26 of any of these who may manufacture, use, maintain, distribute, market or sell Covered  
27 Products, with the requirements of Proposition 65. Notwithstanding any other provision  
28

1 of this agreement, the release by the general public shall not extend beyond the claims and  
2 chemicals identified in the 60 Day Notice Letters referenced in this agreement.

3       **4.2** As to alleged exposures to chemicals identified in the 60 Day Notice Letter  
4 from Covered Products, Mateel, acting on behalf of itself and, as to the matters in the 60  
5 Day Notice Letter, on behalf of the general public, and its agents, successors and assigns,  
6 waives all rights to institute any form of legal action, and releases all claims which were  
7 or could have been brought against Settling Defendant and its parents, subsidiaries or  
8 affiliates, predecessors, officers, directors, employees, and all customers, manufacturers,  
9 distributors, wholesalers, retailers or any other person in the course of doing business  
10 involving the Covered Products, and the successors and assigns of any of them, who may  
11 manufacture, use, maintain, distribute or sell the Covered Products. This release of  
12 claims by the general public is not understood to extend beyond the claims included in the  
13 60 Day Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself  
14 and the general public, hereby waives any and all rights and benefits which it now has, or  
15 in the future may have, conferred upon it with respect to the Covered Products by virtue  
16 of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

21 Mateel understands and acknowledges that the significance and consequence of this  
22 waiver of California Civil Code Section 1542 is that even if Mateel or any member of the  
23 general public suffers future damages arising out of or resulting from, or related directly  
24 or indirectly to, in whole or in part, the Covered Products, it will not be able to make any  
25 claim for those damages against the Settling Defendant, its parents, subsidiaries or  
26 affiliates, predecessors, officers, directors, employees, and all customers, manufacturers,  
27 distributors, wholesalers, retailers or any other person in the course of doing business  
28 involving the Covered Products, and the successors and assigns of any of them, who may

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CONSENT JUDGMENT (BRIGGS & STRATTON.)

1 manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel  
2 acknowledges that it intends these consequences for any such claims which may exist as  
3 of the date of this release but which Mateel does not know exist, and which, if known,  
4 would materially affect its decision to enter into this Consent Judgment, regardless of  
5 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or  
6 any other cause.

7 **5. ENFORCEMENT OF JUDGMENT**

8 **5.1** The injunctive terms of this Consent Judgment shall be enforced exclusively  
9 by the parties hereto. The parties may, by noticed motion or order to show cause before  
10 the Superior Court of San Francisco County, giving the notice required by law, enforce  
11 the injunctive terms and conditions contained herein. A Party may enforce any of the  
12 injunctive terms and conditions of this Consent Judgment only after that Party first  
13 provides 60 days notice to the Party allegedly failing to comply with the terms and  
14 conditions of this Consent Judgment and attempts to resolve such Party's failure to  
15 comply in an open and good faith manner.

16 **5.2** In any proceeding brought by either party to enforce this Consent Judgment,  
17 such party may seek whatever fines, costs, penalties or remedies as may be provided by  
18 law for any violation of Proposition 65 or this Consent Judgment.

19 **6. MODIFICATION OF JUDGMENT**

20 **6.1** This Consent Judgment may be modified only upon written agreement of  
21 the parties and upon entry of a modified Consent Judgment by the Court, or upon motion  
22 of any party as provided by law and upon entry of a modified Consent Judgment by the  
23 Court.

24 **6.2** If, with respect to brass containing lead in products similar to Covered  
25 Products, the Attorney General of the State of California or Plaintiff permit any other  
26 warning or reformulation standard by way of settlement or compromise with any other  
27 person in the course of doing business, or any other entity, or permit another warning or  
28 reformulation standard for brass to be incorporated by way of final judgment as to any

1 other person in the course of doing business, and any other entity, then Defendant is  
2 entitled to seek a modification to this Consent Judgment on the same terms as provided in  
3 those settlements, compromises or judgments.

4 **7. INJUNCTIVE RELIEF**

5 **7.1** The requirements of this paragraph 7 and its subparts, shall apply only to  
6 Covered Products that are manufactured or otherwise acquired for resale by Briggs &  
7 Stratton more than 90 days after approval of this Consent Judgment by the court.

8 **7.2** As to any Covered Product that contains a component made from brass that  
9 contains lead as an intentionally added ingredient, where such brass comes in contact with  
10 the user, a warning that contains one of the following warning statements shall be  
11 provided:

12 **PROP 65 WARNING: This product contains lead and lead compounds,**  
13 **known to the State of California to cause [cancer, and] birth defects or**  
**other reproductive harm. *Wash your hands after handling this product.***

14 or

15 **PROP 65 WARNING: Handling the brass parts of this product will expose**  
16 **you to lead, a chemical known to the State of California to cause [cancer, and]**  
**birth defects and other reproductive harm. *Wash hands after use.***

17 The phrase "PROP 65" may be excluded at the Defendant's discretion. If included, the  
18 phrase "PROP 65" shall be in capitals. The word "WARNING" shall be in bold text and  
19 in capital letters. The words "*Wash hands after handling this product*" or "*Wash hands*  
20 *after use,*" shall be italicized or underlined. Inclusion of the bracketed words "cancer,  
21 and" in the above warning shall be at Settling Defendant's option.

22 **7.3** The warning statements required in paragraph 7.2, shall be prominently  
23 affixed to or printed on each Covered Product, its label, or package and contained in the  
24 same section of the label or package that contains other safety warnings, if any,  
25 concerning the use of the Covered Product or near its displayed price and/or UPC code,  
26 and with such conspicuousness, as compared with other words, statements, designs, or  
27 devices on the Covered Product, its label, package or display as to render it likely to be  
28 read and understood by an ordinary individual under customary conditions of purchase or

1 use. The type size of the warning must be legible, but need not be any larger than any  
2 other warning provided for the Covered Product, and its relative size may take into  
3 account the nature, immediacy, and acuteness of the risks for which other warnings are  
4 provided.

5 **8. AUTHORITY TO STIPULATE**

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

9 **9. RETENTION OF JURISDICTION**

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

12 **10. ENTIRE AGREEMENT**

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

19 **11. GOVERNING LAW**

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

23 **12. FEES AND EXPENSES**

24 The parties acknowledge and agree that, except as set provided in Section of this  
25 Consent Judgment, each party shall bear its own costs and attorneys fees.  
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1 **13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)**

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

5 **14. COURT APPROVAL**

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

8 **IT IS SO STIPULATED:**

9  
10 Dated:

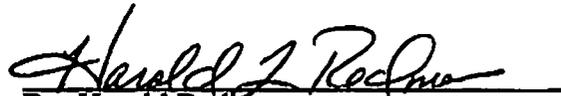
MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION



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

15 Dated:

BRIGGS & STRATTON CORPORATION

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18 By: Harold Redman  
19 Its: President - Home Power Products Group

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

21  
22 Dated: DEC 05 2008

PAUL H. ALVARADO  
JUDGE OF THE SUPERIOR COURT

23  
24 PAUL H. ALVARADO

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**APPENDIX A**  
**Covered Products Subject to Paragraph 7**

<u>Model Number</u>	<u>Description</u>
6040	25' Replacement Hose
6070	30' Replacement Hose
6041	25' Replacement Hose / Extension Hose
6071	25' Replacement Hose / Extension Hose
6042	50' Replacement Hose / Extension Hose
6058	Garden Hose Quick Connect Kit
6074	Garden Hose Quick Connect Kit
6050	High Pressure Hose Quick Connect Kit
6073	High Pressure Hose Quick Connect Kit
6055	Spray Gun
6078	Spray Gun
6056	Pro-Style Spray Gun
6047	Pro-Style Spray Tips
6082	Pro-Style Spray Tips
6094	Project-Pro Spray Tips
6038	Project-Pro Spray Tips
6045	Quick-Connect Turbo Nozzle
6080	Quick-Connect Turbo Nozzle
6158	RotoScrub Wide / Max Turbo Nozzle
6044	Adjustable Spray Wand
6077	Adjustable Spray Wand
6043	Heavy-Duty Turbo Wand (3000 PSI)
6028	Heavy-Duty Turbo Wand (3000 PSI)
6053	33" 4000 psi Quick Connect Spray Wand
6134	20" 3200 psi Quick Connect Spray Wand

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6130                    20" 3200 psi Quick Connect Spray Wand  
6143                    Precision Spray Selector Wand  
6158                    Precision Spray Selector Wand