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

14
15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,,

17 Plaintiff,

18 v.

19 APACHE HOSE AND BELTING CO.,
20 INC., et al.,

21 Defendants.

Case No. CGC-09-495336

**CONSENT JUDGMENT AS TO
DEFENDANT ROCKLER
COMPANIES, INC.**

22 **1. INTRODUCTION**

23 **1.1** On December 21, 2009 the MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a
25 Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco
26 Superior Court, Case No. 495336, against Defendant Rockler Companies, Inc., (“Rockler”
27 or “Defendant”). The Complaint alleges, among other things, that Defendant violated
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**ENDORSED
FILED**
San Francisco County Superior Court

AUG 23 2010

CLERK OF THE COURT
BY: MELINKA JONES
Deputy Clerk

1 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
2 Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In particular, Mateel alleges
3 that Rockler has knowingly and intentionally exposed persons to tools that are made of
4 brass or that have brass components that contains lead and/or lead compounds (hereinafter
5 “leaded brass”), without first providing a clear and reasonable warning to such
6 individuals. Lead and lead compounds are chemicals known to the State of California to
7 cause cancer and birth defects or other reproductive harm.

8 **1.2** On May 7, 2009, Mateel sent a Notice of Violation to Rockler, the
9 California Attorney General, all California District Attorneys, and all City Attorneys of
10 every California city with populations exceeding 750,000. On May 13, 2010 Mateel sent
11 an additional Notice of Violation to Crown Hand Tools, Ltd (hereinafter “Crown”)and to
12 all requisite public enforcers of Proposition 65. The May 13, 2010 Notice of Violation
13 alleged that Crown Hand Tools exposed California residents to lead through its sales of
14 tools that were themselves made of leaded brass, or which had components made from
15 leaded brass. If no authorized public prosecutor files a Proposition 65 enforcement action
16 against Crown Hand Tools concerning alleged lead exposures arising from its leaded
17 brass products within eighty-five days of Mateel’s additional Notice of Violation, this
18 Action shall be deemed amended to include Crown Hand Tools, Ltd as a party, and this
19 Consent Judgment shall be deemed to include Crown’s leaded brass products within the
20 definition of “Covered Products” as otherwise set forth below.

21 **1.3** Rockler is a business that employs ten or more persons and manufactures,
22 distributes, and/or markets leaded brass hand tools and hardware, within the State of
23 California. Some of those products are alleged to contain lead and/or lead compounds.
24 Lead and lead compounds are chemicals known to the State of California to cause cancer,
25 and lead is a chemical known to the State of California to cause reproductive toxicity
26 pursuant to Health and Safety Code Section 25249.9. Under specified circumstances,
27 products containing lead and/or lead compounds that are sold or distributed in the State of
28 California are subject to the Proposition 65 warning requirement set forth in Health and

1 Safety Code Section 25249.6. Plaintiff Mateel alleges that tools that are made from
2 leaded brass, or that have leaded brass components, are manufactured, distributed, sold
3 and/or marketed by Rockler for use in California and require a warning under Proposition
4 65.

5 **1.4** Crown is a business that employs ten or more persons and manufactures,
6 leaded brass hand tools and hardware which are distributed, and/or marketed by its
7 customers within the State of California. Some of those products are alleged to contain
8 lead and/or lead compounds. Lead and lead compounds are chemicals known to the State
9 of California to cause cancer, and lead is a chemical known to the State of California to
10 cause reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under
11 specified circumstances, products containing lead and/or lead compounds that are sold or
12 distributed in the State of California are subject to the Proposition 65 warning requirement
13 set forth in Health and Safety Code Section 25249.6. Plaintiff Mateel alleges that tools
14 that are made from leaded brass, or that have leaded brass components, are manufactured,
15 distributed, sold and/or marketed by Crown for use in California and require a warning
16 under Proposition 65.

17 **1.5** For purposes of this Consent Judgment, the term “Covered Products” shall
18 be defined as tools and hardware that are made from leaded brass or that have leaded brass
19 components that a consumer touches while using the products in their normally intended
20 manner, to the extent such tools are distributed and sold within the state of California, and
21 are manufactured, distributed, marketed and/or sold by Rockler and/or Crown, regardless
22 of whether they bear Rockler or Crown labels. Examples of these types of tools and
23 hardware are tools such as: squares, punches, bevels, mortis gauges, router templates,
24 miter gauges, sliding bevels, and router bushings; and hardware such as: drawer pulls,
25 cabinet handles, hinges and catches.

26
27 **1.6** For purposes of this Consent Judgment, the parties stipulate that this Court
28 has jurisdiction over the allegations of violations contained in the Complaint and personal
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1 jurisdiction over Rockler and Crown as to the acts alleged in the Complaint, that venue is
2 proper in the County of San Francisco and that this Court has jurisdiction to enter this
3 Consent Judgment as a full settlement and resolution of the allegations contained in the
4 Complaint and of all claims that were or could have been raised by any person or entity
5 based in whole or in part, directly or indirectly, on the facts alleged therein or arising
6 therefrom or related thereto.

7 **1.7** This Consent Judgment resolves claims that are denied and disputed. The
8 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
9 all claims between the parties for the purpose of avoiding prolonged litigation. This
10 Consent Judgment shall not constitute an admission with respect to any material allegation
11 of the Complaint, each and every allegation of which Rockler and Crown deny, nor may
12 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
13 misconduct, culpability or liability on the part of Rockler or Crown.

14 **2. SETTLEMENT PAYMENT**

15 **2.1** In settlement of all of the claims referred to in this Consent Judgment
16 against the Settling Defendants Rockler and Crown, no later than the day the court enters
17 this Consent Judgment, Rockler and Crown shall pay \$ 20,000 to the Klamath
18 Environmental Law Center (“KELC”) to cover Mateel’s attorneys’ fees and costs.

19 **2.2** No later than the day the court enters this Consent Judgment, Rockler and
20 Crown shall pay \$7,500 to the Ecological Rights Foundation (“ERF”) and \$7,500 to
21 Californians for Alternatives to Toxics (“CATs”). Both organizations are a California
22 non-profit tax exempt organizations. These payments are to be used by ERF and CATs to
23 inform Californians about toxic chemicals or to eliminate or reduce exposures to toxic
24 chemicals.

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, Rockler and Crown, on one hand, and
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1 Mateel, on the other, waive their respective rights to a hearing or trial on the allegations of
2 the Complaint.

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

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

24 **4.2** As to those alleged exposures to Covered Products raised in the Notice of
25 Violation, Mateel, acting on behalf of itself, and Mateel's agents, successors and assigns,
26 waive all rights to institute any form of legal action, and release all claims against
27 Rockler, Crown, and their parents, subsidiaries or affiliates, predecessors, officers,
28 directors, employees, and all of its customers, manufacturers, distributors, wholesalers,
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1 retailers or any other person in the course of doing business, and the successors and
2 assigns of any of them, who may manufacture, use, maintain, distribute or sell the
3 Covered Products, whether under Proposition 65 or otherwise, arising out of or resulting
4 from, or related directly or indirectly to, in whole or in part, the Covered Products and
5 claims identified in Mateel's Notices of Violation. In furtherance of the foregoing,
6 Mateel, acting on behalf of itself hereby waives any and all rights and benefits which it
7 now has, or in the future may have, conferred upon it with respect to the Covered Products
8 by virtue of the provisions of Section 1542 of the California Civil Code, which provides
9 as follows:

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

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

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1 **5. ENFORCEMENT OF JUDGMENT**

2 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
3 parties hereto. The parties may, by noticed motion or order to show cause before the
4 Superior Court of San Francisco County, giving the notice required by law, enforce the
5 terms and conditions contained herein.

6 **6. MODIFICATION OF JUDGMENT**

7 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
8 modified only upon written agreement of the parties and upon entry of a modified Consent
9 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
10 entry of a modified Consent Judgment by the Court.

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

12 **7.1** Covered Products shall be deemed to comply with Proposition 65 and be
13 exempt from any Proposition 65 warning requirements if the brass that is part of the
14 Covered Products meets the following criteria: (a) the brass alloy from which the brass
15 fittings are made shall have a lead content by weight of no more than 0.03% (300 parts per
16 million, or “300 ppm”). Rockler or Crown may comply with the above requirements by
17 relying on information obtained from their suppliers regarding the content of the brass
18 alloy from which the brass fittings are made, provided such reliance is in good faith.
19 Obtaining test results showing that the lead content is no more than 0.03%, using a
20 method of sufficient sensitivity to establish a limit of quantification (as distinguished from
21 detection) of less than 300 ppm shall be deemed to establish good faith reliance.

22 **7.2** Covered Products that do not meet the warning exemption standard set forth
23 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
24 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply
25 only to: (1) Covered Products that Rockler or Crown ships for distribution after 120 days
26 after entry of this Consent Judgment (“the Effective Date”); and (2) products
27 manufactured, distributed, marketed, sold or shipped for sale or use inside the State of
28 California. Notwithstanding the above, Covered Products for which Rockler or Crown

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1 already has the packaging, or for which the packaging has already been designed and is
2 under contract to be printed may use a warning which states, either on the product
3 labeling, on the register receipt or on the “pick ticket” the following: “WARNING: This
4 product contains one or more chemicals known to the State of California to cause cancer
5 and birth defects or other reproductive harm. WASH HANDS AFTER HANDLING

6 **7.3** Rockler or Crown, or both, shall provide Proposition 65 warnings as
7 follows:

8 (a) Defendants Rockler and Crown shall provide either of the following
9 warning statements:

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

14 or

15 **WARNING:** This product contains one or more chemicals, including lead,
16 that are known to the State of California to cause cancer and birth defects or
17 other reproductive harm. *Wash hands after handling.*

18 The word “WARNING” shall be in bold. The words “Wash hands
19 after handling” shall be in bold and italicized.

20 Rockler or Crown shall provide such warning with the unit package
21 of the Covered Products. Such warning shall be prominently affixed to or
22 printed on each Covered Product’s label or package. The warning shall be
23 at least the same size as the largest of any other safety warnings, if any, on
24 the product container. If printed on the label itself, the warning shall be
25 contained in the same section that states other safety warnings, if any,
26 concerning the use of the product.

27 (b) The requirements for product labeling, set forth in subparagraph (a)
28 above are imposed pursuant to the terms of this Consent Judgment. The

1 parties recognize that product labeling is not the exclusive method of
2 providing a warning under Proposition 65 and its implementing regulations.

3 (c) If Proposition 65 warnings for lead or lead compounds should no
4 longer be required, neither Rockler nor Crown shall have any further
5 warning obligations pursuant to this Consent Judgment. In the event that
6 Rockler or Crown ceases to implement or modifies the warnings required
7 under this Consent Judgment (because of a change in the law or otherwise),
8 then the Settling Defendant which ceases to implement or modifies the
9 warnings, Rockler or Crown, shall provide written notice to Mateel (through
10 KELC) of its intent to do so, and of the basis for its intent, no less than thirty
11 (30) days in advance. Mateel shall notify Rockler and/or Crown in writing
12 of any objection within thirty (30) days of its receipt of such notice, or such
13 objection by Mateel shall be waived.

14 (d) If after the Effective Date, Rockler or Crown ships Covered Products
15 to a retailer or distributor outside of California that neither provide the
16 warnings specified in this paragraph nor meet the Reformulation Standard
17 specified in paragraphs 7.1 through 7.3 of this Consent Judgment (“Non-
18 Conforming Covered Products”), and if the retailer or distributor then offers
19 those Non-Conforming Covered Products for sale in California, then as to
20 those Non-Conforming Covered Products, that retailer or distributor, and
21 their customers, are not released pursuant to Sections 4.1 and 4.2 above.

22 **8. AUTHORITY TO STIPULATE**

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

26 **9. RETENTION OF JURISDICTION**

27 This Court shall retain jurisdiction of this matter to implement the Consent
28

1 Judgment.

2 **10. ENTIRE AGREEMENT**

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

9 **11. GOVERNING LAW**

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

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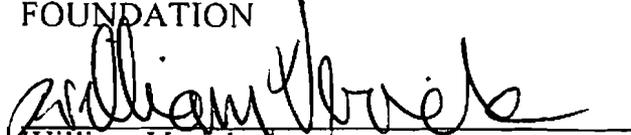
12. COURT APPROVAL

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:

ROCKLER TOOLS, INC.

By: _____
Its:

DATED:

CROWN HAND TOOLS, LTD..

By: _____
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT

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12. 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:

ROCKLER TOOLS, INC.

By:
Its:

DATED:

CROWN HAND TOOLS, LTD..

By: CHARLOTTE E. WARDLE
Its: DIRECTOR

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT

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12. 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: 8/23/2010

ROCKLER TOOLS, INC.


By: DAVID LARSON
Its: CFO

DATED: AUG 23 2010

CROWN HAND TOOLS, LTD..

By:
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: 

JUDGE OF THE SUPERIOR COURT