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17 FOUNDATION

**ENDORSED  
FILED**  
*San Francisco County Superior Court*

DEC 14 2010

CLERK OF THE COURT  
BY: SAJJA RAVINANTAPRICHIA  
Deputy Clerk

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **FOR THE COUNTY OF SAN FRANCISCO**

20 MATEEL ENVIRONMENTAL  
21 JUSTICE FOUNDATION,,  
22  
23 Plaintiff,  
24  
25 v.  
26 Mi-T-M CORPORATION, et al., ,  
27  
28 Defendant.

Case No. CGC – 10 - 497228  
CONSENT JUDGMENT  
(PRIMESOURCE BUILDING  
PRODUCTS, INC.)

1 **1. INTRODUCTION**

1.1 On March 1, 2010, the MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION (“MATEEL”) acting on behalf of itself and the general public, filed a  
Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco County  
Superior Court, Case No. 497228, against Defendant Primesource Building Products, Inc.,

1 (“PRIMESOURCE” or “Defendant”). The Complaint alleges, among other things, that  
2 Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of  
3 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In particular,  
4 MATEEL alleges that PRIMESOURCE has knowingly and intentionally exposed persons  
5 to products that utilize fittings and other accessible components made of brass containing  
6 lead and/or lead compounds (hereinafter “leaded brass”), which are chemicals known to  
7 the State of California to cause cancer and birth defects or other reproductive harm,  
8 without first providing a clear and reasonable warning to such individuals.

9       **1.2** On November 24, 2009, MATEEL sent a 60-Day Notice letter (“Notice  
10 Letter”) to PRIMESOURCE, the California Attorney General, all California District  
11 Attorneys, and all City Attorneys of every California city with populations exceeding  
12 750,000, a copy of which is incorporated into the complaint in this action.

13       **1.3** PRIMESOURCE is a business that employs ten or more persons and  
14 manufactures, distributes, and/or markets products, brass fittings and products, within the  
15 State of California. Some of those products are alleged to contain brass fittings and other  
16 accessible components that contain lead and/or lead compounds. Lead and lead  
17 compounds are chemicals known to the State of California to cause cancer, and lead is a  
18 chemical known to the State of California to cause reproductive toxicity pursuant to  
19 Health and Safety Code Section 25249.9. Under specified circumstances, products  
20 containing lead and/or lead compounds that are sold or distributed in the State of  
21 California are subject to the Proposition 65 warning requirement set forth in Health and  
22 Safety Code Section 25249.6. Plaintiff MATEEL alleges that leaded brass fittings and  
23 other components on products manufactured, distributed, sold and/or marketed by  
24 PRIMESOURCE for use in California require a warning under Proposition 65.

25       **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall  
26 be defined as products that utilize leaded-brass fittings and/or contain other accessible  
27 leaded-brass components, to the extent such products are distributed and sold within the  
28

1 State of California, and that are manufactured, distributed, marketed and/or sold by  
2 PRIMESOURCE, regardless of whether they bear PRIMESOURCE labels.

3 **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court  
4 has jurisdiction over the allegations of violations contained in the Complaint and personal  
5 jurisdiction over PRIMESOURCE as to the acts alleged in the Complaint, that venue is  
6 proper in the County of San Francisco and that this Court has jurisdiction to enter this  
7 Consent Judgment as a full settlement and resolution of the allegations contained in the  
8 Complaint and of all claims that were or could have been raised by any person or entity  
9 based in whole or in part, directly or indirectly, on the facts alleged therein or arising  
10 therefrom or related thereto.

11 **1.6** This Consent Judgment resolves claims that are denied and disputed. The  
12 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
13 all claims between the parties for the purpose of avoiding prolonged litigation. This  
14 Consent Judgment shall not constitute an admission with respect to any material allegation  
15 of the Complaint, each and every allegation of which PRIMESOURCE denies; nor may  
16 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,  
17 misconduct, culpability or liability on the part of PRIMESOURCE or any other person or  
18 entity related to the Defendant.

19 **2. SETTLEMENT PAYMENT**

20 **2.1** In settlement of all of the claims referred to in this Consent Judgment, no  
21 later than five (5) business days prior to the hearing of any motion to approve this  
22 settlement, PRIMESOURCE shall pay \$17,000 to the Klamath Environmental Law  
23 Center ("KELC") to cover a portion of MATEEL's attorneys' fees and costs.

24 **2.2** No later than five (5) business days prior to the hearing of any motion to  
25 approve this settlement, PRIMESOURCE shall pay \$4,000 to the Ecological Rights  
26 Foundation and \$4,000 to Californians for Alternatives to Toxics .

27 **2.3** In the event that within 120 days this consent judgment has not been  
28 approved and entered by the Court, any payments shall be returned to PRIMESOURCE.

1           **3.     ENTRY OF CONSENT JUDGMENT**

2           **3.1**    The parties hereby request that the Court promptly enter this Consent  
3 Judgment. Upon entry of the Consent Judgment, PRIMESOURCE and MATEEL waive  
4 their respective rights to a hearing or trial on the allegations of the Complaint.

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

6           **4.1**    This Consent Judgment is a final and binding resolution between MATEEL,  
7 acting on behalf of itself and, as to the claims made in the 60 Day Notice, acting in the  
8 public interest, and PRIMESOURCE, of: (i) any violation of Proposition 65 with respect  
9 to the Covered Products, and (ii) any other statutory or common law claim, to the fullest  
10 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by  
11 any person or entity against PRIMESOURCE based upon, arising out of or relating to  
12 PRIMESOURCE's compliance with Proposition 65, or regulations promulgated  
13 thereunder, with respect to lead exposures allegedly caused by Covered Products, and any  
14 other claim based in whole or part on the facts alleged in the Complaint, whether based on  
15 actions committed by PRIMESOURCE, or by any other person or entity within  
16 PRIMESOURCE's chain of distribution of the Covered Products, including, but not  
17 limited to, manufacturers, distributors, wholesale or retail sellers, and any other person in  
18 the course of doing business. As to lead exposures allegedly arising from the Covered  
19 Products, compliance with the terms of this Consent Judgment resolves any issue, now  
20 and in the future, concerning compliance by PRIMESOURCE and its parents, subsidiaries  
21 or affiliates, predecessors, officers, directors, employees, and all of their manufacturers,  
22 customers, distributors, wholesalers, retailers, or any other person in the course of doing  
23 business, and the successors and assigns of any of these who may manufacture, use,  
24 maintain, distribute, market or sell Covered Products, with the current requirements of  
25 Proposition 65 as to Covered Products manufactured, distributed, marketed and/or sold by  
26 PRIMESOURCE.

27           **4.2**    As to lead exposures allegedly caused by Covered Products, MATEEL,  
28 acting on behalf of itself, and its agents, successors and assigns, waives all rights to

1 institute any form of legal action, and releases all claims against PRIMESOURCE and its  
2 parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of  
3 its customers, manufacturers, distributors, wholesalers, retailers or any other person in the  
4 course of doing business, and the successors and assigns of any of them, who may  
5 manufacture, use, maintain, distribute or sell the Covered Products, whether under  
6 Proposition 65 or otherwise, arising out of or resulting from, or related directly or  
7 indirectly to, in whole or in part, the Covered Products and claims identified in  
8 MATEEL's Notice Letter. In furtherance of the foregoing, MATEEL, acting on behalf of  
9 itself hereby waives any and all rights and benefits which it now has, or in the future may  
10 have, conferred upon it with respect to the Covered Products by virtue of the provisions of  
11 Section 1542 of the California Civil Code, which provides as follows:

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

19 MATEEL understands and acknowledges that the significance and consequence of this  
20 waiver of California Civil Code Section 1542 is that even if MATEEL suffers future  
21 damages arising out of or resulting from, or related directly or indirectly to, in whole or in  
22 part, the Covered Products, it will not be able to make any claim for those damages  
23 against PRIMESOURCE, its parents, subsidiaries or affiliates, predecessors, officers,  
24 directors, employees, and all of its customers, manufacturers, distributors, wholesalers,  
25 retailers or any other person in the course of doing business, and the successors and  
26 assigns of any of them, who may manufacture, use, maintain, distribute or sell the  
27 Covered Products. Furthermore, MATEEL acknowledges that it intends these  
28 consequences for any such claims which may exist as of the date of this release but which

1 MATEEL does not know exist, and which, if known, would materially affect its decision  
2 to enter into this Consent Judgment, regardless of whether its lack of knowledge is the  
3 result of ignorance, oversight, error, negligence, or any other cause.

4 **5. ENFORCEMENT OF JUDGMENT**

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

9 **6. MODIFICATION OF JUDGMENT**

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

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

15 **7.1** The brass fittings and other accessible brass components of Covered  
16 Products shall be deemed to comply with Proposition 65 with regard to lead and be  
17 exempt from any Proposition 65 warning requirements for exposure to lead if the brass  
18 fittings and other accessible brass components that are part of the Covered Products meet  
19 the following criteria: the brass alloy from which the brass fittings and components are  
20 made shall have a lead content by weight of no more than 0.03% (300 parts per million, or  
21 "300 ppm"). PRIMESOURCE may comply with the above requirements by relying on  
22 information obtained from its suppliers regarding the content of the brass alloy from  
23 which the brass fittings and components are made, provided such reliance is in good faith.  
24 Obtaining test results showing that the lead content is no more than 0.03%, using a  
25 method of sufficient sensitivity to establish a limit of quantification (as distinguished from  
26 detection) of less than 300 ppm shall be deemed to establish good faith reliance.

27 **7.2** Covered Products that do not meet the warning exemption standard set forth  
28 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in

1 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 below shall  
2 apply only to: (1) Covered Products that PRIMESOURCE ships for distribution after 120  
3 days after entry of this Consent Judgment (“the Effective Date”); and (2) Covered  
4 Products manufactured, distributed, marketed, sold or shipped for sale or use inside the  
5 State of California.

6       **7.3** Pursuant to paragraph 7.2, above, PRIMESOURCE shall provide a  
7 Proposition 65 warning for Covered Products that do not meet the exemption provision in  
8 paragraph 7.1, above, as follows:

9           (a) Defendant PRIMESOURCE shall provide either of the following  
10 warning statements:

11                   **WARNING:** This product contains chemicals, including lead, known  
12 to the State of California to cause birth defects or other reproductive  
13 harm. *Wash your hands after handling.*

14           The word “WARNING” shall be in bold. The words “Wash hands after  
15 handling” shall be in bold and italicized. If the warning was printed or  
16 under contract to be printed, prior to the Effective Date, the words “Wash  
17 hands after handling” need not be in italics and substantially equivalent  
18 language (e.g. “and” rather than “or”) will satisfy the provision.

19           (b) Where utilized as an alternative to meeting the criteria set forth in  
20 Section 7.1, PRIMESOURCE shall provide the warning language set forth  
21 in subsection 7.3(a) either:

22                   (1) with the unit package of the Covered Products. Such warning  
23 shall be prominently affixed to or printed on each Covered  
24 Product’s label or package. If printed on the label itself, the  
25 warning shall be contained in the same section that states other  
26 safety warnings, if any, concerning the use of the Covered  
27 Product, or  
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(2) in the owner's manual of a Covered Product, but only if the Covered Product: (i) may cause serious injury or bodily harm unless used as directed; (ii) is sophisticated, difficult to understand or install, set-up, or assemble; or (iii) has one or more features a consumer must read about in order to know how to program or use the Covered Product. If the warning is given in the owners manual pursuant to this subsection, it shall be located in one of the following places in the manual: the outside of the front cover; the inside of the front cover; the first page other than the cover; or the outside of the back cover. The warning shall be printed or stamped in the manual or contained in a durable label or sticker affixed to the manual in a font no smaller than the font used for other chemically-related safety warnings in the manual. Alternatively, the warning may be included in a safety warning section of the owner's manual. PRIMESOURCE may continue to utilize, on an ongoing basis, owners manuals containing substantively the same Proposition 65 warnings as those set forth in paragraph 7.3(a) above without modifying them, but only to the extent such manuals have already been printed prior to the date on which this Consent Judgment has been entered by the Court. Owners manual warnings may only be allowed if the owners manual is sold in the same package and at the same time as the Covered Product and not for individual fittings sold separately.

(3) with the unit package of the Covered Products. Such warning shall be prominently affixed to or printed on each Covered Product's label or package. If printed on the label itself, the

1 warning shall be contained in the same section that states other  
2 safety warnings, if any, concerning the use of the Covered  
3 Product.

4 (c) The requirements for warnings, set forth in subparagraph (a) above  
5 are imposed pursuant to the terms of this Consent Judgment. The parties  
6 recognize that these are not the exclusive methods of providing a warning  
7 under Proposition 65 and its implementing regulations and that they may or  
8 may not be appropriate in other circumstances.

9 (d) If Proposition 65 warnings for lead or lead compounds should no  
10 longer be required, PRIMESOURCE shall have no further warning  
11 obligations pursuant to this Consent Judgment. Except as provided in  
12 section 7.1 above, in the event that PRIMESOURCE ceases to implement or  
13 modifies the warnings required under this Consent Judgment (because of a  
14 change in the law or otherwise), PRIMESOURCE shall provide written  
15 notice to MATEEL (through KELC) of its intent to do so, and of the basis  
16 for its intent, no less than thirty (30) days in advance. MATEEL shall notify  
17 PRIMESOURCE in writing of any objection within thirty (30) days of its  
18 receipt of such notice, or such objection by MATEEL shall be waived.

19 (e) If after the Effective Date, Defendant ships Covered Products to a  
20 retailer or distributor outside of California that neither provide the warnings  
21 specified in this paragraph nor meet the Reformulation Standard specified in  
22 paragraph 7.1 of this Consent Judgment ("Non-Conforming Covered  
23 Products"), and if the retailer or distributor then offers those Non-  
24 Conforming Covered Products for sale in California, then as to those Non-  
25 Conforming Covered Products, that retailer or distributor, and their  
26 customers, are not released pursuant to Sections 4.1 and 4.2 above.

27 (f) Nothing in this Consent Judgment shall create a limitation on a  
28 Proposition 65 enforcement action based on future conduct if such future

1                   conduct is not in compliance with the injunctive terms of this Consent  
2                   Judgment.

3  
4                   **8.     AUTHORITY TO STIPULATE**

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

8                   **9.     RETENTION OF JURISDICTION**

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

11                  **10.    GOVERNING LAW**

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

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**11. 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:**

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION



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

THE PRIMESOURCE BUILDING  
PRODUCTS, INC.

By:  
Its:

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

DATED:

JUDGE OF THE SUPERIOR COURT

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**11. COURT APPROVAL**

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**IT IS SO STIPULATED:**

**MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION**

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

**THE PRIMESOURCE BUILDING  
PRODUCTS, INC.**

\_\_\_\_\_  
*Arnon Zimman*  
By: Arnon Zimman  
Its: Co CEO

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

**CHARLOTTE WALTER WOOLARD**

**DATED: DEC 14 2010**

\_\_\_\_\_  
**JUDGE OF THE SUPERIOR COURT**