

ENDORSED
FILED
San Francisco County Superior Court

DEC 16 2010

CLERK OF THE COURT
BY: 
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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN FRANCISCO**

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,

17 Plaintiff,

18 v.

19 AKERUE INDUSTRIES, LLC, et al.,

20 Defendants.

Case No. 498558

CONSENT JUDGMENT
(STANDARD SALES, INC.)

21 **I. INTRODUCTION**

22 **1.1** On December 21, 2009, the MATEEL ENVIRONMENTAL JUSTICE
23 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a
24 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior
25 Court, Case No. 498558 (the "Action"), against Standard Sales, Inc. ("Standard Sales" or
26 "Defendant"). The Complaint alleges, among other things, that Defendant violated
27 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
28 Safety Code Sections 25249.5, et seq. ("Proposition 65") by failing to provide clear and

1 reasonable warnings regarding the lead composition of the brass components of certain
2 products.

3
4 **1.2** On December 28, 2009, Mateel sent a 60-Day Notice letter (“Notice Letter”) to
5 Standard Sales, the California Attorney General, all California District Attorneys, and all
6 City Attorneys of every California city with populations exceeding 750,000.

7 **1.3** Standard Sales is a business that employs ten or more persons and
8 manufactures, distributes, and/or markets leaded brass products within the State of
9 California. Some of these products are alleged to contain lead and/or lead compounds. Lead
10 and lead compounds are chemicals known to the State of California to cause cancer, and lead
11 is a 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 California
14 are subject to the Proposition 65 warning requirement set forth in Health and Safety Code
15 Section 25249.6. Plaintiff Mateel alleges that products that are made from leaded brass, or
16 that have leaded brass components, are manufactured, distributed, sold and/or marketed by
17 Standard Sales for use in California and require a warning under Proposition 65.

18 **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall be
19 defined as brass products that are made from leaded brass or that have leaded brass
20 components and are manufactured, distributed, marketed and/or sold by Standard Sales. The
21 “Effective Date” shall be defined as 90 days after entry of this Consent Judgment.

22 **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court has
23 jurisdiction over the allegations of violations contained in the Complaint and personal
24 jurisdiction over Standard Sales as to the acts alleged in the Complaint, that venue is proper
25 in the County of San Francisco and that this Court has jurisdiction to enter this Consent
26 Judgment as a full settlement and resolution of the allegations contained in the Complaint
27 and of all claims that were or could have been raised by any person or entity based in whole
28 or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related
thereto.

1
2 **1.6** This Consent Judgment resolves claims that are denied and disputed. The
3 parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
4 claims between the parties for the purpose of avoiding prolonged litigation. This Consent
5 Judgment shall not constitute an admission with respect to any material allegation of the
6 Complaint, each and every allegation of which Standard Sales denies, nor may this Consent
7 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct,
8 culpability or liability on the part of Standard Sales. It is expressly understood and
9 recognized by Mateel that Standard Sales disputes that it is legally responsible for the
10 damages and harm claimed and alleged by Mateel, and that Standard Sales expressly denies
11 any fault, wrongdoing or liability.

12 **2. SETTLEMENT PAYMENT**

13 **2.1** In settlement of all of the claims referred to in this Consent Judgment settling
14 defendants, shall pay \$25,000, in total monetary relief. Of this amount, a total of \$8,000
15 shall be paid in lieu of and as an offset for any civil penalty and shall be divided such that
16 \$4,000 shall be made payable to Ecological Rights Foundation, and \$4,000 shall be made
17 payable to Californians for Alternatives to Toxics. Also, \$17,000 shall be made payable to
18 the Klamath Environmental Law Center ("KELC") for attorneys fees and costs incurred by
19 KELC on behalf of Plaintiff in investigating and prosecuting this matter and in negotiating
20 this Consent Judgment on behalf of itself and in the public interest. The payments described
21 above shall be delivered at least ten (10) days prior to any hearing on a motion to approve
22 this settlement, to William Verick, Esq., Klamath Environmental Law Center, 424 First
23 Street, Eureka, CA 95501. If payment has not been received as provided in this paragraph,
24 Plaintiff may withdraw any motion to approve and enter the agreement and the agreement
25 shall become null and void. If this Consent Judgment has not been approved and entered by
26 the Court within 120 days of the execution of the agreement by the parties, the payments
27 described above shall be promptly returned to Standard Sales, and the terms of this
28 agreement shall be null and void.

1
2 **2.2** MEJF and KELC represent and warrant that Ecological Rights Foundation and
3 Californians for Alternatives to Toxics are each a tax exempt, section 501(c)(3) non-profit
4 organization and that funds distributed to this organization pursuant to this Consent
5 Judgment may only be spent to reduce harm from toxic chemicals, or to increase consumer,
6 worker and community awareness of health hazards posed by lead and other toxic chemicals.

7 **2.3** Except as specifically provided in this Consent Judgment, each side shall bear
8 its own costs and attorney's fees.

9 **3. ENTRY OF CONSENT JUDGMENT**

10 **3.1** The parties hereby request that the Court promptly enter this Consent
11 Judgment. Upon entry of the Consent Judgment, Standard Sales and Mateel waive their
12 respective rights to a hearing or trial on the allegations of the Complaint.

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

14 **4.1** This Consent Judgment is a full, final and binding resolution between Standard
15 Sales and Mateel, acting on behalf of itself and, as to those matters raised in the 60 Day
16 Notice Letter, acting in the public interest pursuant to Health and Safety Code section
17 25249.7(d), of all matters that are or that could have been alleged in the Complaint, including
18 any violation of Proposition 65, or the regulations promulgated thereunder, to the fullest
19 extent that any violation could have been asserted by Mateel against Standard Sales based
20 upon, arising out of, or relating to Standard Sales' compliance with Proposition 65, or
21 regulations promulgated thereunder, with respect to exposures to lead or lead compounds
22 from the Covered Products (and components thereof), whether based on actions committed
23 by Standard Sales, or by any other entity within the chain of manufacture, distribution and
24 sale of the Covered Products. As to alleged lead and lead compound exposures from
25 Covered Products, as expressed in the 60 Day Notice Letters, compliance with the terms of
26 this Consent Judgment resolves any issue, now and in the future, concerning compliance by
27 Standard Sales and its parents, subsidiaries or affiliates, divisions, predecessors, successors,
28 assigns, officers, directors, shareholders, attorneys, representatives, agents, employees, and
all manufacturers, customers, distributors, wholesalers, retailers or any other person in the

1 course of doing business involving the Covered Products, and the successors and assigns of
2 any of these who may manufacture, use, maintain, distribute, market or sell Covered
3 Products, with the current requirements and standards of Proposition 65. This Consent
4 Judgment also is a full, final and binding resolution between Mateel and Standard Sales as to
5 any other claims that could have been asserted against Standard Sales or its affiliates, parent
6 or subsidiary corporations, divisions, successors, officers, directors, shareholders, attorneys,
7 representatives, agents, assigns, distributors, manufacturers, retailers, or customers for failure
8 to disclose the presence of lead (or lead compounds) in or associated with use of the Covered
9 Products.

10
11 4.2 As to alleged lead exposures associated with Covered Products, Mateel, acting
12 on behalf of itself, and its agents, attorneys, representatives, successors and assigns, waives
13 all rights to institute or participate in, directly, or indirectly, any form of legal action, and
14 releases all claims as between Mateel and Standard Sales, including, without limitation, all
15 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
16 agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or
17 expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of
18 any nature whatsoever, whether known or unknown, fixed or contingent (collectively
19 "claims"), against Standard Sales and its parents, subsidiaries or affiliates, predecessors,
20 officers, directors, shareholders, attorneys, representatives, agents, employees, and all
21 customers, manufacturers, distributors, wholesalers, retailers, or any other person in the
22 course of doing business involving the Covered Products, and the successors and assigns of
23 any of them, who may manufacture, use, maintain, distribute or sell the Covered Products or
24 components found in the Covered Products, including, but not limited to, any claims
25 regarding exposure to, and/or failure to warn with respect to, the Covered Products. In
26 furtherance of the foregoing, as to alleged violations of Proposition 65 and lead exposures to
27 Covered Products, Mateel hereby waives any and all rights and benefits which it now has, or
28 in the future may have respecting the Covered Products, conferred upon it with respect to
claims involving Covered Products by virtue of the provisions of Section 1542 of the

1 California Civil Code, which provides as follows:
2

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

9 Mateel understands and acknowledges that the significance and consequence of this
10 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
11 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
12 Covered Products, including but not limited to any exposure to, or failure to warn with
13 respect to exposure to lead or lead compounds from Covered Products, Mateel will not be
14 able to make any claim for those damages against the Standard Sales, its parents, subsidiaries
15 or affiliates, predecessors, officers, directors, shareholders, representatives, attorneys, agents,
16 employees, and all customers, manufacturers, distributors, wholesalers, retailers or any other
17 person in the course of doing business involving the Covered Products, and the successors
18 and assigns of any of them, who may manufacture, use, maintain, distribute or sell the
19 Covered Products. Furthermore, Mateel acknowledges that it intends these consequences for
20 any such claims and any other claims for violations of Proposition 65 which may exist as of
21 the date of this release but which Mateel does not know exist, and which, if known, would
22 materially affect its decision to enter into this Consent Judgment, regardless of whether its
23 lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

24 **5. ENFORCEMENT OF JUDGMENT**

25 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
26 parties hereto. The parties may, by noticed motion or order to show cause before the
27 Superior Court of San Francisco County, giving the notice required by law, enforce the terms
28 and conditions contained herein. The parties hereto agree that prior to any such enforcement
action, they will notify each other of any perceived violation of this Consent Judgment. The

1 parties further agree to take no enforcement action for 30 days after such notice is given, in
2 order to allow the parties to meet and confer in good faith in an effort to resolve the alleged
3 violation.
4

5 6. MODIFICATION OF JUDGMENT

6 6.1 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
7 modified only upon written agreement of the parties and upon entry of a modified Consent
8 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
9 entry of a modified Consent Judgment by the Court.

10 7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING

11 7.1 Covered Products brass components shall be deemed to comply with
12 Proposition 65 for lead and be exempt from any Proposition 65 warning requirements for
13 lead if the brass that is part of the Covered Products meets the following criteria: (a) the
14 brass alloy from which the brass fittings are made shall have a lead content by weight of no
15 more than 0.03% (300 parts per million, or "300 ppm"). Standard Sales may comply with
16 the above requirements by relying on information obtained from its suppliers regarding the
17 content of the brass alloy from which the brass fittings are made, provided such reliance is in
18 good faith. Obtaining test results showing that the lead content is no more than 0.03%, using
19 a method of sufficient sensitivity to establish a limit of quantification (as distinguished from
20 detection) of less than 300 ppm shall be deemed to establish good faith reliance.

21 7.2 Covered Products that do not meet the warning exemption standard set forth in
22 Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
23 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply only
24 to products Standard Sales manufactures, distributes, markets, sells or ships after the
25 Effective Date for sale or use inside the State of California.

26 7.3 Standard Sales shall provide Proposition 65 warnings as follows:

27 (a) Standard Sales shall provide either of the following warning statements:
28

WARNING: This product contains lead, a chemical known to the State of

1 California to cause cancer and birth defects or other reproductive harm. Do
2 not place your hands in your mouth after handling the product. Wash your
3 hands after touching this product.
4

5 or

6 **WARNING:** This product contains chemicals, including lead, known to the
7 State of California to cause cancer and birth defects or other reproductive
8 harm. Wash hands after handling.
9

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

12 Standard Sales shall provide such warning with the unit package of the
13 Covered Products. Such warning shall be prominently affixed to or printed on
14 each Covered Product's label or package. The warning shall be at least the
15 same size as the largest of any other safety warnings, if any, on the product
16 container. If printed on the label itself, the warning shall be contained in the
17 same section that states other safety warnings, if any, concerning the use of the
18 product.

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

23 (c) If Proposition 65 warnings for lead or lead compounds should no longer
24 be required, Standard Sales shall have no further warning obligations pursuant
25 to this Consent Judgment. In the event that Standard Sales ceases to implement
26 or modifies the warnings required under this Consent Judgment (because of a
27 change in the law or otherwise), Standard Sales shall provide written notice to
28 Mateel (through KELC) of its intent to do so, and of the basis for its intent, no
less than thirty (30) days in advance. Mateel shall notify Standard Sales in

1 writing of any objection within thirty (30) days of its receipt of such notice, or
2 such objection by Mateel shall be waived.

3
4 (d) If after the Effective Date, Standard Sales ships Covered Products to a
5 retailer or distributor outside of California that neither provide the warnings
6 specified in this paragraph nor meet the Reformulation Standard specified in
7 paragraphs 7.1 through 7.3 of this Consent Judgment ("Non-Conforming
8 Covered Products"), and if the retailer or distributor then offers those Non-
9 Conforming Covered Products for sale in California, then as to those Non-
10 Conforming Covered Products, that retailer or distributor, and their customers,
11 are not released pursuant to Sections 4.1 and 4.2 above.

12 (e) Except as provided in paragraph 4.2 hereof for Covered Products
13 manufactured or distributed prior to the Effective Date, nothing in this Consent
14 Judgment shall create a limitation on a Proposition 65 enforcement action
15 based on future conduct if such future conduct is not in compliance with the
16 injunctive terms of this Consent Judgment.

17 8. AUTHORITY TO STIPULATE

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

21 9. RETENTION OF JURISDICTION

22 This Court shall retain jurisdiction of this matter to implement the Consent
23 Judgment.

24 10. ENTIRE AGREEMENT

25 This Consent Judgment contains the sole and entire agreement and
26 understanding of the parties with respect to the entire subject matter hereof, and any and all
27 prior discussions, negotiations, commitments and understandings related hereto. No
28 representations, oral or otherwise, express or implied, other than those contained herein have
been made by any party hereto. No other agreements not specifically referred to herein, oral

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2 or otherwise, shall be deemed to exist or to bind any of the parties.

3 **11. GOVERNING LAW**

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

7 **12. NOTICES**

8 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
10 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on
11 any party by the other party at the following addresses:

12 **To Defendant Standard Sales:**

13 Kent B. Goss, Esq.
14 Orrick, Herrington & Sutcliffe, LLP
15 777 S. Figueroa Street, Suite 3200
16 Los Angeles, CA 90017

To Plaintiff Mateel:

17 William Verick, Esq.
18 Klamath Env. Law Center
19 424 First Street
20 Eureka, CA 95501
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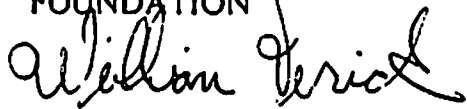
13. COURT APPROVAL

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: 11/30/10

STANDARD SALES, INC.

By: 
Its: PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: DEC 16 2010

CHARLOTTE WALTER WOOLARD
JUDGE OF THE SUPERIOR COURT