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ENDORSED  
FILED  
San Francisco County Superior Court

DEC 16 2010

CLERK OF THE COURT  
BY:   
Deputy Clerk

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SAN FRANCISCO

12 MATEEL ENVIRONMENTAL JUSTICE ) CASE NO: 498558  
13 FOUNDATION, )  
14 PLAINTIFF, ) CONSENT JUDGMENT  
15 v. ) (AKERUE INDUSTRIES LLC AND  
16 AKERUE INDUSTRIES, LLC; ET AL., ) BRUNTON COMPANY)  
17 DEFENDANTS. )

18  
19 1. INTRODUCTION

20 1.1 On April 12, 2010, the MATEEL ENVIRONMENTAL JUSTICE  
21 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a  
22 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco  
23 Superior Court, Case No. 498558, against, among others, Defendants Akerue Industries,  
24 LLC, ("Akerue"), and Brunton Company, a Wyoming corporation ("Brunton").  
25 Collectively Akerue and Brunton may be referred to as Settling Defendants. The  
26 Complaint alleges, among other things, that Settling Defendants violated provisions of  
27 the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
28

1 Sections 25249.5, et seq. ("Proposition 65"). In particular, Mateel alleges that Settling  
2 Defendants have knowingly and intentionally exposed persons to products, including fuel  
3 burning equipment and other products that are made of or include a component made of  
4 brass that contains lead and/or lead compounds, without first providing a clear and  
5 reasonable warning to such individuals. Lead and lead compounds are chemicals known  
6 to the State of California to cause cancer and birth defects or other reproductive harm.

7 **1.2** On December 23, 2009, Mateel sent a 60-Day Notice letter ("Notice  
8 Letter") to Settling Defendants, the California Attorney General, all California District  
9 Attorneys, and all City Attorneys of every California city with populations exceeding  
10 750,000.

11 **1.3** Settling Defendants are each a business that employs ten or more persons  
12 and manufactures, distributes, and/or markets leaded brass products, within the State of  
13 California. Some of these products are alleged to contain components made of brass that  
14 contain lead and/or lead compounds. Lead and lead compounds are chemicals known to  
15 the State of California to cause cancer, and lead is a chemical known to the State of  
16 California to cause reproductive toxicity pursuant to Health and Safety Code Section  
17 25249.9. Under specified circumstances, products containing lead and/or lead  
18 compounds that are sold or distributed in the State of California are subject to the  
19 Proposition 65 warning requirement set forth in Health and Safety Code Section 25249.6.  
20 Plaintiff Mateel alleges that products that are made from leaded brass, or that have leaded  
21 brass components, are manufactured, distributed, sold and/or marketed by Settling  
22 Defendants for use in California and require a warning under Proposition 65.

23 **1.4** For purposes of this Consent Judgment, the term "Covered Products" shall  
24 be defined as products that are made from leaded brass or that have leaded brass  
25 components and are manufactured, distributed, marketed and/or sold by Settling  
26 Defendants, regardless of whether they bear Settling Defendants' label. The "Effective  
27 Date" shall be defined as 120 days after entry of this Consent Judgment.

28 **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court

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

8       **1.6** This Consent Judgment resolves claims that are denied and disputed. The  
9 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
10 all claims between the parties for the purpose of avoiding prolonged litigation. This  
11 Consent Judgment shall not constitute an admission with respect to any material  
12 allegation of the Complaint, each and every allegation of which Settling Defendants  
13 deny, nor may this Consent Judgment or compliance with it be used as evidence of any  
14 wrongdoing, misconduct, culpability or liability on the part of Settling Defendants or any  
15 other person or entity related to the Settling Defendants.

16       **2. SETTLEMENT PAYMENT**

17       **2.1** In settlement of all of the claims referred to in this Consent Judgment  
18 Settling Defendants, shall pay \$30,000 (thirty thousand dollars), in total monetary relief.  
19 Each Settling Defendant shall be responsible for fifty percent (50%) of the total monetary  
20 relief, or \$15,000 (fifteen thousand dollars), and each Settling Defendant shall not be held  
21 jointly or severally liable for any failure of the other Settling Defendant to pay its  
22 equitable share of the total monetary relief. Of this amount, a total of \$10,000 (ten  
23 thousand dollars) shall be paid in lieu of and as an offset for any civil penalty and shall be  
24 divided such that \$5,000 (five thousand dollars) shall be made payable to Ecological  
25 Rights Foundation, and \$5,000 (five thousand dollars) shall be made payable to  
26 Californians for Alternatives to Toxics. Also, \$20,000 (twenty thousand dollars) shall be  
27 made payable to the Klamath Environmental Law Center (“KELC”) for attorneys fees  
28 and costs incurred by KELC on behalf of Plaintiff in investigating and prosecuting this

1 matter and in negotiating this Consent Judgment on behalf of itself and in the public  
2 interest. The payments described above shall be delivered at least 5 days prior to any  
3 hearing on a motion to approve this settlement, to William Verick, 424 First Street,  
4 Eureka, CA 95501. If payment has not been received as provided in this paragraph,  
5 Plaintiff may withdraw any motion to approve and enter the agreement and the agreement  
6 shall become null and void. If this Consent Judgment has not been approved and entered  
7 by the Court within 120 days of the execution of the agreement by the parties, the  
8 payments described above shall be promptly returned to the Settling Defendants, and the  
9 terms of this agreement shall be null and void.

10       **2.2** MEJF and KELC represent and warrant that Ecological Rights Foundation  
11 and Californians for Alternatives to Toxics are each a tax exempt, section 501(c)(3) non-  
12 profit organization and that funds distributed to this organization pursuant to this Consent  
13 Judgment may only be spent to reduce harm from toxic chemicals, or to increase  
14 consumer, worker and community awareness of health hazards posed by lead and other  
15 toxic chemicals.

16       **2.3** Except as specifically provided in this Consent Judgment, each side shall  
17 bear its own costs and attorney's fees.

### 18       **3. ENTRY OF CONSENT JUDGMENT**

19       **3.1** The parties hereby request that the Court promptly enter this Consent  
20 Judgment. Upon entry of the Consent Judgment, Settling Defendants waive their  
21 respective rights to a hearing or trial on the allegations of the Complaint.

### 22       **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

23       **4.1** This Consent Judgment is a full, final and binding resolution between  
24 Settling Defendants and Mateel, acting on behalf of itself and, as to those matters raised  
25 in the 60 Day Notice Letter, acting in the public interest pursuant to Health and Safety  
26 Code section 25249.7(d), of all matters that are or that could have been alleged in the  
27 Complaint, including any violation of Proposition 65, or the regulations promulgated  
28 thereunder, to the fullest extent that any violation could have been asserted by Mateel

1 against the Settling Defendants based upon, arising out of, or relating to Settling  
2 Defendants' compliance with Proposition 65, or regulations promulgated thereunder,  
3 with respect to exposures to lead or lead compounds from the Covered Products (and  
4 components thereof), whether based on actions committed by Settling Defendants, or by  
5 any other entity which at any time was or is within the chain of manufacture, distribution  
6 and sale of the Covered Products, including but not limited to manufacturers, distributors,  
7 wholesale or retail sellers and any other person in the course of doing business. As to  
8 alleged lead and lead compound exposures from Covered Products, as expressed in the 60  
9 Day Notice Letters, compliance with the terms of this Consent Judgment resolves any  
10 issue, now and in the future, concerning compliance by Settling Defendants and their  
11 parents, subsidiaries or affiliates, divisions, predecessors, successors, assigns, officers,  
12 directors, shareholders, attorneys, representatives, agents, employees, and all  
13 manufacturers, customers, distributors, wholesalers, retailers or any other person or entity  
14 in the course of doing business involving the Covered Products or components found in  
15 the Covered Products, and the successors and assigns of any of these who may  
16 manufacture, use, maintain, distribute, market or sell Covered Products, with the current  
17 requirements and standards of Proposition 65. This Consent Judgment also is a full, final  
18 and binding resolution between Plaintiff and Settling Defendants as to any other claims  
19 that could have been asserted against Settling Defendants or their affiliates, parents,  
20 subsidiaries or affiliates, divisions, predecessors, successors, assigns, officers, directors,  
21 shareholders, attorneys, representatives, agents, employees, and all manufacturers,  
22 customers, distributors, wholesalers, retailers, or any other person or entity in the course  
23 of doing business involving the Covered Products, and the successors and assigns of any  
24 of them who may manufacture, use, maintain, distribute, market or sell Covered Products  
25 or components found in the Covered Products, for any claims regarding exposure to,  
26 and/or failure to warn about or disclose the presence of lead (or lead compounds) in or  
27 associated with use of the Covered Products.

28 **4.2** As to alleged lead exposures associated with Covered Products, Mateel,

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

22 "A GENERAL RELEASE DOES NOT EXTEND TO  
23 CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
24 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
25 THE TIME OF EXECUTING THE RELEASE, WHICH IF  
26 KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
27 AFFECTED HIS OR HER SETTLEMENT WITH THE  
28 DEBTOR."

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

## 18 5. ENFORCEMENT OF JUDGMENT

19 5.1 The terms of this Consent Judgment shall be enforced exclusively by the  
20 parties hereto. The parties may, by noticed motion or order to show cause before the  
21 Superior Court of San Francisco County, giving the notice required by law, enforce the  
22 terms and conditions contained herein. The parties hereto agree that prior to any such  
23 enforcement action, they will notify each other of any perceived violation of this Consent  
24 Judgment. The parties further agree to take no enforcement action for 30 days after such  
25 notice is given, in order to allow the parties to meet and confer in good faith in an effort  
26 to resolve the alleged violation.

## 27 6. MODIFICATION OF JUDGMENT

28 6.1 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be

1 modified only upon written agreement of the parties and upon entry of a modified  
2 Consent Judgment by the Court thereon, or upon motion of any party as provided by law  
3 and upon entry of a modified Consent Judgment by the Court.

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

5       **7.1** Covered Products brass components shall be deemed to comply with  
6 current requirements of Proposition 65 for lead and be exempt from any Proposition 65  
7 warning requirements for lead if the brass that is part of the Covered Products meets the  
8 following criteria: (a) the brass alloy from which the brass fittings are made shall have  
9 no intentionally added lead and a lead content by weight of no more than 0.03% (300  
10 parts per million, or “300 ppm”). Settling Defendants may comply with the above  
11 requirements by relying on information obtained from its suppliers regarding the content  
12 of the brass alloy from which the brass products or components are made, provided such  
13 reliance is in good faith. Obtaining test results showing that the lead content is no more  
14 than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification  
15 (as distinguished from detection) of less than 300 ppm shall be deemed to establish good  
16 faith reliance.

17       **7.2** Covered Products that do not meet the warning exemption standard set  
18 forth in Section 7.1 of the Consent Judgment shall be accompanied by a warning as  
19 described in paragraph 7.3 below. The warning requirements set forth in paragraph 7.3  
20 shall apply only to products Settling Defendants manufacture, distribute, market, sell or  
21 ship after the Effective Date for sale or use inside the State of California.

22       **7.3** Each Settling Defendant shall provide Proposition 65 warnings as follows:

23       (a) Each Settling Defendant shall provide one of the following warning  
24 statements:

25       (i) **WARNING:** This product contains lead; a chemical known to the State  
26 of California to cause cancer and birth defects or other reproductive harm.

27       Do not place your hands in your mouth after handling the product. **Wash**  
28 **your hands after touching this product.**



1           The word “**WARNING**” shall be in bold. The words “*Wash your*  
2 *hands after touching the product*” shall be in bold and italicized.

3           or

4           (ii) **WARNING**: This product contains one or more chemicals, including  
5 lead, known to the State of California to cause cancer and birth defects or  
6 other reproductive harm. **Wash hands after handling.**

7           The word “**WARNING**” shall be in bold. The words “*Wash hands*  
8 *after handling*” shall be in bold and italicized.

9           If the warning was printed prior to December 8, 2010, or pursuant to  
10 an order for printing entered into prior to December 8, 2010, the instruction  
11 to “Wash Hands after handling” and the identification of the chemical as  
12 lead may be omitted.

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

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

24           (c) If Proposition 65 warnings for lead or lead compounds should no  
25 longer be required, Settling Defendants shall have no further warning  
26 obligations pursuant to this Consent Judgment. In the event that either  
27 Settling Defendant ceases to implement or modifies the warnings required  
28 under this Consent Judgment (because of a change in the law or otherwise),

1 that Settling Defendant shall provide written notice to Mateel (through  
2 KELC) of its intent to do so, and of the basis for its intent, no less than  
3 thirty (30) days in advance. Mateel shall notify the Settling Defendant in  
4 writing of any objection within thirty (30) days of its receipt of such notice,  
5 or such objection by Mateel shall be waived.

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

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

20 **8. AUTHORITY TO STIPULATE**

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

24 **9. RETENTION OF JURISDICTION**

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

27 **10. ENTIRE AGREEMENT**

28 This Consent Judgment contains the sole and entire agreement and

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

6 **11. GOVERNING LAW**

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

10 **12. NOTICES**

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

15 To Defendant Akerue:  
16 Agent for Service of Process

To Mateel:  
William Verick, Esq.  
Klamath Env. Law Center  
424 First Street  
Eureka, CA 95501

17  
18  
19 To Defendant Brunton:  
20 Agent for Service of Process

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*  
William Verick  
CEO Mateel Environmental Justice  
Foundation.  
Klamath Environmental Law Center

DATED: *December 15, 2010*

AKERUE INDUSTRIES, LLC

*John J. Murray, CEO*  
By: JOHN J. MURRAY  
Its: CHIEF EXECUTIVE OFFICER

DATED: *December 15, 2010*

BRUNTON COMPANY

*Christian G. Steinmetz*  
By: christian G. Steinmetz  
Its: *Assistant Secretary*

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

DEC 16 2010

CHARLOTTE WALTER WOOLARD  
JUDGE OF THE SUPERIOR COURT