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17 Attorneys for Plaintiff  
18 **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**

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

21 **MATEEL ENVIRONMENTAL**  
22 **JUSTICE FOUNDATION,**

23 Plaintiff,

24 v.

25 **CAMPBELL MANUFACTURING CO, INC.,**  
26 **et al.,**

27 Defendants.

Case No. CGC-10-502296

**CONSENT JUDGMENT**

**(JOHNSON LEVEL & TOOL MFG.  
CO., INC. and JOHNSON-ROSE  
CORP.)**

28 **1. INTRODUCTION**

29 **1.1** On August 5, 2010, the MATEEL ENVIRONMENTAL JUSTICE  
30 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a  
31 Complaint for civil penalties and injunctive relief in San Francisco Superior Court, Case  
32 No. 502296, against Defendant Johnson Level & Tool Mfg. Co., Inc. ("Johnson Level");  
33 and on August 5, 2010, Mateel also acting on behalf of itself and the general public, filed

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

DEC 07 2010

**CLERK OF THE COURT**  
BY: ERICKA LARNAUTI  
Deputy Clerk

1 a Complaint for civil penalties and injunctive relief in San Francisco Superior Court, Case  
2 No. 502288 against Defendant Johnson-Rose Corp. ("Johnson-Rose"). Collectively  
3 hereinafter the complaints filed in Case Nos. 502296 and 502288 shall be referred to as  
4 the "Complaints." Johnson Level and Johnson-Rose may be referred to individually as  
5 "Settling Defendant" and collectively as "Settling Defendants." The Complaints allege,  
6 among other things, that Defendants violated provisions of the Safe Drinking Water and  
7 Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq.  
8 ("Proposition 65"). In particular, Mateel alleges that Settling Defendants knowingly and  
9 intentionally exposed persons to hand tools and home products (collectively "leaded brass  
10 products") that are made of or that include a component made of leaded brass, without  
11 first providing a clear and reasonable warning to such individuals. Lead and lead  
12 compounds are chemicals known to the State of California to cause cancer and birth  
13 defects or other reproductive harm.

14 **1.2** By this single consent judgment the parties – Johnson Level, Johnson-Rose,  
15 and Mateel – intend to resolve litigation as against Johnson Level in the above-captioned  
16 case, and as against Johnson-Rose in Case No. 502288. Johnson-Rose agrees to be bound  
17 by this consent judgment. Upon entry of this consent judgment by the court, Mateel shall  
18 dismiss without prejudice Case No. 502288 as against Johnson-Rose.

19 **1.3** On May 13, 2010, Mateel sent 60-Day Notice letters ("Notice Letters") to  
20 Defendants, the California Attorney General, all California District Attorneys, and all City  
21 Attorneys of every California city with populations exceeding 750,000.

22 **1.4** Settling Defendants are both businesses that employ ten or more persons  
23 and both manufacture, distribute, and/or market brass products, within the State of  
24 California. These products are alleged to contain lead and/or lead compounds. Lead and  
25 lead compounds are chemicals known to the State of California to cause cancer, and lead  
26 is a chemical known to the State of California to cause reproductive toxicity pursuant to  
27 Health and Safety Code Section 25249.9. Under specified circumstances, products  
28

1 containing lead and/or lead compounds that are sold or distributed in the State of  
2 California are subject to the Proposition 65 warning requirement set forth in Health and  
3 Safety Code Section 25249.6. Plaintiff Mateel alleges that products that are made from  
4 leaded brass, or that have leaded brass components, are manufactured, distributed, sold  
5 and/or marketed by Settling Defendants for use in California and require a warning under  
6 Proposition 65.

7       **1.5** In the Complaints, Mateel alleges that Settling Defendants have violated  
8 Cal. Health & Safety Code Section 25249.6 by knowingly and intentionally exposing  
9 persons to products that are made of brass, or include a component made of brass, that  
10 contain lead and/or lead compounds, without first providing a clear and reasonable  
11 warning to such individuals. Lead and lead compounds are chemicals known to the State  
12 of California to cause cancer and birth defects or other reproductive harm.

13       **1.6** For purposes of this Consent Judgment, the term “Covered Products” shall  
14 be defined as: (a) brass products that are made from leaded brass or that have leaded  
15 brass components and that are manufactured, distributed, marketed and/or sold by  
16 Johnson Level and (b) brass products that are made from leaded brass or that have leaded  
17 brass components and that are manufactured, distributed, marketed and/or sold by  
18 Johnson-Rose. The “Effective Date” shall be defined as the date of entry of this Consent  
19 Judgment.

20       **1.7** For purposes of this Consent Judgment, the parties stipulate that this Court  
21 has jurisdiction over the allegations of violations contained in the Complaints and  
22 personal jurisdiction over Johnson Level and Johnson-Rose as to the acts alleged in the  
23 Complaints, that venue is proper in the County of San Francisco and that this Court has  
24 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the  
25 allegations contained in the Complaints and of all claims that were or could have been  
26 raised by any person or entity based in whole or in part, directly or indirectly, on the facts  
27 alleged therein or arising therefrom or related thereto.  
28

1           1.8    This Consent Judgment resolves claims that are denied and disputed. The  
2 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
3 all claims between the parties for the purpose of avoiding prolonged litigation. This  
4 Consent Judgment shall not constitute an admission with respect to any material allegation  
5 of the Complaints, each and every allegation of which, Johnson Level and Johnson-Rose  
6 deny, nor may this Consent Judgment or compliance with it be used as evidence of any  
7 wrongdoing, misconduct, culpability or liability on the part of Johnson Level or Johnson-  
8 Rose.

9           1.9    Concurrently with the entry of this Consent Judgment, Johnson-Rose shall  
10 be deemed to have been added as a party defendant to this Action, and plaintiff Mateel  
11 shall file a Request for Dismissal without prejudice of Johnson-Rose in the action *Mateel*  
12 *v. Harold Import Co., Inc., et al.*, Superior Court Case No., CGC 10-502288.

## 13           2.    **SETTLEMENT PAYMENTS**

14           2.1    In settlement of all of the claims referred to in this Consent Judgment,  
15 Settling Defendants shall collectively pay an aggregate of \$35,000 (thirty-five thousand  
16 dollars) in total monetary relief.

17           2.2    Of the foregoing \$35,000 amount, a total of \$15,000 (fifteen thousand  
18 dollars) shall collectively be paid by the Settling Defendants in lieu of, and as an offset  
19 for, any civil penalty. The \$15,000 amount shall be divided by the Settling Defendants in  
20 whatever proportion they have agreed among themselves, but such that \$7,500 (seven  
21 thousand five hundred dollars) shall ultimately be made payable to Ecological Rights  
22 Foundation, and \$7,500 (seven thousand five hundred dollars) shall ultimately be made  
23 payable to Californians for Alternatives to Toxics.

24           2.3    In addition, of the \$35,000 amount specified in Paragraph 2.1 above, a total  
25 amount of \$20,000 (twenty thousand dollars) shall be paid collectively by the Settling  
26 Defendants to the Klamath Environmental Law Center ("KELC") as reimbursement for  
27 attorneys fees and costs incurred by KELC on behalf of Plaintiff in investigating and  
28

1 prosecuting this matter and in negotiating this Consent Judgment on behalf of itself and in  
2 the public interest. The \$20,000 amount required by this paragraph may be divided by the  
3 Settling Defendants in whatever proportion they have agreed among themselves and made  
4 payable in either one or two checks to "KELC."

5       2.4 The payments described in Paragraphs 2.2 and 2.3 above shall be delivered  
6 at least 5 days prior to any hearing on a motion to approve this settlement, to William  
7 Verick, 424 First Street, Eureka, CA 95501. If payment has not been received as provided  
8 in this paragraph, Plaintiff may withdraw any motion to approve and enter the agreement  
9 and the agreement shall become null and void. If this Consent Judgment has not been  
10 approved and entered by the Court within 120 days of the execution of the agreement by  
11 the parties, the payments described above shall be promptly returned to the Settling  
12 Defendants, and the terms of this agreement shall be null and void.

13       2.5 MEJF and KELC represent and warrant that Ecological Rights Foundation  
14 and Californians for Alternatives to Toxics are each a tax exempt, section 501(c)(3) non-  
15 profit organization and that funds distributed to these organizations pursuant to this  
16 Consent Judgment may only be spent to reduce harm from toxic chemicals, or to increase  
17 consumer, worker and community awareness of health hazards posed by lead and other  
18 toxic chemicals.

19       2.6 Except as specifically provided in this Consent Judgment, each side shall  
20 bear its own costs and attorney's fees.

21       **3. ENTRY OF CONSENT JUDGMENT**

22       3.1 The parties hereby request that the Court promptly enter this Consent  
23 Judgment. Upon entry of the Consent Judgment, Johnson Level, Johnson-Rose, and  
24 Mateel waive their respective rights to a hearing or trial on the allegations of the  
25 Complaints.

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

2           **4.1**     This Consent Judgment is a full, final and binding resolution between  
3     Settling Defendants and Mateel, acting on behalf of itself and, as to those matters raised in  
4     the 60-Day Notice Letters, acting in the public interest pursuant to Health and Safety  
5     Code section 25249.7(d), of all matters that are or that could have been alleged in the  
6     Complaints, including any violation of Proposition 65, or the regulations promulgated  
7     thereunder, to the fullest extent that any violation could have been asserted by Mateel  
8     against the Settling Defendants based upon, arising out of, or relating to Settling  
9     Defendants' compliance with Proposition 65, or regulations promulgated thereunder, with  
10    respect to exposures to lead or lead compounds from the Covered Products (and  
11    components thereof), whether based on actions committed by Settling Defendants, or by  
12    any other entity within the chain of manufacture, distribution and sale of the Covered  
13    Products. As to alleged lead and lead compound exposures from Covered Products,  
14    compliance with the terms of this Consent Judgment resolves any issue, now and in the  
15    future, concerning compliance by Settling Defendants and their parents, subsidiaries or  
16    affiliates, divisions, predecessors, successors, assigns, officers, directors, shareholders,  
17    attorneys, representatives, agents, employees, and all manufacturers, customers,  
18    distributors, wholesalers, retailers or any other person in the course of doing business  
19    involving the Covered Products, and the successors and assigns of any of these who may  
20    manufacture, use, maintain, distribute, market or sell Covered Products, with the current  
21    requirements and standards of Proposition 65. This Consent Judgment also is a full, final,  
22    and binding resolution between Plaintiff and Settling Defendants as to any other claims  
23    that could have been asserted against Settling Defendants or their affiliates, parents or  
24    subsidiaries, divisions, successors, officers, directors, shareholders, attorneys,  
25    representatives, agents, assigns, distributors, manufacturers, retailers, or customers for  
26    failure to disclose the presence of lead (or lead compounds) in or associated with use of  
27    the Covered Products.

1           4.2 As to alleged lead exposures associated with Covered Products, Mateel,  
2 acting on behalf of itself, and its agents, attorneys, representatives, successors and assigns,  
3 waives all rights to institute or participate in, directly, or indirectly, any form of legal  
4 action, and releases all claims as between Mateel and Settling Defendants, including,  
5 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,  
6 demands, obligations, agreements, promises, royalties, accountings, damages, costs, fines,  
7 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees,  
8 and attorney's fees) of any nature whatsoever, whether known or unknown, fixed or  
9 contingent (collectively "claims"), against Settling Defendants and their parents,  
10 subsidiaries or affiliates, predecessors, officers, directors, shareholders, attorneys,  
11 representatives, agents, employees, and all customers, manufacturers, distributors,  
12 wholesalers, retailers, or any other person in the course of doing business involving the  
13 Covered Products, and the successors and assigns of any of them, who may manufacture,  
14 use, maintain, distribute or sell the Covered Products or components found in the Covered  
15 Products, including, but not limited to, any claims regarding exposure to, and/or failure to  
16 warn with respect to, the Covered Products. In furtherance of the foregoing, Mateel  
17 hereby waives any and all rights and benefits which it now has, or in the future may have  
18 respecting the Covered Products, conferred upon it with respect to claims involving  
19 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code,  
20 which provides as follows:

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

28           Mateel understands and acknowledges that the significance and consequence of  
this waiver of California Civil Code Section 1542 is that even if Mateel suffers future  
damages arising out of or resulting from, or related directly or indirectly to, in whole or in

1 part, the Covered Products, including but not limited to any exposure to, or failure to warn  
2 with respect to exposure to lead or lead compounds from, the Covered Products, Mateel  
3 will not be able to make any claim for those damages against the Settling Defendant, its  
4 parents, subsidiaries or affiliates, predecessors, officers, directors, shareholders,  
5 representatives, attorneys, agents, employees, and all customers, manufacturers,  
6 distributors, wholesalers, retailers or any other person in the course of doing business  
7 involving the Covered Products, and the successors and assigns of any of them, who may  
8 manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel  
9 acknowledges that it intends these consequences for any such claims and any other claims  
10 which may exist as of the date of this release but which Mateel does not know exist, and  
11 which, if known, would materially affect its decision to enter into this Consent Judgment,  
12 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,  
13 negligence, or any other cause.

#### 14 **5. ENFORCEMENT OF JUDGMENT**

15 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the  
16 parties hereto. The parties may, by noticed motion or order to show cause before the  
17 Superior Court of San Francisco County, giving the notice required by law, enforce the  
18 terms and conditions contained herein. The parties hereto agree that prior to any such  
19 enforcement action, they will notify each other of any perceived violation of this Consent  
20 Judgment. The parties further agree to take no enforcement action for 30 days after such  
21 notice is given, in order to allow the parties to meet and confer in good faith in an effort to  
22 resolve the alleged violation.

#### 23 **6. MODIFICATION OF JUDGMENT**

24 **6.1** Except as provided for in Paragraph 7.3(c), this Consent Judgment may be  
25 modified only upon written agreement of the parties and upon entry of a modified Consent  
26 Judgment by the Court thereon, or upon motion of any party as provided by law and upon  
27 entry of a modified Consent Judgment by the Court.  
28



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

2           7.1     Covered Products' brass components shall be deemed to comply with  
3     current requirements of Proposition 65 for lead and be exempt from any Proposition 65  
4     warning requirements for lead if the brass that is part of the Covered Products meets the  
5     following criteria: (a) the brass alloy from which the brass components are made shall  
6     have no intentionally added lead and a lead content by weight of no more than 0.03% (300  
7     parts per million, or "300 ppm"). Settling Defendants may comply with the above  
8     requirements by relying on information obtained from their suppliers regarding the  
9     content of the brass alloy from which the brass products or components are made,  
10    provided such reliance is in good faith. Obtaining test results showing that the lead  
11    content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit  
12    of quantification (as distinguished from detection) of less than 300 ppm shall be deemed  
13    to establish good faith reliance.

14           7.2     Covered Products that do not meet the warning exemption standard set forth  
15    in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in  
16    paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply  
17    only to products Settling Defendants manufacture, distribute, market, sell or ship for  
18    distribution after 120 days after the Effective Date for sale or use inside the State of  
19    California.

20           7.3     Each Settling Defendant shall provide Proposition 65 warnings as follows:

21           (a)     Each Settling Defendant shall provide either of the following warning  
22                   statements:

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

27                   or

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

4           The word “WARNING” shall be in bold and capitalized. The words  
5 “Wash hands after handling” shall be in bold and italicized.

6           Settling Defendant shall provide such warning with the unit package  
7 of the Covered Products. Such warning shall be prominently affixed to or  
8 printed on each Covered Product’s label or package. The warning shall be  
9 at least the same size as the largest of any other safety warnings, if any, on  
10 the product container. If printed on the label itself, the warning shall be  
11 contained in the same section that states other safety warnings, if any,  
12 concerning the use of the product.

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

17           (c) If Proposition 65 warnings for lead or lead compounds should no  
18 longer be required, Settling Defendants shall have no further warning  
19 obligations pursuant to this Consent Judgment. In the event that either  
20 Settling Defendant ceases to implement or modifies the warnings required  
21 under this Consent Judgment (because of a change in the law or otherwise),  
22 that Settling Defendant shall provide written notice to Mateel (through  
23 KELC) of its intent to do so, and of the basis for its intent, no less than thirty  
24 (30) days in advance. Mateel shall notify the Settling Defendant in writing  
25 of any objection within thirty (30) days of its receipt of such notice, or such  
26 objection by Mateel shall be waived.

1 (d) If following 120 days after the Effective Date, either Settling  
2 Defendant ships Covered Products to a retailer or distributor outside of  
3 California that neither provide the warnings specified in this paragraph nor  
4 meet the Reformulation Standard specified in paragraph 7.1 of this Consent  
5 Judgment (“Non-Conforming Covered Products”), and if the retailer or  
6 distributor then offers those Non-Conforming Covered Products for sale in  
7 California, then as to those Non-Conforming Covered Products, that retailer  
8 or distributor, and their customers, are not released pursuant to Sections 4.1  
9 and 4.2 above.

10 (e) Except as provided in paragraph 4.2 hereof, nothing in this Consent  
11 Judgment shall create a limitation on a Proposition 65 enforcement action  
12 based on future conduct if such future conduct is not in compliance with the  
13 injunctive terms of this Consent Judgment.

14 **8. AUTHORITY TO STIPULATE**

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

18 **9. RETENTION OF JURISDICTION**

19 This Court shall retain jurisdiction of this matter to implement the Consent  
20 Judgment.

21 **10. ENTIRE AGREEMENT**

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

1           **11. GOVERNING LAW**

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

5           **12. NOTICES**

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

10  
11 To Mateel:

12 William Verick, Esq.  
13 Klamath Environmental Law Center  
14 424 First Street  
Eureka, CA 95501

15 To Johnson Level:

16 William Johnson  
17 Johnson Level & Tool Manufacturing Company  
18 6333 West Donges Bay Road  
Mequon, WI 53092-4456

19 With a copy to:

20 Robert Falk, Esq.  
21 Morrison & Foerster LLP  
22 425 Market Street, 32nd Floor  
San Francisco, California 94105

23 To Johnson-Rose:

24 Ernie Berman  
25 Johnson-Rose Corp.  
26 5303 Crown Drive  
Lockport, NY 14095-0447

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With a copy to:  
Robert Falk, Esq.  
Morrison & Foerster LLP  
425 Market Street, 32nd Floor  
San Francisco, California 94105

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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: JOHNSON LEVEL & TOOL MFG. CO, INC.

By:  
Its:

DATED: JOHNSON-ROSE CORP.

  
By: E. BERHAN  
Its: PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JUDGE OF THE SUPERIOR COURT

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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

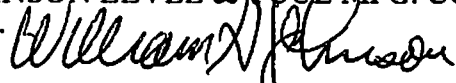


William Verick  
CEO Mateel Environmental Justice  
Foundation,  
Klamath Environmental Law Center

DATED:

October 19, 2010

JOHNSON LEVEL & TOOL MFG. CO,  
INC.



By: William S. Johnson  
Its: Chairman / CEO

DATED:

JOHNSON-ROSE CORP.

By:  
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

DEC 07 2010

CHARLOTTE WALTER WOOLARD  
JUDGE OF THE SUPERIOR COURT