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16 Attorneys for Plaintiff
17 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

20 MATEEL ENVIRONMENTAL
21 JUSTICE FOUNDATION,

22 Plaintiff,

23 v.

24 GROSS MECHANICAL LABORATORIES,
25 INC. et al.,

26 Defendants.

Case No. CGC-12-517923

[PROPOSED]
CONSENT JUDGMENT

(As to GROSS MECHANICAL
LABORATORIES, INC., and
PRO-MARK DISTRIBUTION, INC.)

27 1.0 INTRODUCTION

28 1.1 On February 27, 2012, the MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a First
Amended Complaint for civil penalties and injunctive relief in San Francisco Superior
Court, Case No. 517923, against defendant Gross Mechanical Laboratories, Inc., and
defendant Pro-Mark Distribution, Inc., improperly named as Pro-Mark, Inc. Defendants

ENDORSED
FILED
San Francisco County Superior Court

DEC 21 2012

CLERK OF THE COURT
BY: ERICKA LARNAUTI
Deputy Clerk

1 Gross Mechanical Laboratories, Inc., and Pro-Mark, Distribution, Inc., may be referred to
2 individually as a "Settling Defendant" or collectively as "Settling Defendants." The
3 Complaint alleges, among other things, that each Settling Defendant violated provisions
4 of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
5 Sections 25249.5, et seq. ("Proposition 65"). In particular, Mateel alleges that each
6 Settling Defendant knowingly and intentionally exposed persons to leaded brass products
7 ("Brass Products") that are made of or that include a component made of leaded brass,
8 without first providing a clear and reasonable warning to such individuals. Lead and lead
9 compounds are chemicals known to the State of California to cause cancer and birth
10 defects or other reproductive harm.

11 1.2 On March 9, 2011, Mateel sent a Notice of Violation letter ("March 9,
12 2011, Notice Letter") to Pro-Mark, Inc., the California Attorney General, all California
13 District Attorneys, and all City Attorneys of every California city with populations
14 exceeding 750,000. On July 21, 2011, Mateel sent a Notice of Violation letter ("July 21,
15 2011, Notice Letter") to Gross Mechanical Laboratories, Inc.) the California Attorney
16 General, all California District Attorneys, and all City Attorneys of every California city
17 with populations exceeding 750,000.

18 1.3 Each Settling Defendant is a business that employs ten or more persons
19 and manufactures, distributes or markets brass products within the State of California.
20 These Brass Products are alleged to contain lead and/or lead compounds. Lead and lead
21 compounds are chemicals known to the State of California to cause cancer, and lead is a
22 chemical known to the State of California to cause reproductive toxicity pursuant to
23 Health and Safety Code Section 25249.9. Under specified circumstances, businesses that
24 use products containing lead and/or lead compounds in the State of California are subject
25 to the Proposition 65 warning requirement set forth in Health and Safety Code Section
26 25249.6. Plaintiff Mateel alleges that certain Brass Products that are made of leaded
27 brass, or that have leaded brass components, are manufactured, distributed, and/or
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1 marketed by each Settling Defendant for use in California such that a warning is required
2 under Proposition 65.

3 1.4 For purposes of this Consent Judgment, the term “Covered Gross
4 Mechanical Products” shall be defined as Brass Products distributed or otherwise
5 marketed by Gross Mechanical Laboratories, Inc., and set forth in the July 21, 2011, 60
6 Day Notice Letter and the term “Covered Pro-Mark Products” shall be defined as
7 the Orbit Hose Bib Lock Model # 37 439, and similar brass hose bib locks distributed or
8 otherwise marketed by Pro-Mark Distribution, Inc., as set forth in the March 9, 60 Day
9 Notice Letter.

10 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court
11 has jurisdiction over the allegations of violations contained in the Complaint and personal
12 jurisdiction over each Settling Defendant as to the acts alleged in the Complaints, that
13 venue is proper in the County of San Francisco and that this Court has jurisdiction to enter
14 this Consent Judgment as a full settlement and resolution of the allegations contained in
15 the Complaint and of all claims that were or could have been raised by any person or
16 entity based in whole or in part, directly or indirectly, on the facts alleged therein or
17 arising therefrom or related thereto.

18 1.6 This Consent Judgment resolves claims that are denied and disputed. The
19 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
20 all claims between the parties for the purpose of avoiding prolonged litigation. This
21 Consent Judgment shall not constitute an admission with respect to any material allegation
22 of the Complaints, each and every allegation of which Settling Defendant denies, nor may
23 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
24 misconduct, culpability or liability on the part of a Settling Defendant.

1 **2.0 SETTLEMENT PAYMENTS**

2 **2.1** In settlement of all of the claims referred to in this Consent Judgment,
3 Defendant Pro-Mark shall pay an aggregate of \$15,000 (fifteen thousand dollars) in total
4 monetary relief. Of the foregoing, a total of \$1,000 (one thousand dollars) shall be paid
5 in civil penalties, Mateel waives its right to receive twenty five percent (25%) of this
6 payment, and, accordingly, the entire \$1,000 shall be paid to the Office of Environmental
7 Health Hazard Assessment (OEHHA). A total of \$4,000 (four thousand dollars) shall be
8 paid by Settling Defendant in lieu of, and as an offset for, a larger civil penalty. The
9 amount shall be made payable to Californians for Alternatives to Toxics.

10 **2.2** In addition, a total amount of \$10,000 (ten thousand dollars) shall be paid
11 by the Settling Defendant Pro-Mark to the Klamath Environmental Law Center ("KELC")
12 as reimbursement for attorney's fees and costs incurred by KELC on behalf of Plaintiff in
13 investigating and prosecuting this matter and in negotiating this Consent Judgment on
14 behalf of itself and in the public interest. The payments described in Paragraphs 2.1 and
15 2.2 above shall be made payable to the recipient, and delivered at least 5 court days prior
16 to any hearing on a motion to approve this settlement, to counsel for defendant Pro-Mark,
17 and upon approval sent within five (5) business days to William Verick, 424 First Street,
18 Eureka, CA 95501. If payment has not been acknowledged as received by counsel for
19 defendant Pro-Mark, as provided in this paragraph, Plaintiff may withdraw any pending
20 motion to approve the agreement and the agreement shall become null and void. If this
21 Consent Judgment has not been approved and entered by the Court within 120 days of the
22 execution of the agreement by the parties, the payments described above shall be promptly
23 returned to Settling Defendant and the terms of this agreement shall be null and void.

24 **2.3** In settlement of all of the claims referred to in this Consent Judgment,
25 Defendant Gross Mechanical Laboratories, Inc. shall pay an aggregate of \$13,000 (thirteen
26 thousand dollars) in total monetary relief. Of the foregoing, a total of \$1,000 (one
27 thousand dollars) shall be paid in civil penalties, Mateel waives its right to receive twenty
28

1 five percent (25%) of this payment, and, accordingly, the entire \$1,000 shall be paid to the
2 Office of Environmental Health Hazard Assessment (OEHHA). A total of \$2,000 (two
3 thousand dollars) shall be paid by Settling Defendant in lieu of, and as an offset for, a
4 larger civil penalty. The amount shall be made payable to Californians for Alternatives to
5 Toxics.

6 2.4 In addition, a total amount of \$10,000 (ten thousand dollars) shall be paid
7 by the Settling Defendant Gross Mechanical Laboratories, Inc., to the Klamath
8 Environmental Law Center ("KELC") as reimbursement for attorney's fees and costs
9 incurred by KELC on behalf of Plaintiff in investigating and prosecuting this matter and
10 in negotiating this Consent Judgment on behalf of itself and in the public interest. The
11 payments described in Paragraphs 2.3 and 2.4 above shall be made payable to the
12 recipient, and delivered at least 5 court days prior to any hearing on a motion to approve
13 this settlement, to legal counsel for Defendant Gross Mechanical Laboratories, Inc., and
14 upon approval, sent within one business day to William Verick, 424 First Street, Eureka,
15 CA 95501. If payment has not been acknowledged as received by counsel for Defendant
16 Gross Mechanical Laboratories, Inc., as provided in this paragraph, Plaintiff may
17 withdraw any pending motion to approve the agreement and the agreement shall become
18 null and void. If this Consent Judgment has not been approved and entered by the Court
19 within 120 days of the execution of the agreement by the parties, the payments described
20 above shall be promptly returned to Settling Defendant and the terms of this agreement
21 shall be null and void.

22 2.5 MEJF and KELC represent and warrant that recipients of the offset
23 payments are tax exempt, section 501(c)(3) non-profit organizations and that funds
24 distributed to these organizations pursuant to this Consent Judgment may only be spent to
25 reduce harm from toxic chemicals, or to increase consumer, worker and community
26 awareness of health hazards posed by lead and other toxic chemicals.

1 2.6 Except as specifically provided for in this Consent Judgment, each side
2 shall bear its own costs and attorney's fees.

3 **3.0 ENTRY OF CONSENT JUDGMENT**

4 The parties hereby request that the Court promptly enter this Consent Judgment.
5 Upon entry of the Consent Judgment, Settling Defendant and Mateel waive their
6 respective rights to a hearing or trial on the allegations of the Complaints.

7 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

8 4.1 As to lead and lead compounds from Covered Gross Mechanical Products,
9 this Consent Judgment provides a full release of liability on behalf of the Public Interest to
10 Gross Mechanical Laboratories, Inc., (as well as its past, present and future parents,
11 subsidiaries affiliates, predecessors, successors, and assigns "Released Entities"), as to all
12 claims and matters raised in the July 21, 2011, 60 Day Notice Letter. As to lead and lead
13 compounds from Covered Pro-Mark Products, this Consent Judgment provides a full
14 release of liability on behalf of the Public Interest to Pro-Mark Distribution, Inc., (as well
15 as its past, present and future parents, subsidiaries affiliates, predecessors, successors, and
16 assigns "Released Entities"), as to all claims and matters raised in the March 9, 2011, 60
17 Day Notice Letter

18 4.2 As to alleged lead and lead compound exposures associated with Covered
19 Gross Mechanical Products and Covered Pro-Mark Products, Mateel, acting on behalf of
20 itself, and its agents, attorneys, representatives, successors and assigns, waives all rights to
21 institute or participate in, directly, or indirectly, any form of legal action, and releases all
22 claims as between Mateel and Settling Defendant, including, without limitation, all
23 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
24 agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or
25 expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees)
26 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
27 "claims"), against Settling Defendant and its parents, subsidiaries or affiliates,

1 predecessors, officers, directors, shareholders, attorneys, representatives, agents,
2 employees, and all customers, manufacturers, distributors, wholesalers, retailers, or any
3 other person in the course of doing business involving the Covered Gross Mechanical
4 Products or the Covered Pro-Mark Products, and the successors and assigns of any of
5 them, who may manufacture, use, maintain, distribute or sell such products or components
6 found in such products, including, but not limited to, any claims regarding exposure to,
7 and/or failure to warn with respect to, such products. In furtherance of the foregoing,
8 Mateel on its own behalf hereby waives any and all rights and benefits which it now has,
9 or in the future may have respecting the Covered Gross Mechanical Products or Covered
10 Pro-Mark Products, conferred upon it with respect to claims involving such products by
11 virtue of the provisions of Section 1542 of the California Civil Code, which provides as
12 follows:

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

20 Mateel understands and acknowledges that the significance and consequence of
21 this waiver of California Civil Code Section 1542 is that even if Mateel suffers future
22 damages arising out of or resulting from, or related directly or indirectly to, in whole or in
23 part, the Covered Gross Mechanical Products or Covered Pro-Mark Products, including
24 but not limited to any exposure to, or failure to warn with respect to exposure to lead or
25 lead compounds from such products, Mateel will not be able to make any claim for those
26 damages against a Settling Defendant, its parents, subsidiaries or affiliates, predecessors,
27 officers, directors, shareholders, representatives, attorneys, agents, employees, and all
28 customers, manufacturers, distributors, wholesalers, retailers or any other person in the
course of doing business involving such products, and the successors and assigns of any
of them, who may manufacture, use, maintain, distribute or sell such products.

1 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
2 and any other claims which may exist as of the date of this release but which Mateel does
3 not know exist, and which, if known, would materially affect its decision to enter into this
4 Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance,
5 oversight, error, negligence, or any other cause.

6 **5.0 ENFORCEMENT OF JUDGMENT**

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

15 **6.0 MODIFICATION OF JUDGMENT**

16 Except as provided for in Paragraph 7.3(b), this Consent Judgment may be
17 modified only upon written agreement of the parties and upon entry of a modified Consent
18 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
19 entry of a modified Consent Judgment by the Court.

20 **7.0 INJUNCTIVE RELIEF – REFORMULATION**

21 **7.1 Covered Gross Mechanical Products and Covered Pro-Mark Products**
22 (collectively “Covered Products”) shall be deemed to comply with the warning
23 requirements of Proposition 65 for lead and lead compounds (H&S Code 25249.6), and be
24 exempt from any Proposition 65 warning requirements for these listed chemicals if the
25 brass that is part of the Covered Products is made of an alloy which contains no
26 intentionally added lead and no lead content by weight of more than 0.03% (“300 parts
27 per million,” or “300 ppm”).

1 7.2 Covered Products that do not meet the warning exemption standard set forth
2 in Sections 7.1 of this Consent Judgment shall be accompanied by a warning as described
3 in paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply
4 only to products a Settling Defendant manufactures, distributes, markets, sells or ships
5 after the Effective Date for sale or use inside the State of California.

6 7.3 For Covered Products that do not meet the reformulation requirements of
7 Sections 7.1, each Settling Defendant shall provide Proposition 65 warnings as follows:

8 (a) Each Settling Defendant shall provide either of the following warning
9 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
12 *Wash your hands after handling this product.*

13 or

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

17 or

18 Any other Proposition 65 warning applicable to Brass Products, which is
19 approved by Plaintiff or the Attorney General of the State of California by
20 way of settlement, compromise or final judgment with a Settling Defendant.

21 Bracketed language may be omitted at a Settling Defendant's
22 option. A Settling Defendant may add additional listed chemicals to the
23 warning unless the Attorney General advises that the inclusion of such
24 additional chemicals would render the warning misleading or constitute an
25 over warning. The word "WARNING" shall be in bold, and may be
26 preceded by the word "CALIFORNIA", "PROP 65", or "CALIFORNIA
27 PROP 65" at the Settling Defendant's option provided such words are also
28 in bold. The words "Wash your hands after touching this product" or
"Wash hands after handling" in either warning above may be replaced by

1 “Wash hands after use”, and in any case such words shall be underlined, in
2 bold or italicized.

3 (b) Settling Defendant shall provide such warning on or attached to
4 Covered Product or with the unit package of the Covered Products as
5 packaged by Settling Defendant. Such warning shall be included with,
6 affixed to or printed on each Covered Product or its label, package or
7 container in the same section that states other safety warnings, if any,
8 concerning the use of the product or near the product brand name, or
9 displayed price and/or UPC code, in a manner reasonably calculated to be
10 seen by an ordinary individual. If after the Effective Date, any Settling
11 Defendant ships Covered Products to a retailer or distributor outside of
12 California that neither provides the warnings specified in this paragraph nor
13 meets the Reformulation Standard specified in paragraph of this Consent
14 Judgment (“Non-Conforming Covered Products”), and if the retailer or
15 distributor then offers those Non-Conforming Covered Products for sale in
16 California, then as to those Non-Conforming Covered Products, that retailer
17 or distributor, and their customers, are not released pursuant to Sections 4.1
18 and 4.2 above.

19 (c) Except as provided in paragraphs 4.1 and 4.2 hereof for Covered
20 Products manufactured or distributed prior to the Effective Date, nothing in
21 this Consent Judgment shall create a limitation on a Proposition 65
22 enforcement action based on future conduct if such future conduct is not in
23 compliance with the injunctive terms of this Consent Judgment.

24 8.0 AUTHORITY TO STIPULATE

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

1 **9.0 RETENTION OF JURISDICTION**

2 This Court shall retain jurisdiction of this matter to implement the Consent
3 Judgment.

4 **10.0 ENTIRE AGREEMENT**

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

11 **11.0 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.

15 **12.0 NOTICES**

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

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21 To Mateel:
22 William Verick, Esq.
23 Klamath Environmental Law Center
24 424 First Street
25 Eureka, CA 95501
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To Gross Mechanical Laboratories, Inc.
:
Don Gross
Gross Mechanical Laboratories, Inc.
450 Marion Quimby Drive
Stevensville, MD 21666

With a copy to

William Tarantino, Esq.
Morrison & Foerster, LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105

To Pro-Mark Distribution, Inc.:

Gregory Butters, Esq.
Orbit Irrigation, Inc.
845 Overland Road
North Salt Lake, UT 84054

William Tarantino, Esq.
Morrison & Foerster, LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105

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:

GROSS MECHANICAL
LABORATORIES, INC.,

By:

Its:

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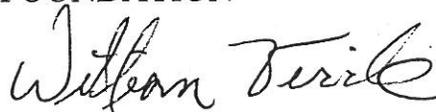
13. COURT APPROVAL

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: 12/12/12

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED:

GROSS MECHANICAL
LABORATORIES, INC.,

By:

Its:

1 To Gross Mechanical Laboratories, Inc.
2 :
3 Don Gross
4 Gross Mechanical Laboratories, Inc.
5 450 Marion Quimby Drive
6 Stevensville, MD 21666

With a copy to

William Tarantino, Esq.
Morrison & Foerster, LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105

7
8 To Pro-Mark Distribution, Inc.:

9 Gregory Butters, Esq.
10 Orbit Irrigation, Inc.
11 845 Overland Road
12 North Salt Lake, UT 84054

William Tarantino, Esq.
Morrison & Foerster, LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105

13 **13. COURT APPROVAL**

14 If this Consent Judgment is not approved by the Court, it shall be of no force
15 or effect, and cannot be used in any proceeding for any purpose.

16 IT IS SO STIPULATED:

17 DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

18
19
20 William Verick
21 CEO Mateel Environmental Justice
22 Foundation,
Klamath Environmental Law Center

23 DATED: *November 16, 2017*

GROSS MECHANICAL
LABORATORIES, INC.,

24
25 By: *[Signature]*
26 Its: *PRESIDENT*

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DATED:

PRO-MARK DISTRIBUTION, INC.,



By: STEVEN ERICKSEN

Its: VICE PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: DEC 21 2012

Lynn O'Malley Taylor
JUDGE OF THE SUPERIOR COURT