

ENDORSED
FILED
San Francisco County Superior Court

FEB 02 2015

CLERK OF THE COURT

BY: FELICIA M. GREEN
Deputy Clerk

1 WILLIAM VERICK, SBN 140972
2 KLAMATH ENVIRONMENTAL LAW CENTER
3 FREDRIC EVENSON, SBN 198059
4 424 First Street
5 Eureka, CA 95501
6 Telephone: (707) 268-8900
7 Facsimile: (707) 268-8901
8 E-mail: wverick@igc.org

9
10 DAVID WILLIAMS, SBN 144479
11 BRIAN ACREE, SBN 202505
12 1990 N. California Blvd., 8th Fl.
13 Walnut Creek, CA 94596
14 Telephone: (510) 847 2356
15 E-mail: dhwill7@gmail.com

16 Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,
Plaintiff,
v.
APEX TOOL GROUP, LLC; BATTENFELD
TECHNOLOGIES, INC.; BLAZER
MANUFACTURING, CORP.; FROST CUTLERY;
FROST CORPORATION; OHAUS CORP.; THE
L.R. STARRETT COMPANY; WEEMS & PLATH,
INC.,
Defendants.

Case No. CGC-14-539537
CONSENT JUDGMENT

Complaint Filed: May 29, 2014

DM14966176.1 R2259/00001

CONSENT JUDGMENT - FROST: CASE NO. CGC-14-539537

APEX TOOL GROUP, LLC; BATTENFELD

1 **1.0 INTRODUCTION**

2 **1.1 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel" or "MEJF")**
3 **acting on behalf of itself and the general public, previously filed a complaint ("Complaint") in this**
4 **action for civil penalties and injunctive relief in San Francisco Superior Court, against Defendant**
5 **FROST CUTLERY COMPANY, LLC ("Frost"). Mateel and Frost are collectively referred to**
6 **herein as the "parties". The Complaint alleges, among other things, that Frost manufactures or sells**
7 **products made of, or containing components that are made of lead in violation of provisions of the**
8 **Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5,**
9 **et seq. ("Proposition 65"). In particular, Mateel alleges that Frost knowingly and intentionally**
10 **exposed persons to lead in cutlery, knives, and related products or parts (collectively, "Cutlery**
11 **Products"), without 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 defects or other**
13 **reproductive harm.**

14 **1.2 On March 6, 2011, Mateel sent a Notice of Violation letter concerning the allegations**
15 **set forth in Paragraph 1.1 above pursuant to Health and Safety Code section 25249.7(d) ("Notice**
16 **Letter") to Frost, the California Attorney General, all California District Attorneys, and all City**
Attorneys of every California city with populations exceeding 750,000.

1.3 Mateel alleges that Frost manufactures and/or sells Cutlery Products; Frost is a
business that employ ten or more persons and manufactures, distributes, and/or markets Cutlery
Products within the State of California. These products are alleged to contain lead and/or lead
compounds. Under specified circumstances, businesses that use products containing lead and/or lead
compounds in the State of California are subject to the Proposition 65 warning requirement set forth
in Health and Safety Code Section 25249.6. Mateel alleges that Cutlery Products that contain lead
are manufactured, distributed, sold and/or marketed by Settling Defendants for use in California,
such that a warning is required under Proposition 65.

1.4 On May 29, 2014, following the expiration of the 60-day period following its issuance
of the March 6, 2014 Notice Letter to Frost without an authorized public prosecutor of Proposition
65 having filed and enforcement action against Frost for the claims alleged therein, Mateel filed the

1 Complaint in which Frost is included as a defendant. In the Complaint, Mateel alleges that Frost
2 violated Cal. Health & Safety Code Section 25249.6 by knowingly and intentionally exposing
3 persons to Cutlery Products that contain lead and/or lead compounds, without first providing a clear
4 and reasonable warning to such individuals.

5 1.5 For purposes of settlement and the entry of this Consent Judgment only, the parties
6 stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint
7 and personal jurisdiction over Frost as to the acts alleged in the Complaint, that venue is proper in
8 the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a
9 full settlement and resolution of the allegations contained in the Complaint and of all claims that
10 were or could have been raised by any person or entity based in whole or in part, directly or
11 indirectly, on the facts alleged in, arising from, or related to the Complaint. For purposes of this
12 Consent Judgment, "Covered Products" is defined to include Cutlery Products manufactured,
13 distributed, sold or otherwise marketed for sale or use in California by Frost which are not required
14 to comply with AB 1953 (California Health & Safety Code §116875) or equivalent Federal law.
15 Products which are the subject of AB 1953 or equivalent Federal law are expressly not addressed by
16 this Consent Judgment, and no inference regarding compliance or violation with the requirements of
Proposition 65 by such products is intended by this judgment. Regardless of whether or not they are
subject to AB 1953 or equivalent Federal law, Covered Products also do not include products that
are addressed in the Consent Judgment this Court previously entered in *People v. American
Standard, et al., No. 948017*.

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

1.7 This Consent Judgment shall be effective on entry by the Court, the "Effective Date."

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1 **2.0 SETTLEMENT PAYMENTS**

2 2.1 In settlement of all of the claims referred to in this Consent Judgment, Settling
3 Defendants shall collectively pay an aggregate of \$26,000.00 in total monetary relief, inclusive of
4 Paragraph 2.2, below. Of the foregoing, a total of \$2,000.00 shall be paid in civil penalties. Mateel
5 waives its right to receive 25 percent of this payment, and, accordingly, the entire \$2,000 shall be
6 paid to the Office of Environmental Health Hazard Assessment ("OEHHA").

7 2.2 A total amount of \$16,000.00 shall be paid by the Settling Defendants collectively to
8 the Klamath 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 in
10 negotiating this Consent Judgment on behalf of itself and in the public interest. An additional total of
11 \$8,000.00 shall be paid by Settling Defendants in lieu of, and as an offset for, what may have been a
12 larger reimbursement of Mateel's attorneys fees had Mateel filed a motion for attorneys' fees under
13 Civil Procedure Code Section 1021.5. By this settlement, Mateel waives its right to file such a
14 motion. The aforementioned \$8,000 payment in lieu of attorneys' fees shall be made in the form of
15 two equal payments of \$4,000.00 each, one to the Ecological Rights Foundation and one to
16 Californians for Alternatives to Toxics. The payments described in Paragraph 2.1 above and this
Paragraph 2.2 shall be delivered within 10 court days after the Effective Date to William Verick, 424
First Street, Eureka, CA 95501.

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

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

3.0 ENTRY OF CONSENT JUDGMENT

3.1 The parties hereby request that the Court promptly enter this Consent Judgment
which shall constitute a full and final adjudication of all claims asserted or that could have been

1 asserted in Plaintiff's Complaint. Upon entry of the Consent Judgment, the parties waive their
2 respective rights to a hearing or trial on the allegations of the Complaint.

3 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

4 **4.1 As to lead and lead compounds from Covered Products, this Consent Judgment**
5 **provides a full release of liability on behalf of the public interest to Frost as well as its past, present**
6 **and future subsidiaries, affiliates, predecessors, successors, assigns, distributors, wholesalers and**
7 **retailers (collectively, "Released Entities"), from all claims for violations of Proposition 65 up**
8 **through the Effective Date of this Consent Judgment based upon exposure to lead from Covered**
9 **Products as set forth in Mateel's March 6, 2014 Notice of Violation letter. Compliance with the**
10 **terms of this Consent Judgment by Frost following its entry by the Court shall be deemed to**
11 **constitute compliance with Proposition 65 as to lead and lead compounds in its Covered Products,**
12 **provided, however, that the authority and discretion of the Office of the California Attorney General**
13 **shall not be restricted in the event it chooses to undertake enforcement action in the future.**

14 **4.2 As to alleged lead and lead compound exposures associated with Covered Products,**
15 **Mateel on behalf of itself, and its privies, agents, attorneys, representatives, successors and assigns,**
16 **waives all rights to institute or participate in, directly, or indirectly, any form of legal action, and**
releases all claims as between Mateel and the Released Entities, including, without limitation, all
actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, agreements,
promises, royalties, accountings, damages, costs, fines, penalties, losses, or expenses (including, but
not limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever, whether
known or unknown, fixed or contingent (collectively "claims"), against the Released Entities and
their parents, subsidiaries or affiliates, predecessors, officers, directors, shareholders, attorneys,
representatives, agents, employees, and all customers, manufacturers, distributors, wholesalers,
retailers, or any other person in the course of doing business involving the Covered Products, and the
successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the
Covered Products or components found in the Covered Products, including, but not limited to, any
claims regarding exposure to, and/or failure to warn with respect to, the Covered Products. In

furtherance of the foregoing, Mateel hereby waives any and all rights and benefits which it now has,

1 or in the future may have respecting the Covered Products, conferred upon it with respect to claims
2 involving Covered Products by virtue of the provisions of Section 1542 of the California Civil Code,
3 which provides as follows:

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

9 **4.3 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 arising**
11 **out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,**
12 **including but not limited to any exposure to, or failure to warn with respect to exposure to lead or**
13 **lead compounds from, the Covered Products, Mateel will not be able to make any claim for those**
14 **damages against the Released Entities, their parents, subsidiaries or affiliates, predecessors, officers,**
15 **directors, shareholders, representatives, attorneys, agents, employees, and all customers,**
16 **manufacturers, distributors, wholesalers, retailers or any other person in the course of doing business**
involving the Covered Products, and the successors and assigns of any of them, who may
manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel
acknowledges that it intends these consequences for any such claims and any other claims which
may exist as of the date of this release but which Mateel does not know exist, and which, if known,
would materially affect its decision to enter into this Consent Judgment, regardless of whether its
lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

5.0 ENFORCEMENT OF JUDGMENT

5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
including on behalf of the Released Entities. The parties may, by noticed motion before the Superior
Court of San Francisco County, giving the notice required by law, enforce the terms and conditions
of this Consent Judgment. The parties agree that prior to any such enforcement proceeding, they will
notify each other of any perceived violation of this Consent Judgment. The parties further agree to
meet and confer in good faith in an effort for 30 days before such notice is given to resolve the
alleged violation.

1 **6.0 MODIFICATION OF JUDGMENT**

2 **6.1 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be modified**
3 **only upon written agreement of the parties and upon entry of a modified Consent Judgment by the**
4 **Court, or upon motion of any party as provided by law and upon entry of a modified Consent**
5 **Judgment by the Court. The California Attorney General shall be entitled to at least 15 days' notice**
6 **of any proposed modification before it is presented to the Court for approval.**

7 **6.2 Notwithstanding any other term or provision of this Consent Judgment, if Plaintiff, or**
8 **the California Attorney General, and another (current or potential) defendant ("Future Settling**
9 **Party") agree to or is otherwise bound by injunctive relief terms or provisions relating to the**
10 **reformulation of, or provisions of Proposition 65 warnings for, products of like characteristics and**
11 **use to those of Covered Products, which are more favorable to the Future Settling Party than this**
12 **Consent Judgment otherwise provides to Frost, then Plaintiff stipulates and agrees to not oppose any**
13 **effort by Frost to seek amendment or adjustment of injunctive relief terms provided for in Section 7**
14 **of this Consent Judgment to be modified to add such more favorable terms or provisions as an**
15 **option.**

16 **6.3 Mateel shall give notice to Frost, per Section 12, of all consent judgments entered into**
by Mateel described in Section 6.2 on or after the date of this Consent Judgment involving similar
products to those at issue in this Consent Judgment, unless such consent judgments are posted on the
public Proposition 65 web site maintained by the California Attorney General.

7.0 INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNING

7.1 Covered Products' components shall be deemed to comply with Proposition 65 with
respect to lead and lead compounds and be exempt from any Proposition 65 warning requirements
for these listed chemicals, if the components that are part of the Covered Products are made of an
alloy which contains no intentionally added lead and no lead content by weight of more than 0.03%
(300 parts per million, or "300 ppm") or if the component containing lead is not touched by a person
during intended and reasonably foreseeable use of the Covered Product.

7.2 Mateel agrees, on its own behalf only, that for purposes of this Consent Judgment, as
to the lead content of the components of any reformulated Covered Product, Frost and any other

1 Released Entities may rely upon the representations of their respective manufacturers, suppliers,
2 distributors, official product certification organizations (such as IAPMO) or any other person in the
3 course of doing business that manufactures, supplies or otherwise distributes the reformulated
4 Covered Product(s), provided that the reliance is in good faith. Although good faith reliance
5 regarding the alloy may also be established by other means, Mateel agrees that obtaining test results
6 showing that the lead content is no more than .003% (300 ppm), using a method of sufficient
7 sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300
8 ppm shall be deemed to establish good faith reliance.

9 7.3. Covered Products packaged for distribution or sale by Frost 180 days or more
10 following the Effective Date that do not meet the warning exemption standard set forth in Section
11 7.1 of the Consent Judgment shall be accompanied by either of the following warning statements:

12 **WARNING: This product contains lead, a chemical known to the State of California**
13 **to cause [cancer and] birth defects or other reproductive harm. [Wash your hands**
14 **after handling this product.]**

15 or

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

Bracketed language may be omitted at Frost's option. The word "WARNING" shall be in
bold and may be preceded by the word "CALIFORNIA," "PROP 65," or "CALIFORNIA
PROP 65" at Frost's option provided such words are also in bold. The bracketed words
"Wash hands after handling this product" or "Wash hands after handling" may be replaced
with "Wash hands after use" or "Wash hands after installing or removing this product" and in
any case shall be underlined, in bold, or italicized. If Frost had begun to use the regulatory
safe harbor warning language specified in 27 CCR § 25603.2, a combination of the cancer
and reproductive warning language formulations specified therein, or one of the warning
statements set forth above but without a specific reference to lead, prior to the execution of

1 this Consent Judgment, they may continue to use that warning language in lieu of that set
2 forth above until they next produce packaging or labeling based on updated artwork for the
3 product in question.

4 7.4 Any warning shall be prominently placed with such conspicuousness as
5 compared with other words, statements, designs, or devices as to render it likely to be read by an
6 ordinary individual under customary conditions before purchase or use. Any warning shall be
7 provided in a manner such that the ordinary competent consumer or user should understand to which
8 specific Covered Product the warning applies. Settling Defendants may provide warnings as
9 specified in Section 7.3 as follows:

10 Affixed Warnings. Frost may provide such warning on or attached to Covered Products or
11 with the unit package of the Covered Products as packaged by Settling Defendants. Such
12 warning shall be included with, affixed to or printed on each Covered Product or its label,
13 package or container in the same section that states other safety warnings, if any, concerning
14 the use of the product or near the product brand name, displayed price and/or UPC code, or
15 in any other manner reasonably calculated to be seen by an ordinary individual.

16 Point of Sale Warnings. Frost may alternatively perform its warning obligation by arranging
for the posting of the shelf labeling, signs, menus, warning slips or a combination thereof as
set forth in Health & Safety Code Section 25603.1 at retail outlets in the State of California
where Covered Products are sold. In such instances, the Settling Defendant shall provide the
warning specified in Section 7.3, and instructions for its use, with the shipping materials
containing the Covered Product or otherwise ensure the installation of fixed adhesive
warning placards on the Covered Product display shelves. Such warning and instructions
shall be included with or affixed to each package box or other container containing Covered
Product(s) or otherwise installed on the Covered Product display shelves with fixed adhesive
warning placards. For a Point of Sale Warning to be considered reasonably calculated to be
seen by an ordinary individual, the warning shall be posted at (1) each location in the store
where the Covered Products are displayed and visible when the Covered Products are being
viewed without the Covered Products being moved, or (2) for stores with less than 7,500

1 square feet retail space, adjacent to each checkout counter, sales register, cash stand, cash
2 wrap or similar check out location in the store. All warning signs must be displayed in such a
3 manner that any potential purchaser would reasonably be expected to see the warning and
4 adequately distinguish between products for which warnings are required and product which
5 do not cause a lead exposure. If the point of sale warning is not posted in such a manner, or
6 any other manner otherwise agreed to by the California Attorney General, the retail entity
7 shall not benefit from the terms of this Consent Judgment, including the release of claims
8 contained therein.

9 **7.5** If Frost ships Cutlery Products packaged for distribution or sale after 180 days
10 following the Effective Date to a retailer or distributor outside of California that neither provide the
11 warnings specified in Section 7.3 nor meet the warning exemption standard specified in Section 7.1
12 of this Consent Judgment ("Non-Conforming Cutlery Products"), and if the retailer or distributor
13 then offers those Non-Conforming Cutlery Products for sale in California, then as to those Non-
14 Conforming Cutlery Products, that retailer or distributor, and their customers, are not released
15 pursuant to Sections 4.1 and 4.2 above.

16 **7.6** For Covered Products packaged for distribution or sale by Frost more than 180 days
following the Effective Date, nothing in this Consent Judgment shall create a limitation on a
Proposition 65 enforcement action if such Covered Products are not in compliance with the
injunctive terms of this Consent Judgment.

8.0 AUTHORITY TO STIPULATE

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

9.0 RETENTION OF JURISDICTION

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

10.0 ENTIRE AGREEMENT

10.1 This Consent Judgment contains the sole and entire agreement and understanding of
the parties with respect to the Covered Products, and any and all prior discussions, negotiations,

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commitments and understandings to them. No representations, oral or otherwise, express or implied, other than those contained herein regarding the Covered Products have been made by any party. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties with respect to the Covered Products.

11.0 GOVERNING LAW

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

12.0 NOTICES

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

To Mateel:

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

To Frost:

Cameron A. Thomsen
Frost Cutlery Company, LLC
6861 Mountain View Road
Ooltewah, TN 37363

With a copy to:

Paul S. Rosenlund
Duane Morris LLP
One Market Plaza, Spear Tower, Suite 2200
San Francisco, CA 94105

13.0 COURT APPROVAL

13.1 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.

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Mateel.

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Frost Cutlery Company, LLC

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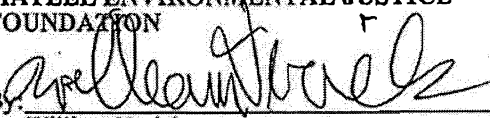
Frost Cutlery Company, LLC
6861 Mountain View Road
Ooltewah, TN 37363

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IT IS SO STIPULATED:

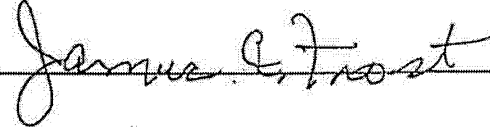
Dated: ~~December~~ Jan. 13, 2015, 2014

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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

Dated: December 30, 2014

FROST CUTLERY COMPANY, LLC

By: 

IT IS ORDERED, ADJUDGED AND DECREED:

DATED: FEB 02 2015

ERNEST H. GOLDSMITH

JUDGE OF THE SUPERIOR COURT