

JAN 15 2015

CLERK OF THE COURT  
By: Felicia Green  
Deputy Clerk

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

8 DAVID WILLIAMS, SBN 144479  
9 BRIAN ACREE, SBN 202505  
10 370 Grand Avenue, Suite 5  
11 Oakland, CA 94610  
12 Telephone: (510) 647-1900  
13 Facsimile: (510) 647-1905  
14 E-mail: davidhwilliams@earthlink.net

15 Attorneys for Plaintiff  
16 MATEEL ENVIRONMENTAL JUSTICE  
17 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 APEX TOOL GROUP, LLC, et al.,

25 Defendants.

Case No. CGC-14-539537

CONSENT JUDGMENT AS TO  
BATTENFELD TECHNOLOGIES

26 1. INTRODUCTION

27 1.1 On May 29, 2014, the MATEEL ENVIRONMENTAL JUSTICE  
28 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a  
Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco County  
Superior Court, Case No. CGC-09-495332, against Defendant, Battenfeld Technologies  
"Battenfeld" or "Defendant"). The Complaint alleges, among other things, that Defendant  
violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
Health and Safety Code Sections 25249.5, *et seq.* ("Proposition 65"). In particular,

1 Mateel alleges that Battenfeld has knowingly and intentionally exposed persons to  
2 products made of brass containing lead and/or lead compounds (hereinafter “leaded  
3 brass”), which are chemicals known to the State of California to cause cancer and birth  
4 defects or other reproductive harm, without first providing a clear and reasonable warning  
5 to such individuals.

6 1.2 On March 6, 2014, a 60-Day Notice letter (“Notice Letter”) was sent by  
7 Mateel to Battenfeld, the California Attorney General, all California District Attorneys,  
8 and all City Attorneys of every California city with populations exceeding 750,000.

9 1.3 Battenfeld is a business that employs ten or more persons and manufactures,  
10 distributes, markets, and/or offers for sale leaded brass tools, including hammer and punch  
11 sets, within the State of California. Leaded Brass tools are alleged to contain lead and/or  
12 lead compounds. Lead and lead compounds are chemicals known to the State of  
13 California to cause cancer, and lead is a chemical known to the State of California to  
14 cause reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under  
15 specified circumstances, products containing lead and/or lead compounds that are sold or  
16 distributed in the State of California are subject to the Proposition 65 warning requirement  
17 set forth in Health and Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded  
18 brass tools manufactured, distributed, sold and/or marketed by Battenfeld for use in  
19 California require a warning under Proposition 65.

20 1.4 For purposes of this Consent Judgment, the term “Covered Products” shall  
21 be defined as tools that utilize leaded brass that are distributed and sold within the State of  
22 California, and that are manufactured, distributed, marketed and/or sold by Battenfeld,  
23 regardless of whether they bear Battenfeld labels.

24 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court  
25 has jurisdiction over the allegations of violations contained in the Complaint and personal  
26 jurisdiction over Battenfeld as to the acts alleged in the Complaint, that venue is proper in  
27 the County of San Francisco and that this Court has jurisdiction to enter this Consent  
28 Judgment as a full settlement and resolution of the allegations contained in the Complaint

1 and of all claims that were or could have been raised by any person or entity based in  
2 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or  
3 related thereto.

4 1.6 This Consent Judgment resolves claims that are denied and disputed. The  
5 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
6 all claims between the parties for the purpose of avoiding prolonged litigation. This  
7 Consent Judgment shall not constitute an admission with respect to any material allegation  
8 of the Complaint, each and every allegation of which Battenfeld denies; nor may this  
9 Consent Judgment or compliance with it be used as evidence of any wrongdoing,  
10 misconduct, culpability or liability on the part of Battenfeld or any other person or entity  
11 related to the Defendant.

12 **2. SETTLEMENT PAYMENT**

13 2.1 In settlement of all of the claims that are alleged, or could have been  
14 alleged, in the Complaint concerning Covered Products, Battenfeld shall pay \$16,000 to  
15 the Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees.  
16 Additionally, Battenfeld shall pay \$4,000 to the Ecological Rights Foundation, ("ERF")  
17 and \$4,000 to Californians for Alternatives to Toxics, ("CATs") for use toward reducing  
18 exposures to toxic chemicals and other pollutants, and toward increasing consumer,  
19 worker and community awareness of health hazards posed by lead and other toxic  
20 chemicals. The charitable contributions to ERF and CATs are in lieu of, and as an offset  
21 for, what would have been a larger reimbursement of Mateel's attorneys' fees in this  
22 matter. The parties agree and acknowledge that the charitable contributions made pursuant  
23 to this section shall not be construed as a credit against the personal claims of absent third  
24 parties for restitution against the defendant. The above described payments shall be  
25 forwarded by Battenfeld to its attorney so that they are received at least 5 days prior to the  
26 hearing date scheduled for approval of this Consent Judgment. Battenfeld's attorney shall  
27 notify the Klamath Environmental Law Center ("KELC") when the funds are received. If  
28 the Consent Judgment is approved and entered by the Court, within five days Battenfeld's

1 attorney shall deliver the payments to KELC by overnight mail. If the Consent Judgment  
2 is not approved with 120 days of the date scheduled for approval, the above described  
3 payments shall be returned and the provisions of this Consent judgment shall become null  
4 and void.

5 2.1 2.2 Battenfeld shall pay a civil penalty in the amount of \$2,000 pursuant  
6 to Health and Safety Code Section 25249.7(b).

7 **3. ENTRY OF CONSENT JUDGMENT**

8 3.1 The parties hereby request that the Court promptly enter this Consent  
9 Judgment. Upon entry of the Consent Judgment, Battenfeld and Mateel waive their  
10 respective rights to a hearing or trial on the allegations of the Complaint.

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

12 4.1 This Consent Judgment is a final and binding resolution between Mateel,  
13 acting on behalf of itself and the public interest, and Battenfeld of any violation of  
14 Proposition 65 with respect to lead exposures from Covered Products alleged in the 60  
15 Day Notice, whether based on actions committed by Battenfeld, or by any other person or  
16 entity within Battenfeld's chain of distribution of the Covered Products, including, but not  
17 limited to, manufacturers, distributors, wholesale or retail sellers, and any other person in  
18 the course of doing business. As to lead exposures allegedly arising from the Covered  
19 Products, compliance with the terms of this Consent Judgment resolves any issue, now  
20 and in the future, concerning compliance by Battenfeld and its parents, subsidiaries or  
21 affiliates, predecessors, officers, directors, employees, and all of their manufacturers,  
22 customers, distributors, wholesalers, retailers, or any other person in the course of doing  
23 business, and the successors and assigns of any of these who may manufacture, use,  
24 maintain, distribute, market or sell Covered Products, with the requirements of  
25 Proposition 65.

26 4.2 As to lead exposures allegedly arising from the Covered Products, Mateel,  
27 acting on behalf of itself and its agents, successors and assigns, waives all rights to  
28 institute any form of legal action, and releases all claims against Battenfeld and its

1 parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of  
2 its customers, manufacturers, distributors, wholesalers, retailers or any other person in the  
3 course of doing business, and the successors and assigns of any of them, who may  
4 manufacture, use, maintain, distribute or sell the Covered Products, whether under  
5 Proposition 65 or otherwise. In furtherance of the foregoing, Mateel, acting on behalf of  
6 itself hereby waives any and all rights and benefits which it now has, or in the future may  
7 have, conferred upon it with respect to the Covered Products by virtue of the provisions of  
8 Section 1542 of the California Civil Code, which provides as follows:

9 "A GENERAL RELEASE DOES NOT EXTEND TO  
10 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR  
11 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF  
12 EXECUTING THE RELEASE, WHICH IF KNOWN BY  
13 HIM MUST HAVE MATERIALLY AFFECTED HIS  
14 SETTLEMENT WITH THE DEBTOR."

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

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**5. ENFORCEMENT OF JUDGMENT**

5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties hereto. The parties may, by noticed motion or order to show cause before the Superior Court of San Francisco County, giving the notice required by law, enforce the terms and conditions contained herein.

**6. MODIFICATION OF JUDGMENT**

Except as provided for in Paragraph 7.2(c), this Consent Judgment may be modified only upon written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and upon entry of a modified Consent Judgment by the Court.

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

7.1 Covered Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements if they meet the following criteria: (a) the brass alloy from which the tools are made shall have no lead as an intentionally added constituent; and (b) the brass alloy from which the tools are made shall have a lead content by weight of no more than 0.03% (300 parts per million, or “300 ppm”). Battenfeld may comply with the above requirements by relying on information obtained from its suppliers regarding the content of the brass alloy from which the tools are made, provided such reliance is in good faith. Obtaining test results showing that the lead content is no more than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 300 ppm shall be deemed to establish good faith reliance.

7.2 Covered Products that do not meet the warning exemption standard set forth in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply only to: (1) Covered Products that Battenfeld ships for distribution after 90 days after entry of this Consent Judgment (“the Effective Date”); and (2) Covered Products

1 manufactured, distributed, marketed, sold or shipped for sale or use inside the State of  
2 California.

3 7.3 Battenfeld shall provide Proposition 65 warnings as follows:

4 (a) Battenfeld shall provide either of the following warning statements:

5 **WARNING:** This product contains lead, a chemical known to the  
6 State of California to cause birth defects or other reproductive harm.

7 Do not place your hands in your mouth after handling the product.

8 ***Wash your hands after touching this product.***

9 or

10 **WARNING:** This product contains one or more chemicals known to  
11 the State of California to cause birth defects or other reproductive

12 harm. ***Wash hands after handling.***

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

15 Battenfeld shall provide such warning directly on or with the unit package  
16 of the Covered Products. Such warning shall be prominently affixed to or  
17 printed on each Covered Product or its label or package. If printed on the  
18 label itself, the warning shall be contained in the same section that states  
19 other safety warnings, if any, concerning the use of the Covered 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, Battenfeld shall have no further warning obligations  
26 pursuant to this Consent Judgment. Except as provided in section 7.1 above,  
27 in the event that Battenfeld ceases to implement or modifies the warnings  
28 required under this Consent Judgment (because of a change on the law or

1 otherwise), Battenfeld 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 thirty  
3 (30) days in advance. Mateel shall notify Battenfeld in writing of any  
4 objection within thirty (30) days of its receipt of such notice, or such  
5 objection by Mateel shall be waived.

6 **8. AUTHORITY TO STIPULATE**

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

10 **9. RETENTION OF JURISDICTION**

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

13 **10. ENTIRE AGREEMENT**

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

20 **11. GOVERNING LAW**

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

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**12. COURT APPROVAL**

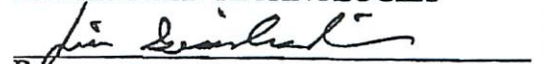
If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

**IT IS SO STIPULATED:**

DATED: 10/20/14

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION  
  
William Verick  
CEO Mateel Environmental Justice  
Foundation,  
Klamath Environmental Law Center

DATED: 9/22/14

BATTENFELD TECHNOLOGIES  
  
By: Jim Gianlatis  
Its: CEO Battenfeld Technologies

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

DATED: JAN 15 2015  
A. JAMES ROBERTSON, II  
JUDGE OF THE SUPERIOR COURT