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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
24 Plaintiff,
25
26 v.
27 CAMPBELL MANUFACTURING CO, INC.,
28 et al.,
Defendants.

Case No. CGC-10-502296
CONSENT JUDGMENT
**(JOHNSON LEVEL & TOOL MFG.
CO., INC. and JOHNSON-ROSE
CORP.)**

1. INTRODUCTION

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

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
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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.

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
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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.
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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.
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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.
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11. GOVERNING LAW

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. NOTICES

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 courier 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 Johnson Level:
William Johnson
Johnson Level & Tool Manufacturing Company
6333 West Donges Bay Road
Mequon, WI 53092-4456

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

To Johnson-Rose:
Ernie Berman
Johnson-Rose Corp.
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 G. Johnson
Its: Chairman / CEO

DATED:

JOHNSON-ROSE CORP.

By:
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT