

1 William Verick (SBN 140972)
2 KLAMATH ENVIRONMENTAL LAW CENTER
3 Fredric Evenson (SBN 198059)
4 LAW OFFICE OF FREDRIC EVENSON
5 424 First Street
6 Eureka, CA 95501
7 Telephone: (707) 268-8900
8 Facsimile: (707) 268-8901
9 wverick@igc.org
10 ecorights@earthlink.net

7 DAVID WILLIAMS (SBN 144479)
8 BRIAN ACREE (SBN 202505)
9 370 Grand Avenue, Suite 5
10 Oakland, CA 94610
11 Telephone: (510) 271-0826
12 Facsimile: (510) 271-0829
13 davidhwilliams@earthlink.net
14 brianacree@earthlink.net

11 Attorneys For Plaintiff
12 MATEEL ENVIRONMENTAL JUSTICE
13 FOUNDATION
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

16 MATEEL ENVIRONMENTAL JUSTICE) Case No. CGC-11-512045
17 FOUNDATION,)
18 Plaintiff,) [PROPOSED] CONSENT
19 v.) JUDGMENT AS TO NEW BUFFALO
20 LEHR INCORPORATED, et al.,) CORPORATION
21 Defendants.)

23 **1. INTRODUCTION**

24 1.1 On June 28, 2011, the Mateel Environmental Justice Foundation (“Plaintiff
25 MEJF”) acting on behalf of itself and on behalf of public interest, filed a Complaint for civil
26 penalties and injunctive relief (“Complaint”) in San Francisco Superior Court, Case No. CGC-11-
27 512045, against defendant New Buffalo Corporation, (referred to as “New Buffalo” or
28

1 “Defendant”) and other defendants. The Complaint alleges that Defendant violated provisions of
2 the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections
3 25249.5, et seq. (Proposition 65) by failing to give clear and reasonable warnings to those
4 residents of California who handle and use products made of, or incorporate parts made of, brass
5 and/or bronze, that handling and use of those products causes exposures to lead and/or lead
6 compounds. Lead is known to the State of California to cause cancer and/or birth defects or other
7 reproductive harm. The Complaint was based upon a 60-Day Notice letter (“Notice of
8 Violation”), dated February 10, 2011, sent by MEJF to New Buffalo, the California Attorney
9 General, all District Attorneys, and all City Attorneys for cities with populations exceeding
10 750,000.

11 1.2 Defendant is a business that employs more than ten persons, and manufactures,
12 distributes, and sells brass tools, including but not limited to welding hoses and welding hose
13 accessories (“Brass Products”). Mateel alleges that the Brass Products at issue contain
14 components manufactured from leaded brass and cause exposures to lead and/or lead compounds.
15 Pursuant to Health and Safety Code Section 25249.8, lead and lead compounds are chemicals
16 known to the State of California to cause cancer and reproductive toxicity. Plaintiff MEJF alleges
17 that Brass Products with components containing lead-containing brass that are sold by New
18 Buffalo for use in California require a warning under Proposition 65, pursuant to Health and
19 Safety Code Section 25249.6. New Buffalo denies that a warning is required. For purposes of
20 this Consent Judgment, the parties stipulate that this Court has jurisdiction over the allegations of
21 violations contained in the Complaint and personal jurisdiction over New Buffalo as to the acts
22 alleged in the Complaint, that venue is proper in the County of San Francisco and that this Court
23 has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the
24 allegations contained in the Complaint.

25 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
26 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
27 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
28 shall not constitute an admission with respect to any material allegation of the Complaint, each

1 and every allegation of which New Buffalo denies, nor may this Consent Judgment or compliance
2 with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
3 New Buffalo.

4 1.4 For purposes of this Consent Judgment, the term "Covered Products" means Brass
5 Products as described in paragraph 1.2, that contain one or more components manufactured from
6 brass, and that are manufactured, marketed or sold by New Buffalo.

7 1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

8 **2. SETTLEMENT PAYMENT**

9 2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the
10 Complaint concerning Covered Products, New Buffalo shall pay \$15,000 to the Klamath
11 Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally, New
12 Buffalo shall pay \$4,000 to the Ecological Rights Foundation, and \$4,000 to Californians for
13 Alternatives to Toxics, for use toward reducing exposures to toxic chemicals and other pollutants,
14 and toward increasing consumer, worker and community awareness of health hazards posed by
15 lead and other toxic chemicals. The parties agree and acknowledge that the charitable
16 contributions made pursuant to this section shall not be construed as a credit against the personal
17 claims of absent third parties for restitution against the defendant.

18 2.2 New Buffalo shall also pay \$2,000 in civil penalties. Mateel waives its entitlement
19 to 25% of this amount, and thus the entire amount of civil penalties shall be made payable,
20 pursuant to the statute, to the Office of Environmental Health Hazard Assessment (OEHHA).

21 2.3 The above described payments shall be forwarded by New Buffalo to its counsel
22 so that they are received at least 5 days prior to the hearing date scheduled for approval of this
23 Consent Judgment. Defendant's counsel shall notify via email Klamath Environmental Law
24 Center upon receipt of the funds. If the Consent Judgment is not approved with 120 days of the
25 date scheduled for approval, the above described payments shall be returned and the provisions of
26 this Consent judgment shall become null and void. If the Consent Judgment is approved and
27 entered by the Court, on that day Defendant's counsel shall ensure the above described payments

28

1 are delivered, via UPS or Fedex for next business day delivery, to Klamath Environmental Law
2 Center.

3 **3. ENTRY OF CONSENT JUDGMENT**

4 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.
5 Upon entry of the Consent Judgment, New Buffalo and MEJF waive their respective rights to a
6 hearing or trial on the allegations of the Complaint.

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

8 4.1 As to alleged exposures to lead or lead compounds from Covered Products, this
9 Consent Judgment provides a full release of liability on behalf of the Public Interest to New
10 Buffalo, (as well as its past, present and future parents, subsidiaries affiliates, predecessors,
11 successors, and assigns "Released Entities"), as to all claims and matters raised in the Notice of
12 Violation. Notwithstanding any other provision of this Consent Judgment, no claim or matter is
13 released on behalf of the Public Interest unless that claim or matter was raised in the Notice of
14 Violation.

15 4.2 As to alleged exposures to lead or lead compounds from Covered Products, MEJF,
16 by and on behalf of itself and its respective agents, successors and assigns, waives any and all
17 rights to institute any form of legal action, and releases all claims against New Buffalo and the
18 Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their
19 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of
20 doing business, and the successors and assigns of any of them, who may use, maintain, distribute
21 or sell the Covered Products, whether, under Proposition 65 or otherwise, arising out of or
22 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
23 including but not limited to any exposure to, or failure to warn with respect to, the Covered
24 Products (referred to collectively in this paragraph as the "Claims"). In furtherance of the
25 foregoing, as to alleged exposures to Covered Products, MEJF hereby waives any and all rights
26 and benefits which it now has, or in the future may have, conferred upon it with respect to the
27 Claims by virtue of the provisions of section 1542 of the California Civil Code, which provides as
28 follows:

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

6 4.3 MEJF understands and acknowledges that the significance and consequence of this
7 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising
8 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
9 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
10 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for
11 those damages against New Buffalo or the Released Entities. Furthermore, MEJF acknowledges
12 that it intends these consequences for any such Claims as may exist as of the date of this release
13 but which MEJF does not know exist, and which, if known, would materially affect their decision
14 to enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of
15 ignorance, oversight, error, negligence, or any other cause.

16 **5. ENFORCEMENT OF JUDGMENT**

17 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
18 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
19 San Francisco County, giving the notice required by law, enforce the terms and conditions
20 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
21 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the
22 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
23 comply in an open and good faith manner.

24 5.2 In any proceeding brought by either party to enforce this Consent Judgment, such
25 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
26 violation of Proposition 65 or this Consent Judgment.
27
28

1 **6. MODIFICATION OF JUDGMENT**

2 6.1 This Consent Judgment may be modified only upon written agreement of the
3 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
4 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

5 6.2 If, with respect to brass containing lead, the Attorney General of the State of
6 California or Plaintiff permit any other reformulation standard by way of settlement or
7 compromise with any other person in the course of doing business, or any other entity, or if
8 another reformulation standard for brass is incorporated by way of final judgment as to any other
9 person in the course of doing business, or any other entity, then Defendant is entitled to seek a
10 modification to this Consent Judgment on the same terms as provided in those settlements,
11 compromises or judgments.

12 **7. INJUNCTIVE RELIEF**

13 7.1 The requirements of this paragraph 7 shall apply only to Covered Products that are
14 manufactured by New Buffalo after the Effective Date.

15 7.2 As to any Covered Product that contains a component made from brass that
16 contains lead as an intentionally added ingredient, where such brass comes into contact with the
17 user, a warning that contains one of the following warning statements shall be provided:

18 (a) **“WARNING:** This product contains chemicals, including lead, known to
19 the State of California to cause birth defects and other reproductive harm. *Wash hands after*
20 *handling”* or

21 (b) **“WARNING:** Handling the brass parts of this product will expose you to
22 lead, a chemical known to the State of California to cause birth defects and other reproductive
23 harm. *Wash hands after handling.”*

24 (c) The word **“WARNING”** shall be in bold text, and the phrase ***“Wash hands***
25 ***after handling”*** shall be in bold italic text.

26 (d) The warning statements required in paragraph 7.2 shall be affixed to or
27 printed on the Covered Product itself or to the Covered Product’s packaging, labeling, or
28 instruction booklet, if any. The warning shall be prominently affixed to or printed on the Covered

1 Product or packaging, labeling, or instruction booklet, and displayed with such conspicuousness,
2 as compared with other words, statements, designs, or devices on the Covered Product, or its
3 packaging, labeling, or instruction booklet, as to render it likely to be read and understood by an
4 ordinary individual under customary conditions of purchase or use. For purposes of this
5 paragraph, a warning may be contained in the same section of the packaging, labeling, or
6 instruction booklet that contains other safety warnings, if any, concerning the use of the Covered
7 Product, or near its displayed price and/or UPC code. The type size of the warning must be
8 legible, but need not be any larger than any other warning provided for the Covered Product, and
9 its relative size may take into account the nature, immediacy, and acuteness of the risks for which
10 other warnings are provided.

11 **8. TERMINATION AND RETENTION OF JURISDICTION**

12 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
13 terms this Consent Judgment.

14 **9. AUTHORITY TO STIPULATE**

15 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
16 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
17 the party represented and legally to bind that party.

18 **10. DUTIES LIMITED TO CALIFORNIA**

19 10.1 This Consent Judgment shall have no effect on Covered Products sold by New
20 Buffalo outside the State of California.

21 **11. SERVICE ON THE ATTORNEY GENERAL**

22 11.1 KELC shall serve a copy of this Consent Judgment, signed by both parties, on the
23 California Attorney General on behalf of the parties so that the Attorney General may review this
24 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
25 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
26 and in the absence of any written objection by the Attorney General to the terms of this Consent
27 Judgment, the parties may then submit it to the Court for approval.


28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:

DATED: _____

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

BY: 
WILLIAM VERICK

DATED: _____

NEW BUFFALO ELECTRIC COMPANY

BY: _____

ITS: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT