

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

5 DAVID WILLIAMS, SBN 144479
BRIAN ACREE, SBN 202505
6 370 Grand Avenue, Suite 5
Oakland, CA 94610
7 Telephone: (510) 647-1900
Facsimile: (510) 647-1905
8 E-mail: davidhwilliams@earthlink.net

9 Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE
10 FOUNDATION

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN FRANCISCO**

14
15 MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,,

16 Plaintiff,

17 v.

18 GROSS MECHANICAL
19 LABORATORIES, INC., et al.,

20 Defendants.

Case No. CGC-12-517923

**[PROPOSED] CONSENT JUDGMENT
AS TO MILTON INDUSTRIES, INC.**

21
22 **1. INTRODUCTION**

23 1.1 On February 27, 2012, the MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a
25 Complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco County
26 Superior Court, Case No. CGC-12-517923, against Defendant MILTON INDUSTRIES,
27 INC. (referred to herein as “Milton” or “Defendant”). The Complaint alleges, among
28 other things, that Defendant violated provisions of the Safe Drinking Water and Toxic

1 Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition
2 65”). In particular, Mateel alleges that Milton has knowingly and intentionally exposed
3 persons to nozzles and fittings made of brass containing lead and/or lead compounds
4 (hereinafter “leaded brass”), which are chemicals known to the State of California to
5 cause cancer and birth defects or other reproductive harm, without first providing a clear
6 and reasonable warning to such individuals.

7 1.2 On August 27, 2009, a 60-Day Notice letter (“Notice Letter”) was sent by
8 Mateel to Milton, the California Attorney General, all California District Attorneys, and
9 all City Attorneys for all California cities with populations exceeding 750,000.

10 1.3 Milton is a business that employs ten or more persons and manufactures,
11 distributes, markets, and/or offers for sale nozzles and fittings, including Blo-Guns with
12 brass tips or buttons, and FRL's (filter/regulator/lubricator), within the State of California.
13 Some of those products are alleged to contain lead and/or lead compounds. Lead and lead
14 compounds are chemicals known to the State of California to cause cancer, and lead is a
15 chemical known to the State of California to cause reproductive toxicity pursuant to
16 Health and Safety Code Section 25249.9. Under specified circumstances, products
17 containing lead and/or lead compounds that are sold or distributed in the State of
18 California are subject to the Proposition 65 warning requirement set forth in Health and
19 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass nozzles and
20 fittings manufactured, distributed, sold and/or marketed by Milton for use in California
21 require a warning under Proposition 65.

22 1.4 For purposes of this Consent Judgment, the term “Covered Products” shall
23 be defined as nozzles and fittings, including Blo-Guns with brass tips or buttons and
24 FRL's (filter/regulator/lubricator), that utilize leaded brass, whether or not sold as
25 freestanding products or as components of other products to which they are attached, to
26 the extent such products are distributed and sold within the State of California, and that
27 are manufactured, distributed, marketed and/or sold by Milton, regardless of whether they
28 bear Milton labels.

1 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court
2 has jurisdiction over the allegations of violations contained in the Complaint and personal
3 jurisdiction over Milton as to the acts alleged in the Complaint, that venue is proper in the
4 County of San Francisco and that this Court has jurisdiction to enter this Consent
5 Judgment as a full settlement and resolution of the allegations contained in the Complaint
6 and of all claims that were or could have been raised by any person or entity based in
7 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
8 related thereto.

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

17 **2. SETTLEMENT PAYMENT**

18 2.1 In settlement of all of the claims that are alleged, or could have been
19 alleged, in the Complaint concerning Covered Products, Milton shall pay \$20,000 to the
20 Klamath Environmental Law Center (“KELC”) to cover Plaintiff’s attorneys’ fees.
21 Additionally, Milton shall pay \$4,000 to the Ecological Rights Foundation for use toward
22 reducing exposures to toxic chemicals and other pollutants, and toward increasing
23 consumer, worker and community awareness of health hazards posed by lead and other
24 toxic chemicals. The parties agree and acknowledge that the charitable contributions
25 made pursuant to this section shall not be construed as a credit against the personal claims
26 of absent third parties for restitution against the defendant. Milton shall also pay \$1,000
27 in civil penalties. Mateel waives its entitlement to 25% of this amount, and thus the entire
28 amount of civil penalties shall be made payable, pursuant to the statute, to the Office of

1 Environmental Health Hazard Assessment (OEHHA). The above described payments
2 shall be forwarded by Milton to its counsel so that they are received at least 5 days prior to
3 the hearing date scheduled for approval of this Consent Judgment. Defendant's counsel
4 shall notify via email Klamath Environmental Law Center upon receipt of the funds. If the
5 Consent Judgment is not approved with 120 days of the date scheduled for approval, the
6 above described payments shall be returned and the provisions of this Consent judgment
7 shall become null and void. If the Consent Judgment is approved and entered by the
8 Court, on that day Defendant's counsel shall ensure the above described payments are
9 delivered, via UPS or Fedex for next business day delivery, to Klamath Environmental
10 Law Center.

11 2.1 2.2 Milton shall not be required to pay a civil penalty pursuant to Health
12 and Safety Code Section 25249.7(b).

13 **3. ENTRY OF CONSENT JUDGMENT**

14 3.1 The parties hereby request that the Court promptly enter this Consent
15 Judgment. Upon entry of the Consent Judgment, Milton and Mateel waive their
16 respective rights to a hearing or trial on the allegations of the Complaint.

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

18 4.1 As to alleged exposures to lead or lead compounds from Covered Products,
19 this Consent Judgment provides a full release of liability on behalf of the Public Interest to
20 Milton, (as well as its past, present and future parents, subsidiaries, affiliates,
21 predecessors, officers, directors, employees, successors, and assigns), as to all claims and
22 matters raised in the Notice of Violation. Notwithstanding any other provision of this
23 Consent Judgment, no claim or matter is released on behalf of the Public Interest unless
24 that claim or matter was raised in the Notice of Violation.

25 4.2 As to lead exposures allegedly arising from the Covered Products, Mateel,
26 acting on behalf of itself and its agents, successors and assigns, waives all rights to
27 institute any form of legal action, and releases all claims against Milton and its parents,
28 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its

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

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

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

1 **5. ENFORCEMENT OF JUDGMENT**

2 5.1 The terms of this Consent Judgment shall be enforced exclusively by the
3 parties hereto. The parties may, by noticed motion or order to show cause before the
4 Superior Court of San Francisco County, giving the notice required by law, enforce the
5 terms and conditions contained herein.

6 **6. MODIFICATION OF JUDGMENT**

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

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

12 7.1 Covered Products shall be deemed to comply with Proposition 65 and be
13 exempt from any Proposition 65 warning requirements if the Covered Products meet the
14 following criteria: (a) the brass alloy from which the Covered Products are made shall
15 have no lead as an intentionally added constituent; and (b) the brass alloy from which the
16 Covered Products are made shall have a lead content by weight of no more than 0.03%
17 (300 parts per million, or “300 ppm”). Milton may comply with the above requirements
18 by relying on information obtained from its suppliers regarding the content of the brass
19 alloy from which the Covered Products are made, provided such reliance is in good faith.
20 Obtaining test results showing that the lead content is no more than 0.03%, using a
21 method of sufficient sensitivity to establish a limit of quantification (as distinguished from
22 detection) of less than 300 ppm shall be deemed to establish good faith reliance.

23 7.2 Covered Products that do not meet the warning exemption standard set forth
24 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
25 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply
26 only to: (1) Covered Products that Milton ships for distribution after 90 days after entry
27 of this Consent Judgment (“the Effective Date”); and (2) Covered Products manufactured,
28 distributed, marketed, sold or shipped for sale or use inside the State of California.

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7.3 Milton shall provide Proposition 65 warnings as follows:

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

WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Do not place your hands in your mouth after handling the product. *Wash your hands after touching this product.*

or

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

The word “**WARNING**” shall be in bold. The words “*Wash hands after handling*” shall be italicized.

Milton shall provide such warning directly on or with the unit package of the Covered Products. Such warning shall be prominently affixed to or printed on each Covered Product or its label or package. If printed on the label itself, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the Covered Product.

(b) The requirements for product labeling, set forth in subparagraph (a) above are imposed pursuant to the terms of this Consent Judgment. The parties recognize that product labeling is not the exclusive method of providing a warning under Proposition 65 and its implementing regulations.

(c) If Proposition 65 warnings for lead or lead compounds should no longer be required, Milton shall have no further warning obligations pursuant to this Consent Judgment. Except as provided in section 7.1 above,

1 in the event that Milton ceases to implement or modifies the warnings
2 required under this Consent Judgment (because of a change on the law or
3 otherwise), Milton shall provide written notice to Mateel (through KELC) of
4 its intent to do so, and of the basis for its intent, no less than thirty (30) days
5 in advance. Mateel shall notify Milton in writing of any objection within
6 thirty (30) days of its receipt of such notice, or such objection by Mateel
7 shall be waived.

8 **8. AUTHORITY TO STIPULATE**

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

12 **9. RETENTION OF JURISDICTION**

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

15 **10. ENTIRE AGREEMENT**

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

22 **11. GOVERNING LAW**

23 The validity, construction and performance of this Consent Judgment shall
24 be governed by the laws of the State of California, without reference to any conflicts of
25 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: 3/15/12

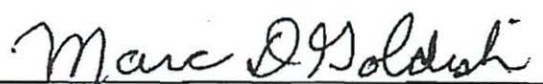
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED:

MILTON INDUSTRIES, INC.



By:
Its: PRESIDENT

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT