

1 WILLIAM VERICK, SBN 140972  
2 FREDRIC EVENSON, SBN 198059  
3 **KLAMATH ENVIRONMENTAL LAW CENTER**  
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 DAVID WILLIAMS, SBN 144479  
10 BRIAN ACREE, SBN 202505  
11 370 Grand Avenue, Suite 5  
12 Oakland, CA 94610  
13 Telephone: (510) 271-0826  
14 Facsimile: (510) 271-0829  
15 E-mail: dhwill7@gmail.com

16 Attorneys for Plaintiff  
17 **MATEEL ENVIRONMENTAL JUSTICE 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 31 INCORPORATED, et al.,

25 Defendants.

Case No. CGC-12-521671

**[PROPOSED]**  
**CONSENT JUDGMENT**

**(As to 31 INCORPORATED)**

26 **1.0 INTRODUCTION**

27 **1.1** On, or about, June 18, 2012, MATEEL ENVIRONMENTAL JUSTICE  
28 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. CGC-12-521671, against defendant 31, Incorporated, (31 INC., or Settling  
Defendant) The Complaint alleges, among other things, that Settling Defendant violated  
provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and

1 Safety Code Sections 25249.5, et seq. (“Proposition 65”). In particular, Mateel alleges  
2 that Settling Defendant knowingly and intentionally exposed persons to leaded brass  
3 products (“Brass Products”) that are made of or that include a component made of leaded  
4 brass, without first providing a clear and reasonable warning to such individuals. Lead  
5 and lead compounds are chemicals known to the State of California to cause cancer and  
6 birth defects or other reproductive harm.

7 **1.2** On February 15, 2012, Mateel sent a Notice of Violation letter (“Notice  
8 Letter”) to 31 INC., the California Attorney General, all California District Attorneys, and  
9 all City Attorneys of every California city with populations exceeding 750,000.

10 **1.3** Settling Defendant is a business that employs ten or more persons and  
11 manufactures brass products. These Brass Products are alleged to contain lead and/or lead  
12 compounds. Lead and lead compounds are chemicals known to the State of California to  
13 cause cancer, and lead is a chemical known to the State of California to cause  
14 reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under  
15 specified circumstances, businesses that use products containing lead and/or lead  
16 compounds in the State of California are subject to the Proposition 65 warning  
17 requirement set forth in Health and Safety Code Section 25249.6. Plaintiff Mateel alleges  
18 that Brass Products that are made of leaded brass, or that have leaded brass components,  
19 are manufactured, distributed, and/or marketed by Settling Defendant for use in California  
20 such that a warning is required under Proposition 65.

21 **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall  
22 be defined as Brass Products manufactured or otherwise distributed by 31, INC, and set  
23 forth in the Notice Letter.

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 Settling Defendant as to the acts alleged in the Complaints, that venue is  
27 proper in the County of San Francisco and that this Court has jurisdiction to enter this  
28

1 Consent Judgment as a full settlement and resolution of the allegations contained in the  
2 Complaint and of all claims that were or could have been raised by any person or entity  
3 based in whole or in part, directly or indirectly, on the facts alleged therein or arising  
4 therefrom or related thereto.

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

12 **2.0 SETTLEMENT PAYMENTS**

13 **2.1** In settlement of all of the claims referred to in this Consent Judgment,  
14 Defendant 31 INC., shall pay the total sum of \$32,500 ( thirty-two thousand, five hundred  
15 dollars) in total monetary relief. Of the foregoing, a total of \$2,500 (two thousand, five  
16 hundred dollars) shall be paid in civil penalties, Mateel waives its right to receive twenty  
17 five percent (25%) of this payment, and the entire amount shall be paid to the Office of  
18 Environmental Health Hazard Assessment (OEHHA). A total of \$10,000 (ten thousand  
19 dollars) shall be paid by Settling Defendant to Ecological Rights Foundation. This  
20 payment is to be used by ERF to inform Californians about toxic chemicals or to eliminate  
21 or reduce exposures to toxic chemicals.

22 **2.2** In addition, of the foregoing total settlement amount, a total amount of  
23 \$20,000 (twenty thousand dollars) shall be paid by the Settling Defendant, to the Klamath  
24 Environmental Law Center (“Klamath”) as reimbursement for attorneys’ fees and costs  
25 incurred by Klamath on behalf of Plaintiff in investigating and prosecuting this matter and  
26 in negotiating this Consent Judgment on behalf of itself and in the public interest. The  
27 payments described in Paragraphs 2.1 and 2.2 above shall be made payable to the  
28

1 recipient, and delivered prior to any hearing on a motion to approve this settlement to  
2 counsel for Settling Defendant. Upon approval of the settlement by the court, counsel for  
3 Settling Defendant shall send the payments described in Paragraphs 2.1 and 2.2 within  
4 five business days of receipt of the court's order approving the settlement to William  
5 Verick, Klamath Environmental Law Center, 424 First Street, Eureka, CA 95501. If  
6 payment has not been sent to William Verick, as provided for in this paragraph, Plaintiff  
7 may move to vacate the agreement. If this Consent Judgment has not been approved and  
8 entered by the Court within 120 days of the execution of the agreement by the parties, the  
9 terms of this agreement shall be null and void.

10 **2.5** Mateel and Klamath represent and warrant that the recipient of the offset  
11 payments is a tax exempt, section 501(c)(3) non-profit organization and that funds  
12 distributed to the organization pursuant to this Consent Judgment may only be spent to  
13 reduce harm from toxic chemicals, or to increase consumer, worker and community  
14 awareness of health hazards posed by lead and other toxic chemicals.

15 **2.6** Except as specifically provided for in this Consent Judgment, each side  
16 shall bear its own costs and attorney's fees.

17 **3.0 ENTRY OF CONSENT JUDGMENT**

18 The parties hereby request that the Court promptly enter this Consent Judgment.  
19 Upon entry of the Consent Judgment, Settling Defendant and Mateel waive their  
20 respective rights to a hearing or trial on the allegations of the Complaints.

21 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

22 **4.1** As to lead and lead compounds from Covered Products, this Consent  
23 Judgment provides a full release of liability on behalf of the Public Interest to Settling  
24 Defendant (as well as its past, present and future parents, subsidiaries, affiliates,  
25 shareholders, employees, predecessors, successors, and assigns "Released Entities"), as to  
26 all claims and matters raised in the February 15, 2012, 60 Day Notice Letter.  
27

1           **4.2** As to alleged lead and lead compound exposures associated with Covered  
2 Products, Mateel, acting on behalf of itself, and its agents, attorneys, representatives,  
3 successors and assigns, waives all rights to institute or participate in, directly, or  
4 indirectly, any form of legal action, and releases all claims as between Mateel and Settling  
5 Defendant, including, without limitation, all actions, and causes of action, in law or in  
6 equity, suits, liabilities, demands, obligations, agreements, promises, royalties,  
7 accountings, damages, costs, fines, penalties, losses, or expenses (including, but not  
8 limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever,  
9 whether known or unknown, fixed or contingent (collectively "claims"), against Settling  
10 Defendant and its parents, subsidiaries or affiliates, predecessors, officers, directors,  
11 shareholders, attorneys, representatives, agents, employees, and all customers,  
12 manufacturers, distributors, wholesalers, retailers, or any other person in the course of  
13 doing business involving the Covered Products, and the successors and assigns of any of  
14 them, who may manufacture, use, maintain, distribute or sell such products or components  
15 found in such products, including, but not limited to, any claims regarding exposure to,  
16 and/or failure to warn with respect to, such products. In furtherance of the foregoing,  
17 Mateel on its own behalf hereby waives any and all rights and benefits which it now has,  
18 or in the future may have respecting the Covered Products, conferred upon it with respect  
19 to claims involving such products by virtue of the provisions of Section 1542 of the  
20 California Civil Code, 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 such products, Mateel will not  
3 be able to make any claim for those damages against a Settling Defendant, its parents,  
4 subsidiaries or affiliates, predecessors, officers, directors, shareholders, representatives,  
5 attorneys, agents, employees, and all customers, manufacturers, distributors, wholesalers,  
6 retailers or any other person in the course of doing business involving such products, and  
7 the successors and assigns of any of them, who may manufacture, use, maintain, distribute  
8 or sell such products. Furthermore, Mateel acknowledges that it intends these  
9 consequences for any such claims and any other claims which may exist as of the date of  
10 this release but which Mateel does not know exist, and which, if known, would materially  
11 affect its decision to enter into this Consent Judgment, regardless of whether its lack of  
12 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

#### 13 **5.0 ENFORCEMENT OF JUDGMENT**

14 The terms of this Consent Judgment shall be enforced exclusively by the parties  
15 hereto. The parties may, by noticed motion or order to show cause before the Superior  
16 Court of San Francisco County, giving the notice required by law, enforce the terms and  
17 conditions contained herein. The parties hereto agree that prior to any such enforcement  
18 action, they will notify each other of any perceived violation of this Consent Judgment.  
19 Any notice required by this section shall be given in accordance with Section 12 herein.  
20 The parties further agree to take no enforcement action for 30 days after such notice is  
21 given, in order to allow the parties to meet and confer in good faith in an effort to resolve  
22 the alleged violation.

#### 23 **6.0 MODIFICATION OF JUDGMENT**

24 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.

1           **7.0 INJUNCTIVE RELIEF – REFORMULATION**

2           7.1 Covered Products shall be deemed to comply with the warning requirements  
3 of Proposition 65 for lead and lead compounds (H&S Code 25249.6), and be exempt from  
4 any Proposition 65 warning requirements for these listed chemicals if the brass that is part  
5 of the Covered Products is made of an alloy which contains no intentionally added lead or  
6 no lead content by weight of more than 0.03% (“300 parts per million,” or “300 ppm”).  
7 Covered Products shall also be exempt from any Proposition 65 warning requirement if  
8 Settling Defendant, or any third party acting on its behalf, in good faith obtains test results  
9 indicating that the Covered Products contain no intentionally added lead or no lead  
10 content by weight of more than .03% (“300 parts per million,” or “300 ppm”). Settling  
11 Defendant may rely upon the written representations from its suppliers that the test  
12 standards have been met to the extent such reliance is in good faith.

13           7.2 Covered Products that do not meet the warning exemption standard set forth  
14 in Sections 7.1 of this Consent Judgment shall be accompanied by a warning as described  
15 in paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply  
16 only to products a Settling Defendant manufactures, distributes, markets, sells or ships  
17 after a period of 120 (one hundred, twenty) days following the Effective Date for sale or  
18 use inside the State of California. The Effective Date shall be the date on which the court  
19 approves settlement of this matter.

20           7.3 For Covered Products that do not meet the reformulation requirements of  
21 Sections 7.1, Settling Defendant shall provide Proposition 65 warnings as follows:

- 22           (a) Settling Defendant shall provide either of the following warning  
23 statements:

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

27                           or

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

4           Bracketed language may be omitted at a Settling Defendant’s  
5           option. A Settling Defendant may add additional listed chemicals to the  
6           warning unless the Attorney General advises that the inclusion of such  
7           additional chemicals would render the warning misleading or constitute an  
8           over warning. The word “WARNING” shall be in bold, and may be  
9           preceded by the word “CALIFORNIA”, “PROP 65”, or “CALIFORNIA  
10          PROP 65” at the Settling Defendant’s option provided such words are also  
11          in bold. The words “Wash your hands after touching this product” or  
12          “Wash hands after handling” in either warning above may be replaced by  
13          “Wash hands after use”, and in any case such words shall be underlined, in  
14          bold or italicized.

15          Settling Defendant shall provide such warning on or attached to  
16          Covered Product or with the unit package of the Covered Products as  
17          packaged by Settling Defendant. Such warning shall be included with,  
18          affixed to or printed on each Covered Product or its label, package or  
19          container in the same section that states other safety warnings, if any,  
20          concerning the use of the product or near the product brand name, or  
21          displayed price and/or UPC code, in a manner reasonably calculated to be  
22          seen by an ordinary individual.

23          (b) If after the Effective Date, any Settling Defendant ships Covered  
24          Products to a retailer or distributor outside of California that neither  
25          provides the warnings specified in this paragraph nor meets the  
26          Reformulation Standard specified in paragraph of this Consent Judgment  
27          (“Non-Conforming Covered Products”), and if the retailer or distributor then  
28          offers those Non-Conforming Covered Products for sale in California, then



1 as to those Non-Conforming Covered Products, that retailer or distributor,  
2 and their customers, are not released pursuant to Sections 4.1 and 4.2 above.

3 (c) Except as provided in paragraphs 4.1 and 4.2 hereof for Covered  
4 Products manufactured or distributed prior to the Effective Date, nothing in  
5 this Consent Judgment shall create a limitation on a Proposition 65  
6 enforcement action based on future conduct if such future conduct is not in  
7 compliance with the injunctive terms of this Consent Judgment.

8 **8.0 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 **9.0 RETENTION OF JURISDICTION**

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

15 **10.0 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 **11.0 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.

26 **12.0 NOTICES**

27 Unless specified herein, all correspondence and notices required to be  
28

1 provided pursuant to this Consent Judgment shall be in writing and personally delivered  
2 or sent by: (i) first-class, (registered or certified mail) return receipt requested; or  
3 (ii) overnight courier on any party by the other party at the following addresses:  
4

5 To Mateel:

6 William Verick, Esq.  
7 Klamath Environmental Law Center  
8 424 First Street  
9 Eureka, CA 95501

10 To 31 Incorporated:

11 Kevin Gardner  
12 31, Incorporated  
13 100 Enterprise Drive  
14 Newcomerstown, Ohio 43832

15 with a copy to:

16 Brian R. Mertes, Esq.  
17 Black, McCuskey, Souers & Arbaugh  
18 220 Market Avenue South  
19 Canton, Ohio 44702  
20  
21  
22  
23  
24  
25  
26  
27  
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

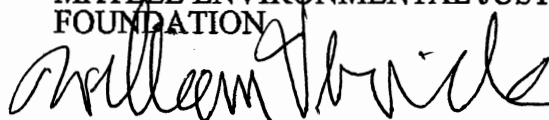
**13. COURT APPROVAL**

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

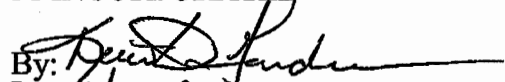


William Verick  
CEO Mateel Environmental Justice  
Foundation,  
Klamath Environmental Law Center

DATED:

5/30/13

31 INCORPORATED

By:   
Its: Vice President

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT