

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

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18 Attorneys for Plaintiff
19 **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**

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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF SAN FRANCISCO**

24 MATEEL ENVIRONMENTAL
25 JUSTICE FOUNDATION,

26 Plaintiff,

27 v.

28 MUELLER INDUSTRIES, INC., et al.,

Defendant.

Case No. CGC-13-531776

CONSENT JUDGMENT
(American Valve, Inc.)

1.0 **INTRODUCTION**

1.1 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel” or “MEJF”), on October 15, 2013, acting on behalf of itself and the general public, filed an Amended Complaint for civil penalties and injunctive relief in San Francisco Superior Court, against Defendant AMERICAN VALVE, INC. (“AMERICAN VALVE” or “Settling Defendant”). The Amended Complaint alleges, among other things, that

1 AMERICAN VALVE violated provisions of the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq. (“Proposition
3 65”). In particular, Mateel alleges that AMERICAN VALVE knowingly and intentionally
4 exposed persons to leaded brass plumbing and hose products, including fittings, valves,
5 accessories, connectors, nipples, vacuum breakers, drains, hose bibbs and sprinkler heads
6 (“Brass Products”) that are made of or that include a component made of leaded brass,
7 without first providing a clear and reasonable warning to such individuals. Lead and lead
8 compounds are chemicals known to the State of California to cause cancer and birth
9 defects or other reproductive harm.

10 1.2 On January 10, 2013, Mateel sent a Notice of Violation letter (“Notice
11 Letter”) to AMERICAN VALVE, the California Attorney General, all California District
12 Attorneys, and all City Attorneys of every California city with populations exceeding
13 750,000.

14 1.3 Settling Defendant is a business that employs ten or more persons and
15 manufactures, distributes, and/or markets Brass Products within the State of California.
16 These products are alleged to contain lead and/or lead compounds. Lead and lead
17 compounds are chemicals known to the State of California to cause cancer, and lead is a
18 chemical known to the State of California to cause reproductive toxicity pursuant to
19 Health and Safety Code Section 25249.9. Under specified circumstances, businesses that
20 use products containing lead and/or lead compounds in the State of California are subject
21 to the Proposition 65 warning requirement set forth in Health and Safety Code Section
22 25249.6. Plaintiff Mateel alleges that Brass Products that are made from leaded brass, or
23 that have leaded brass components, are manufactured, distributed, sold and/or marketed
24 by Settling Defendant for use in California such that a warning is required under
25 Proposition 65.

26 1.4 In the Amended Complaint, Mateel alleges that Settling Defendant violated
27 Cal. Health & Safety Code Section 25249.6 by knowingly and intentionally exposing
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1 persons to Brass Products made of brass, or which include a component made of brass that
2 contains lead and/or lead compounds, without first providing a clear and reasonable
3 warning to such individuals. Lead and lead compounds are chemicals known to the State
4 of California to cause cancer and birth defects or other reproductive harm.

5 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court
6 has jurisdiction over the allegations of violations contained in the Amended Complaint
7 and personal jurisdiction over AMERICAN VALVE as to the acts alleged in the
8 Amended Complaint, that venue is proper in the County of San Francisco and that this
9 Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of
10 the allegations contained in the Amended Complaint and of all claims that were or could
11 have been raised by any person or entity based in whole or in part, directly or indirectly,
12 on the facts alleged therein or arising therefrom or related thereto. "Covered Products"
13 shall be defined to include Brass Products manufactured, distributed, or sold by Settling
14 Defendant.

15 1.6 This Consent Judgment resolves claims that are denied and disputed. The
16 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
17 all claims between the parties for the purpose of avoiding prolonged litigation. This
18 Consent Judgment shall not constitute an admission with respect to any allegation of the
19 Amended Complaint, each and every allegation of which Settling Defendant denies, nor
20 may this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
21 misconduct, culpability or liability on the part of Settling Defendant.

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23 1.7 This Consent Judgment shall be effective on entry by the Court,
24 the "Effective Date." All Covered Products already shipped on or before the "Effective
25 Date" or within 90 days thereafter are deemed to be covered by the waiver and release
26 provisions of Paragraphs 4.1 through 4.3 of this Consent Judgment and shall not be
27 subject to any enforcement action by Mateel under Paragraph 5 of this Consent Judgment.

1 The reformulation and warning requirements of Paragraph 7 shall apply to any Covered
2 Product shipped later than 90 days after the Effective Date.

3 **2.0 SETTLEMENT PAYMENTS**

4 2.1 In settlement of all of the claims referred to in this Consent Judgment,
5 Settling Defendant shall collectively pay an aggregate of \$25, 000 dollars in total
6 monetary relief, inclusive of Paragraph 2.2, below. Of the foregoing, a total of \$1,000
7 dollars shall be paid in civil penalties. Mateel waives its right to receive twenty-five
8 (25%) of this payment, and, accordingly, the entire \$1,000 shall be paid to the Office of
9 Environmental Health Hazard Assessment (OEHHA). A total of \$8,000 dollars shall be
10 paid by Settling Defendant in lieu of Mateel seeking full compensation (including a
11 potential multiplier) for the attorneys fees and costs Mateel incurred in bringing this
12 action. The payments shall be made in the form of two equal payments of \$4,000 dollars,
13 one to the Ecological Rights Foundation and one to Californians for Alternatives to
14 Toxics.

15 2.2 A total amount of \$16,000 dollars shall be paid by the Settling Defendant
16 to the Klamath Environmental Law Center (“KELC”) as reimbursement for attorney’s
17 fees and costs incurred by KELC on behalf of Plaintiff in investigating and prosecuting
18 this matter and in negotiating this Consent Judgment on behalf of itself and in the public
19 interest. The payments described in Paragraphs 2.1 and 2.2 above shall be delivered at
20 least 5 days prior to any hearing on a motion to approve this settlement, to counsel for
21 Settling Defendant, and upon entry of this consent judgment, sent within five business
22 days to William Verick, 424 First Street, Eureka, CA 95501. If payment has not been
23 confirmed as received by counsel for Settling Defendant as provided in this paragraph,
24 Plaintiff may withdraw any motion to approve and the agreement shall become null and
25 void. If this Consent Judgment has not been approved and entered by the Court within
26 120 days of the execution of the agreement by the parties, the payments described above
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1 shall be promptly returned to Settling Defendant, and the terms of this agreement shall be
2 null and void.

3 2.3 MEJF and KELC represent and warrant that Californians for Alternatives
4 to Toxics and the Ecological Rights Foundation are tax exempt, section 501(c)(3) non-
5 profit organizations and that funds distributed to these organizations pursuant to this
6 Consent Judgment may only be spent to reduce harm from toxic chemicals, or to increase
7 consumer, worker and community awareness of health hazards posed by lead and other
8 toxic chemicals.

9 2.4 Except as specifically provided in this Consent Judgment, each side shall
10 bear its own costs and attorney's fees.

11 **3.0 ENTRY OF CONSENT JUDGMENT**

12 3.1 The parties hereby request that the Court promptly enter this Consent
13 Judgment which shall constitute a full, final and binding adjudication of all claims
14 asserted or that could have been asserted in Plaintiff's Amended Complaint. Upon entry
15 of the Consent Judgment, Settling Defendant and Mateel waive their respective rights to a
16 hearing or trial on the allegations of the Amended Complaint.

17 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

18 4.1 As to lead and lead compounds from Covered Products, this Consent
19 Judgment provides a full release of liability on behalf of the Public Interest to Defendant
20 as well as their past, present and future parents, subsidiaries, affiliates, predecessors,
21 successors, assigns, distributors, customers, wholesalers, and retailers including but not
22 limited to Home Depot USA, Inc. and Lowe's Companies, Inc. ("Released Entities"),
23 from all claims arising from any alleged violations of Proposition 65 (or any other
24 statutory or common law claim that have been or could have been asserted) up through
25 and within 90 days of the Effective Date of this Consent Judgment based upon exposure
26 to lead and lead compounds from Covered Products as set forth in Mateel's January 10,
27 2013 Notice of Violation letter.
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1 4.2 As to alleged lead and lead compound exposures associated with Covered
2 Products, Mateel on behalf of itself, and its privies, 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 the
5 Released Entities, including, without limitation, all actions, and causes of action, in law or
6 in 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 the
10 Released Entities and their parents, subsidiaries or affiliates, predecessors, officers,
11 directors, shareholders, attorneys, representatives, agents, employees, and all customers,
12 manufacturers, distributors, wholesalers, retailers (including but not limited to Home
13 Depot USA, Inc. and Lowe’s Companies, Inc.), or any other person in the course of doing
14 business involving the Covered Products, and the successors and assigns of any of them,
15 who may manufacture, use, maintain, distribute or sell the Covered Products or
16 components found in the Covered Products, including, but not limited to, any claims
17 regarding exposure to, and/or failure to warn with respect to, the Covered Products. In
18 furtherance of the foregoing, Mateel hereby waives any and all rights and benefits which
19 it now has, or in the future may have respecting the Covered Products, conferred upon it
20 with respect to claims involving Covered Products by virtue of the provisions of Section
21 1542 of the California Civil Code, which provides as follows:

22 **“A GENERAL RELEASE DOES NOT EXTEND TO**
23 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR**
24 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE**
25 **TIME OF EXECUTING THE RELEASE, WHICH IF**
26 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
27 **AFFECTED HIS OR HER SETTLEMENT WITH THE**
28 **DEBTOR.”**

29 4.3 Mateel understands and acknowledges that the significance and
30 consequence of this waiver of California Civil Code Section 1542 is that even if Mateel

1 suffers future damages arising out of or resulting from, or related directly or indirectly to,
2 in whole or in part, the Covered Products, including but not limited to any exposure to, or
3 failure to warn with respect to exposure to lead or lead compounds from, the Covered
4 Products, Mateel will not be able to make any claim for those damages against the
5 Released Entities, their parents, subsidiaries or affiliates, predecessors, officers, directors,
6 shareholders, representatives, attorneys, agents, employees, and all customers,
7 manufacturers, distributors, wholesalers, retailers or any other person in the course of
8 doing business involving the Covered Products, and the successors and assigns of any of
9 them, who may manufacture, use, maintain, distribute or sell the Covered Products.

10 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
11 and any other claims which may exist as of the date of this release but which Mateel does
12 not know exist, and which, if known, would materially affect its decision to enter into this
13 Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance,
14 oversight, error, negligence, or any other cause.

15 **5.0 ENFORCEMENT OF JUDGMENT**

16 5.1 The terms of this Consent Judgment shall be enforced exclusively by the
17 parties hereto including on behalf of the Released Entities hereunder. The parties may, by
18 noticed motion or order to show cause before the Superior Court of San Francisco County,
19 giving the notice required by law, enforce the terms and conditions contained herein. The
20 parties hereto agree that prior to any such enforcement action, they will notify each other
21 of any perceived violation of this Consent Judgment. The parties further agree to take no
22 enforcement action for 30 days after such notice is given, in order to allow the parties to
23 meet and confer in good faith in an effort to resolve the alleged violation.

24 **6.0 MODIFICATION OF JUDGMENT**

25 6.1 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
26 modified only upon written agreement of the parties and upon entry of a modified Consent
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1 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
2 entry of a modified Consent Judgment by the Court.

3 6.2 Notwithstanding any other term or provision of this Consent Judgment, if
4 Plaintiff, or the California Attorney General and another (current or potential) party
5 (“Future Settling Party”) agrees to or is otherwise bound by injunctive relief terms or
6 provisions relating to the reformulation of, or provisions of Proposition 65 warnings for,
7 products of like characteristics and use to those of Covered Products, which are more
8 favorable to the Future Settling Party than this Consent Judgment otherwise provides to
9 Settling Defendant, then Plaintiff stipulates and agrees to not oppose any effort by Settling
10 Defendant to seek amendment or adjustment of injunctive relief terms provided for in
11 Section 7 of this Consent Judgment to be modified to add such more favorable terms or
12 provisions as an option.

13 6.3 Mateel shall give notice to AMERICAN VALVE, per section 12, of all
14 consent judgments entered into by Mateel described in Section 6.2 on or after the date of
15 this Consent Judgment involving similar products to those at issue in this Consent
16 Judgment, unless such consents are posted on the public Proposition 65 web site
17 maintained by the California Attorney General.

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19 **7.0 INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

20 7.1 Covered Products’ brass components shall be deemed to comply with
21 current warning requirements of Proposition 65 for lead and lead compounds (H&S Code
22 25249.6) and be exempt from any Proposition 65 warning requirements for these listed
23 chemicals after the Effective Date, if the brass that is part of the Covered Products is made
24 of an alloy which contains no intentionally added lead and no lead content by weight of
25 more than 0.03% (300 parts per million, or “300 ppm”).

26 7.2 Mateel agrees, on its own behalf only, that for purposes of this Consent
27 Judgment, as to the lead content of the brass components of any reformulated Covered
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1 Product, Settling Defendant and any other Released Entities, may rely upon the
2 representations of their or its respective manufacturers, suppliers, distributors, official
3 product certification organizations (such as IAPMO) or any other person in the course of
4 doing business that manufactures, supplies or otherwise distributes the reformulated
5 Covered Product(s) to AMERICAN VALVE, provided that AMERICAN VALVE's
6 reliance is in good faith. Although good faith reliance regarding the brass alloy may also
7 be established by other means, Mateel agrees that obtaining test results showing that the
8 lead content is no more than 0.03% (300 ppm), using a method of sufficient sensitivity to
9 establish a limit of quantification (as distinguished from detection) of less than 300 ppm
10 shall be deemed to establish good faith reliance.

11 7.3 Covered Products that do not meet the warning exemption standard set
12 forth in Section 7.1 of the Consent Judgment shall be accompanied by a warning as
13 described in paragraph 7.4 below no later than 90 days after the Effective Date. The
14 warning requirements set forth in paragraph 7.4, below, apply only to products Settling
15 Defendant manufactures, distributes, markets, sells or ships for distribution 90 days after
16 the Effective Date for sale or use inside the State of California.

17 7.4 For Covered Products that do not meet the reformulation requirements of
18 Section 7.1, Settling Defendant shall provide Proposition 65 warnings as follows:

19 Settling Defendant shall provide either of the following warning statements:

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

22 *[Wash your hands after handling this product.]*

23 or

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

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

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12 7.5 Any warning shall be prominently placed with such conspicuousness as
13 compared with other words, statements, designs, or devices as to render it likely to be read
14 and understood by an ordinary individual under customary conditions before purchase or
15 use. Any warning shall be provided in a manner such that the ordinary competent
16 consumer or user understands to which specific Covered Product the warning applies.

17 AMERICAN VALVE may provide warnings as specified in Section 7.4 as follows:

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

26 Point of Sale Warnings. AMERICAN VALVE may perform its warning
27 obligation by arranging for the posting of the shelf labeling, signs, menus,
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1 warning slips or a combination of thereof as set forth in Health & Safety
2 Code Section 25603.1 at retail outlets in the State of California where
3 Covered Products are sold. In such instances, Settling Defendant shall
4 provide the warning specified in Section 7.4, and instructions for its use,
5 with the shipping materials containing the Covered Product or otherwise
6 ensure the installation of fixed adhesive warning placards on the Covered
7 Product display shelves. Such warning and instructions shall be included
8 with or affixed to each package box or other container containing Covered
9 Product(s) or otherwise installed on the Covered Product display shelves
10 with fixed adhesive warning placards. For a Point of Sale Warning to be
11 considered reasonably calculated to be seen by an ordinary individual, the
12 warning shall be posted at (1) each location in the store where the Covered
13 Products are displayed and visible when the Covered Products are being
14 viewed without the Covered Products being moved, or (2) for stores with
15 less than 7,500 square feet retail space, adjacent to each check out counter,
16 sales register, cash stand, cash wrap or similar check out location in the
17 store. All warning signs must be displayed in such a manner that any
18 potential purchaser would reasonably be expected to see the warning and
19 adequately distinguish between brass products for which warnings are
20 required and product which do not cause a lead exposure. If the point of
21 sale warning is not posted in such a manner, or any other manner otherwise
22 agreed to by the Attorney General, the retail entity shall not benefit from the
23 terms of this consent judgment, including the release of claims contained
24 therein.

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26 7.6 If after the Effective Date, any Settling Defendant ships Covered Products
27 to a retailer or distributor outside of California that neither provide the warnings specified
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1 in this paragraph nor meets the Reformulation Standard specified in paragraph 7.1 of this
2 Consent Judgment (“Non-Conforming Covered Products”), and if the retailer or
3 distributor then offers those Non-Conforming Covered Products for sale in California,
4 then as to those Non-Conforming Covered Products, that retailer or distributor, and their
5 customers, are not released pursuant to Sections 4.1 and 4.2 above.

6 7.7 Except as provided in paragraphs 4.1 and 4.2 hereof, for Covered Products
7 manufactured or distributed prior to or within 90 days of the Effective Date, nothing in
8 this Consent Judgment shall create a limitation on a Proposition 65 enforcement action
9 based on future conduct if such future conduct is not in compliance with the injunctive
10 terms of this Consent Judgment.

11 7.8 Compliance with the terms of this Consent Judgment by Defendant
12 and the Released Entities shall constitute compliance with Proposition 65 by Defendant
13 and the Released Entities with respect to any alleged Proposition 65 violations concerning
14 lead and/or lead compounds in Covered Products manufactured, distributed, or sold by
15 Defendant after 90 days of the Effective Date, provided, however, that the authority and
16 discretion of the Office of the California Attorney General shall not be restricted in the
17 event it chooses to undertake enforcement action in the future.

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19 **8.0 AUTHORITY TO STIPULATE**

20 8.1 Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the party he or she represents to enter into this Consent Judgment and to
22 execute it on behalf of the party represented and legally to bind that party.

23 **9.0 RETENTION OF JURISDICTION**

24 9.1 This Court shall retain jurisdiction of this matter to implement the Consent
25 Judgment.

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27 **10.0 ENTIRE AGREEMENT**

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12.0 NOTICES

12.1 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 AMERICAN VALVE, INC.:

Seth Guterman
AMERICAN VALVE, INC.
4321 Piedmont Pkwy
Greensboro, NC 27410

With a copy to:

William W. Funderburk, Jr., Esq.
Anna L. Le May, Esq.
811 Wilshire Boulevard, Suite 1025
Los Angeles, CA 90017

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13.0 COURT APPROVAL

13.1 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: AMERICAN VALVE, INC.

Seth Guterman, President

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____
JUDGE OF THE SUPERIOR COURT

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