

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 1990 N. California Blvd., 8th Fl.  
13 Walnut Creek, CA 94596  
14 Telephone: (510) 847 2356  
15 E-mail: [dhwill7@gmail.com](mailto:dhwill7@gmail.com)

16 Attorneys for Plaintiff  
17 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

18  
19  
20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
21 **FOR THE COUNTY OF SAN FRANCISCO**

22 MATEEL ENVIRONMENTAL  
23 JUSTICE FOUNDATION,

24 Plaintiff,

25 v.

26 APEX TOOL GROUP, LLC., et al.

27 Defendants.

Case No. CGC-14-539537

**CONSENT JUDGMENT  
(MASCO)**

28 **1.0 INTRODUCTION**

29 1.1 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel” or  
30 “MEJF”) acting on behalf of itself and the general public, previously filed a complaint  
31 (“Complaint”) in this action for civil penalties and injunctive relief in San Francisco  
32 Superior Court, against Defendant MASCO CORPORATION (“Masco”). (Mateel and

1 Masco are collectively referred to herein as the “parties”.) The Complaint alleges, among  
2 other things, that subsidiaries of Masco that manufacture or sell products which are made  
3 of, or contain components that are made of, leaded brass violated provisions of the Safe  
4 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections  
5 25249.5, et seq. (“Proposition 65”). In particular, Mateel alleges that they knowingly and  
6 intentionally exposed persons to (products which are made of, or with components that are  
7 handled and made of, leaded brass, such as, plumbing fixtures (e.g.,  
8 tubs/showers/sinks/toilets/bidets) and related fittings (e.g., connectors, drains, nipples,  
9 elbows, vacuum breakers, water and flow control devices, and valves -- collectively,  
10 “Fittings”); utility and outdoor plumbing devices and Fittings; gas distribution system  
11 components and Fittings; and other bathroom and kitchen fixture-related service and spare  
12 parts (collectively, “Brass Products”), without first providing a clear and reasonable  
13 warning to such individuals. Lead and lead compounds are chemicals known to the State  
14 of California to cause cancer and birth defects or other reproductive harm.

15           1.2       On March 24, 2011, Mateel sent a Notice of Violation letter concerning  
16 the allegations set forth in Paragraph 1.1 above pursuant to Health and Safety Code  
17 section 25249.7(d) (“Notice Letter”) to Masco, the California Attorney General, all  
18 California District Attorneys, and all City Attorneys of every California city with  
19 populations exceeding 750,000. On February 11, 2014, Mateel sent a further Notice  
20 Letter concerning such violations to Masco, the California Attorney General, all  
21 California District Attorneys, and all City Attorneys of every California city with  
22 populations exceeding 750,000.

23           1.3       “Settling Defendants” hereunder are subsidiaries of Masco that  
24 manufacture or sell Brass Products; these subsidiaries are businesses that employ ten or  
25 more persons and manufacture, distribute, and/or market Brass Products within the State  
26 of California. These products are alleged to contain lead and/or lead compounds. Lead  
27 and lead compounds are chemicals known to the State of California to cause cancer, and  
28

1 lead is a chemical known to the State of California to cause reproductive toxicity pursuant  
2 to Health and Safety Code Section 25249.9. Under specified circumstances, businesses  
3 that use products containing lead and/or lead compounds in the State of California are  
4 subject to the Proposition 65 warning requirement set forth in Health and Safety Code  
5 Section 25249.6. Plaintiff, Mateel, alleges that Brass Products that are made from leaded  
6 brass, or that have leaded brass components, are manufactured, distributed, sold and/or  
7 marketed by Settling Defendants for use in California, such that a warning is required  
8 under Proposition 65.

9           1.4     On May 29, 2014, following the expiration of the 60-day period following  
10 its issuance of the February 11, 2014 Notice Letter to Masco without an authorized public  
11 prosecutor of Proposition 65 having filed and enforcement action against Masco for the  
12 claims alleged therein, Mateel filed the complaint in this action (“Complaint”) in which  
13 Masco is included as a defendant. In the Complaint, Mateel alleges that Masco (through  
14 its relevant subsidiaries) violated Cal. Health & Safety Code Section 25249.6 by  
15 knowingly and intentionally exposing persons to Brass Products made of brass, or which  
16 include a component made of brass, that contains lead and/or lead compounds, without  
17 first providing a clear and reasonable warning to such individuals. Lead and lead  
18 compounds are chemicals known to the State of California to cause cancer and birth  
19 defects or other reproductive harm.

20           1.5     For purposes of settlement and the entry of this Consent Judgment only,  
21 the parties stipulate that this Court has jurisdiction over the allegations of violations  
22 contained in the Complaint and personal jurisdiction over Masco and the Settling  
23 Defendants as to the acts alleged in the Complaint, that venue is proper in the County of  
24 San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full  
25 settlement and resolution of the allegations contained in the Complaint and of all claims  
26 that were or could have been raised by any person or entity based in whole or in part,  
27 directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.  
28

1 For purposes of this Consent Judgment, "Covered Products" shall be defined to include  
2 Brass Products manufactured, distributed, sold or otherwise marketed for sale or use in  
3 California by a Settling Defendant which are not required to comply with AB 1953  
4 (California Health & Safety Code §116875) or equivalent Federal law. Products which  
5 are the subject of AB 1953 or equivalent Federal law are expressly not addressed by this  
6 Consent Judgment, and no inference regarding compliance or violation with the  
7 requirements of Proposition 65 by such products is intended by this judgment.  
8 Regardless of whether or not they are subject to AB 1953 or equivalent Federal law,  
9 Covered Products hereunder also do not include products that are addressed in the  
10 Consent Judgment this Court previously entered in *People v. American Standard, et al.*,  
11 No. 948017.

12           1.6       This Consent Judgment resolves claims that are denied and disputed. The  
13 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
14 all claims between the parties for the purpose of avoiding prolonged litigation. This  
15 Consent Judgment shall not constitute an admission with respect to any material allegation  
16 of the Complaints, each and every allegation of which Masco and the Settling Defendants  
17 deny, nor may this Consent Judgment or compliance with it be used as evidence of any  
18 wrongdoing, misconduct, culpability or liability on the part of Masco or any Settling  
19 Defendant.

20           1.7       This Consent Judgment shall be effective on entry by the Court, the  
21 "Effective Date."

## 22           **2.0       SETTLEMENT PAYMENTS**

23           2.1       In settlement of all of the claims referred to in this Consent Judgment,  
24 Settling Defendants shall collectively pay an aggregate of \$32,000 (thirty-two thousand  
25 dollars) in total monetary relief, inclusive of Paragraph 2.2, below. Of the foregoing, a  
26 total of \$8,000 (eight thousand dollars) shall be paid in civil penalties. Mateel waives its  
27

1 right to receive twenty-five (25%) of this payment, and, accordingly, the entire \$8,000  
2 shall be paid to the Office of Environmental Health Hazard Assessment (“OEHHA”).

3           2.2       A total amount of \$16,000 (sixteen thousand dollars) shall be paid by the  
4 Settling Defendants collectively to the Klamath Environmental Law Center (“KELC”) as  
5 reimbursement for attorney’s fees and costs incurred by KELC on behalf of Plaintiff in  
6 investigating and prosecuting this matter and in negotiating this Consent Judgment on  
7 behalf of itself and in the public interest. An additional total of \$8,000 (eight thousand  
8 dollars) shall be paid by Settling Defendants in lieu of, and as an offset for, what would  
9 have been a larger reimbursement of Mateel’s attorneys fees hereunder, and manifest  
10 itself instead in the form of two equal payments of \$4,000 (four thousand dollars) each,  
11 one to the Ecological Rights Foundation and one to Californians for Alternatives to  
12 Toxics. The payments described in Paragraph 2.1 above and this Paragraph 2.2 shall be  
13 delivered at least 5 days prior to any hearing on a motion to approve this settlement, to  
14 counsel for Masco, and upon entry of this Consent Judgment, sent within 5 business days  
15 to William Verick, 424 First Street, Eureka, CA 95501. If payment has not been  
16 confirmed as received by counsel for Masco as provided in this paragraph, Plaintiff may  
17 withdraw any motion to approve and the agreement shall become null and void. If this  
18 Consent Judgment has not been approved and entered by the Court within 180 days of the  
19 execution of the agreement by the parties, unless the parties further stipulate otherwise,  
20 the payments described above shall be promptly returned to Settling Defendants, and the  
21 terms of this agreement shall be null and void.

22           2.3       MEJF and KELC represent and warrant that Californians for Alternatives  
23 to Toxics and the Ecological Rights Foundation are tax exempt, section 501(c)(3) non-  
24 profit organizations and that funds distributed to these organizations pursuant to this  
25 Consent Judgment may only be spent to reduce harm from toxic chemicals, or to increase  
26 consumer, worker and community awareness of health hazards posed by lead and other  
27 toxic chemicals.

1           2.4       Except as specifically provided in this Consent Judgment, each side shall  
2 bear its own costs and attorney’s fees.

3           **3.0       ENTRY OF CONSENT JUDGMENT**

4           3.1       The parties hereby request that the Court promptly enter this Consent  
5 Judgment which shall constitute a full and final adjudication of all claims asserted or that  
6 could have been asserted in Plaintiff’s Complaint. Upon entry of the Consent Judgment,  
7 Masco and Mateel waive their respective rights to a hearing or trial on the allegations of  
8 the Complaint.

9           **4.0       MATTERS COVERED BY THIS CONSENT JUDGMENT**

10          4.1       As to lead and lead compounds from Covered Products, this Consent  
11 Judgment provides a full release of liability on behalf of the public interest to Masco as  
12 well as its past, present and future subsidiaries, affiliates, predecessors, successors,  
13 assigns, distributors, wholesalers and retailers (collectively, “Released Entities”), from all  
14 claims for violations of Proposition 65 up through the Effective Date of this Consent  
15 Judgment based upon exposure to lead from Covered Products as set forth in Mateel’s  
16 February 11, 2014 Notice of Violation letter. Compliance with the terms of this Consent  
17 Judgment by a Settling Defendant following its entry by the Court shall be deemed to  
18 constitute compliance with Proposition 65 as to lead and lead compounds in its Covered  
19 Products, provided, however, that the authority and discretion of the Office of the  
20 California Attorney General shall not be restricted in the event it chooses to undertake  
21 enforcement action in the future.

22          4.2       As to alleged lead and lead compound exposures associated with Covered  
23 Products, Mateel on behalf of itself, and its privies, agents, attorneys, representatives,  
24 successors and assigns, waives all rights to institute or participate in, directly, or  
25 indirectly, any form of legal action, and releases all claims as between Mateel and the  
26 Released Entities, including, without limitation, all actions, and causes of action, in law or  
27 in equity, suits, liabilities, demands, obligations, agreements, promises, royalties,  
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1 accountings, damages, costs, fines, penalties, losses, or expenses (including, but not  
2 limited to, investigation fees, expert fees, and attorney’s fees) of any nature whatsoever,  
3 whether known or unknown, fixed or contingent (collectively “claims”), against the  
4 Released Entities and their parents, subsidiaries or affiliates, predecessors, officers,  
5 directors, shareholders, attorneys, representatives, agents, employees, and all customers,  
6 manufacturers, distributors, wholesalers, retailers, or any other person in the course of  
7 doing business involving the Covered Products, and the successors and assigns of any of  
8 them, who may manufacture, use, maintain, distribute or sell the Covered Products or  
9 components found in the Covered Products, including, but not limited to, any claims  
10 regarding exposure to, and/or failure to warn with respect to, the Covered Products. In  
11 furtherance of the foregoing, Mateel hereby waives any and all rights and benefits which  
12 it now has, or in the future may have respecting the Covered Products, conferred upon it  
13 with respect to claims involving Covered Products by virtue of the provisions of Section  
14 1542 of the California Civil Code, which provides as follows:

15 “A GENERAL RELEASE DOES NOT EXTEND TO  
16 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR  
17 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE  
18 TIME OF EXECUTING THE RELEASE, WHICH IF  
19 KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
20 AFFECTED HIS OR HER SETTLEMENT WITH THE  
21 DEBTOR.”

19 4.3 Mateel understands and acknowledges that the significance and  
20 consequence of this waiver of California Civil Code Section 1542 is that even if Mateel  
21 suffers future damages arising out of or resulting from, or related directly or indirectly to,  
22 in whole or in part, the Covered Products, including but not limited to any exposure to, or  
23 failure to warn with respect to exposure to lead or lead compounds from, the Covered  
24 Products, Mateel will not be able to make any claim for those damages against the  
25 Released Entities, their parents, subsidiaries or affiliates, predecessors, officers, directors,  
26 shareholders, representatives, attorneys, agents, employees, and all customers,  
27 manufacturers, distributors, wholesalers, retailers or any other person in the course of  
28

1 doing business involving the Covered Products, and the successors and assigns of any of  
2 them, who may manufacture, use, maintain, distribute or sell the Covered Products.

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

8 **5.0 ENFORCEMENT OF JUDGMENT**

9 5.1 The terms of this Consent Judgment shall be enforced exclusively by the  
10 parties hereto including on behalf of the Released Entities hereunder. The parties may, by  
11 noticed motion or order to show cause before the Superior Court of San Francisco County,  
12 giving the notice required by law, enforce the terms and conditions contained herein. The  
13 parties hereto agree that prior to any such enforcement action, they will notify each other  
14 of any perceived violation of this Consent Judgment. The parties further agree to take no  
15 enforcement action for 30 days after such notice is given, in order to allow the parties to  
16 meet and confer in good faith in an effort to resolve the alleged violation.

17 **6.0 MODIFICATION OF JUDGMENT**

18 6.1 Except as provided for in Paragraph 7.3(c), this Consent Judgment may be  
19 modified only upon written agreement of the parties and upon entry of a modified Consent  
20 Judgment by the Court thereon, or upon motion of any party as provided by law and upon  
21 entry of a modified Consent Judgment by the Court. The California Attorney General  
22 shall be entitled to at least 15 days' notice of any proposed modification hereunder before  
23 it is presented to the Court for approval.

24 6.2 Notwithstanding any other term or provision of this Consent Judgment, if  
25 Plaintiff, or the California Attorney General, and another (current or potential) defendant  
26 (“Future Settling Party”) agree to or is otherwise bound by injunctive relief terms or  
27 provisions relating to the reformulation of, or provisions of Proposition 65 warnings for,  
28



1 products of like characteristics and use to those of Covered Products, which are more  
2 favorable to the Future Settling Party than this Consent Judgment otherwise provides to a  
3 Settling Defendant, then Plaintiff stipulates and agrees to not oppose any effort by Settling  
4 Defendant to seek amendment or adjustment of injunctive relief terms provided for in  
5 Section 7 of this Consent Judgment to be modified to add such more favorable terms or  
6 provisions as an option.

7           6.3       Mateel shall give notice to Masco, per Section 12, of all consent  
8 judgments entered into by Mateel described in Section 6.2 on or after the date of this  
9 Consent Judgment involving similar products to those at issue in this Consent Judgment,  
10 unless such consent judgments are posted on the public Proposition 65 web site  
11 maintained by the California Attorney General.

## 12                           **7.0    INJUNCTIVE RELIEF - CLEAR AND REASONABLE**

### 13       **WARNING**

14           7.1       Covered Products' brass components shall be deemed to comply with  
15 Proposition 65 with respect to lead and lead compounds and be exempt from any  
16 Proposition 65 warning requirements for these listed chemicals, if the brass that is part of  
17 the Covered Products is made of an alloy which contains no intentionally added lead and  
18 no lead content by weight of more than 0.03% (300 parts per million, or "300 ppm").

19           7.2       Mateel agrees, on its own behalf only, that for purposes of this Consent  
20 Judgment, as to the lead content of the brass components of any reformulated Covered  
21 Product, Settling Defendants and any other Released Entities, may rely upon the  
22 representations of their or its respective manufacturers, suppliers, distributors, official  
23 product certification organizations (such as IAPMO) or any other person in the course of  
24 doing business that manufactures, supplies or otherwise distributes the reformulated  
25 Covered Product(s), provided that the reliance is in good faith. Although good faith  
26 reliance regarding the brass alloy may also be established by other means, Mateel agrees  
27 that obtaining test results showing that the lead content is no more than .03% (300 ppm),  
28

1 using a method of sufficient sensitivity to establish a limit of quantification (as  
2 distinguished from detection) of less than 300 ppm shall be deemed to establish good faith  
3 reliance.

4           7.3       Covered Products packaged for distribution or sale by a Settling  
5 Defendant one hundred eighty (180) days or more following the Effective Date that do not  
6 meet the warning exemption standard set forth in Section 7.1 of the Consent Judgment  
7 shall be accompanied by either of the following warning statements:

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

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

11                   or

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

15  
16                   Bracketed language may be omitted at Settling Defendant’s option. The  
17 word “WARNING” shall be in bold and may be preceded by the word  
18 “CALIFORNIA,” “PROP 65,” or “CALIFORNIA PROP 65” at the Settling  
19 Defendant’s option provided such words are also in bold. The bracketed  
20 words “Wash hands after handling this product” or “Wash hands after  
21 handling” may be replaced with “Wash hands after use” or “Wash hands  
22 after installing or removing this product” and in any case shall be  
23 underlined, in bold, or italicized. If a Settling Defendant had begun to use  
24 the regulatory safe harbor warning language specified in 27 CCR §  
25 25603.2, a combination of the cancer and reproductive warning language  
26 formulations specified therein, or one of the warning statements set forth  
27 above but without a specific reference to lead, prior to the execution of this  
28

1 Consent Judgment, they may continue to use that warning language in lieu  
2 of that set forth above until they next produce packaging or labeling based  
3 on updated artwork for the product in question.  
4

5 7.4 Any warning shall be prominently placed with such conspicuousness as  
6 compared with other words, statements, designs, or devices as to render it likely to be read  
7 and understood by an ordinary individual under customary conditions before purchase or  
8 use. Any warning shall be provided in a manner such that the ordinary competent  
9 consumer or user understands to which specific Covered Product the warning applies.

10 Settling Defendants may provide warnings as specified in Section 7.3 as follows:

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

19 Point of Sale Warnings. A Settling Defendant may alternatively perform its  
20 warning obligation by arranging for the posting of the shelf labeling, signs,  
21 menus, warning slips or a combination of thereof as set forth in Health &  
22 Safety Code Section 25603.1 at retail outlets in the State of California where  
23 Covered Products are sold. In such instances, the Settling Defendant shall  
24 provide the warning specified in Section 7.3, and instructions for its use,  
25 with the shipping materials containing the Covered Product or otherwise  
26 ensure the installation of fixed adhesive warning placards on the Covered  
27 Product display shelves. Such warning and instructions shall be included  
28

1 with or affixed to each package box or other container containing Covered  
2 Product(s) or otherwise installed on the Covered Product display shelves  
3 with fixed adhesive warning placards. For a Point of Sale Warning to be  
4 considered reasonably calculated to be seen by an ordinary individual, the  
5 warning shall be posted at (1) each location in the store where the Covered  
6 Products are displayed and visible when the Covered Products are being  
7 viewed without the Covered Products being moved, or (2) for stores with  
8 less than 7,500 square feet retail space, adjacent to each check out counter,  
9 sales register, cash stand, cash wrap or similar check out location in the  
10 store. All warning signs must be displayed in such a manner that any  
11 potential purchaser would reasonably be expected to see the warning and  
12 adequately distinguish between brass products for which warnings are  
13 required and product which do not cause a lead exposure. If the point of  
14 sale warning is not posted in such a manner, or any other manner otherwise  
15 agreed to by the California Attorney General, the retail entity shall not  
16 benefit from the terms of this Consent Judgment, including the release of  
17 claims contained therein.

18  
19 7.5 If a Settling Defendant ships Brass Products packaged for distribution or  
20 sale after 180 days following the Effective Date to a retailer or distributor outside of  
21 California that neither provide the warnings specified in Section 7.3 nor meet the warning  
22 exemption standard specified in Section 7.1 of this Consent Judgment (“Non-Conforming  
23 Brass Products”), and if the retailer or distributor then offers those Non-Conforming Brass  
24 Products for sale in California, then as to those Non-Conforming Brass Products, that  
25 retailer or distributor, and their customers, are not released pursuant to Sections 4.1 and  
26 4.2 above.

1           7.7       For Covered Products packaged for distribution or sale by a Settling  
2 Defendant more than 180 days following the Effective Date, nothing in this Consent  
3 Judgment shall create a limitation on a Proposition 65 enforcement action if such Covered  
4 Products are not in compliance with the injunctive terms of this Consent Judgment.  
5

6           **8.0     AUTHORITY TO STIPULATE**

7           8.1       Each signatory to this Consent Judgment certifies that he or she is fully  
8 authorized by the party he or she represents to enter into this Consent Judgment and to  
9 execute it on behalf of the party represented and legally to bind that party.

10          **9.0     RETENTION OF JURISDICTION**

11          9.1       This Court shall retain jurisdiction of this matter to implement the Consent  
12 Judgment.

13          **10.0    ENTIRE AGREEMENT**

14          10.1       This Consent Judgment contains the sole and entire agreement and  
15 understanding of the parties with respect to the Covered Products, and any and all prior  
16 discussions, negotiations, commitments and understandings related hereto. No  
17 representations, oral or otherwise, express or implied, other than those contained herein  
18 regarding the Covered Products have been made by any party hereto. No other  
19 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist  
20 or to bind any of the parties with respect to the Covered Products.

21          **11.0    GOVERNING LAW**

22          11.1       The validity, construction and performance of this Consent Judgment shall  
23 be governed by the laws of the State of California, without reference to any conflicts of  
24 law provisions of California law.

25          **12.0    NOTICES**

26          12.1       Unless specified herein, all correspondence and notices required to be  
27 provided pursuant to this Consent Judgment shall be in writing and personally delivered  
28

1 or sent by: (i) first-class, (registered or certified mail) return receipt requested; or  
2 (ii) overnight courier on any party by the other party at the following addresses:  
3

4 To Mateel:

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

8 To Masco :

9 Office of the General Counsel  
10 Masco Corporation  
11 21001 Van Born Road  
12 Taylor, MI 48180 Attn. Scott Halpert, Esq.

12 With a copy to:

13 Robert Falk  
14 Morrison & Foerster LLP  
15 425 Market Street, 32<sup>nd</sup> Floor  
16 San Francisco, CA 94115  
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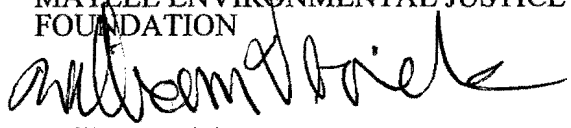
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**13.0 COURT APPROVAL**

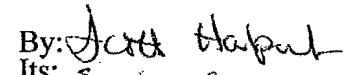
13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

**IT IS SO STIPULATED:**

DATED: 7-16-14

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION  
  
William Verick  
CEO, Mateel Environmental Justice  
Foundation,  
Klamath Environmental Law Center

DATED: 7/10/14

MASCO CORPORATION  
By:   
Its: Senior Corporate Counsel

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

DATED:

JUDGE OF THE SUPERIOR COURT