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17 MATEEL ENVIRONMENTAL JUSTICE
18 FOUNDATION

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20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF SAN FRANCISCO
22 UNLIMITED JURISDICTION

23 MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION,

25 Plaintiff,

26 v.

27 APEX TOOL GROUP, LLC; BATTENFELD
28 TECHNOLOGIES, INC.; BLAZER
MANUFACTURING, CORP.; FROST CUTLERY;
FROST CORPORATION; OHAUS CORP.; THE
L.S. STARRETT COMPANY; WEEMS & PLATH,
INC.,

Defendants.

Case No. CGC-14-539537

**CONSENT JUDGMENT AS TO THE
L.S. STARRETT COMPANY**

Complaint Filed: May 29, 2014

1 **1.0 INTRODUCTION**

2 1.1 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel” or “MEJF”)
3 acting on behalf of itself and the general public, previously filed a complaint (“Complaint”) in this
4 action for civil penalties and injunctive relief in San Francisco Superior Court, against Defendant
5 THE L.S. STARRETT COMPANY (“L.S. Starrett” or “Settling Defendant”). Mateel and L.S.
6 Starrett are collectively referred to herein as the “Parties”. The Complaint alleges, among other
7 things, that L.S. Starrett manufactures or sells products made of, or containing components that are
8 made of, brass with lead in violation of provisions of the Safe Drinking Water and Toxic
9 Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq. (“Proposition 65”). In
10 particular, Mateel alleges that L.S. Starrett knowingly and intentionally exposed persons to products
11 which are made of, or with components that are handled and made of, leaded brass, such as punches
12 and related products (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 of
14 California to cause cancer and birth defects or other reproductive harm.

15 1.2 On March 6, 2014, Mateel sent a Notice of Violation letter concerning the allegations
16 set forth in Paragraph 1.1 above pursuant to Health and Safety Code section 25249.7(d) (“Notice
17 Letter”) to L.S. Starrett, the California Attorney General, all California District Attorneys, and all
18 City Attorneys of every California city with populations exceeding 750,000.

19 1.3 Mateel alleges that L.S. Starrett manufactures and/or sells Brass Products; L.S.
20 Starrett is a business that employs ten or more persons and manufactures, distributes, and/or markets
21 Brass Products that may enter the State of California. These Brass Products are alleged to contain
22 lead and/or lead compounds. Under specified circumstances, businesses that use products containing
23 lead and/or lead compounds in the State of California are subject to the Proposition 65 warning
24 requirement set forth in Health and Safety Code Section 25249.6. Mateel alleges that Brass Products
25 that are made from leaded brass, or that have leaded brass components, are manufactured,
26 distributed, sold and/or marketed by Settling Defendant for use in California, such that a warning is
27 required under Proposition 65.

1 1.4 On May 29,2014, following the expiration of the 60-day period following its issuance
2 of the March 6, 2014 Notice Letter to L.S. Starrett without an authorized public prosecutor of
3 Proposition 65 having filed and enforcement action against L.S. Starrett for the claims alleged
4 therein, Mateel filed the Complaint in which L.S. Starrett is included as a defendant. In the
5 Complaint, Mateel alleges that L.S. Starrett violated Cal. Health & Safety Code Section 25249.6 by
6 knowingly and intentionally exposing persons to Brass Products made of brass, or which include a
7 component made of brass, which contains lead and/or lead compounds, without first providing a
8 clear and reasonable warning to such individuals.

9 1.5 For purposes of settlement and the entry of this Consent Judgment only, the Parties
10 stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint
11 and personal jurisdiction over L.S. Starrett as to the acts alleged in the Complaint, that venue is
12 proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
13 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of all
14 claims that were or could have been raised by any person or entity based in whole or in part, directly
15 or indirectly, on the facts alleged in, arising from, or related to the Complaint. For purposes of this
16 Consent Judgment, “Covered Products” is defined to include Brass Products manufactured,
17 distributed, sold or otherwise marketed for sale or use in California by L.S. Starrett which are not
18 required to comply with AB 1953 (California Health & Safety Code §116875) or equivalent Federal
19 law. Products which are the subject of AB 1953 or equivalent Federal law are expressly not
20 addressed by this Consent Judgment, and no inference regarding compliance or violation with the
21 requirements of Proposition 65 by such products is intended by this judgment. Regardless of whether
22 or not they are subject to AB 1953 or equivalent Federal law, Covered Products also do not include
23 products that are addressed in the Consent Judgment this Court previously entered in *People v.*
24 *American Standard, et al.*, No. 948017.

25 1.6 This Consent Judgment resolves claims that are denied and disputed. The Parties
26 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
27 between the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
28 not constitute an admission with respect to any allegation of the Complaint, each and every

1 allegation of which L.S. Starrett denies, nor may this Consent Judgment or compliance with it be
2 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of L.S. Starrett.

3 1.7 This Consent Judgment shall be effective on entry by the Court, the "Effective Date."

4 **2.0 SETTLEMENT PAYMENTS**

5 2.1 In settlement of all of the claims referred to in this Consent Judgment, Settling
6 Defendant shall pay an aggregate of \$51,250.00 in total monetary relief, inclusive of Paragraph 2.2,
7 below. Of the foregoing, a total of \$5,000 shall be paid in civil penalties. Mateel waives its right to
8 receive 25 percent of this payment, and, accordingly, the entire \$5,000 shall be paid to the Office of
9 Environmental Health Hazard Assessment ("OEHHA").

10 2.2 A total amount of \$30,000 shall be paid by the Settling Defendant collectively to the
11 Klamath Environmental Law Center ("KELC") as reimbursement for attorney's fees and costs
12 incurred by KELC on behalf of Plaintiff in investigating and prosecuting this matter and in
13 negotiating this Consent Judgment on behalf of itself and in the public interest. An additional total of
14 \$16,250 shall be paid by Settling Defendant in lieu of civil penalties, and/or as an offset for what
15 may have been a larger reimbursement of Mateel's attorneys' fees had Mateel filed a motion for
16 attorney's fees under Civil Procedure Code Section 1021.5. By this settlement, Mateel waives its
17 right to file such a motion. The aforementioned payment in lieu of attorneys' fees shall be made in
18 the form of two payments. One payment of \$11,250 to the Ecological Rights Foundation and one
19 payment of \$5,000 to Californians for Alternatives to Toxics. The payments described in Paragraph
20 2.1 above and this Paragraph 2.2 shall be delivered within 5 court days after the Effective Date to
21 William Verick, 424 First Street, Eureka, CA 95501.

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

27 2.4 Except as specifically provided in this Consent Judgment, each side shall bear its own
28 costs and attorney's fees.

1 **3.0 ENTRY OF CONSENT JUDGMENT**

2 3.1 The Parties hereby request that the Court promptly enter this Consent Judgment
3 which shall constitute a full and final adjudication of all claims asserted or that could have been
4 asserted in the Complaint. Upon entry of the Consent Judgment, the Parties waive their respective
5 rights to a hearing or trial on the allegations of the Complaint.

6 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

7 4.1 As to lead and lead compounds from Covered Products, this Consent Judgment
8 provides a full release of liability on behalf of Mateel and, as to those matters and claims raised in
9 the 60 Day Notice Letter on behalf of the public interest to the Settling Defendant as well as their
10 respective past, present and future officers, directors, agents, subsidiaries, affiliates, predecessors,
11 successors, assigns, distributors, wholesalers and retailers (collectively, "Released Entities"), from
12 all claims for violations of Proposition 65 up through and including the Effective Date of this
13 Consent Judgment with respect to the Covered Products. Compliance with the terms of this Consent
14 Judgment by L.S. Starrett following its entry by the Court shall be deemed to constitute full
15 compliance with Proposition 65 as to lead and lead compounds in its Covered Products, provided,
16 however, that the authority and discretion of the Office of the California Attorney General shall not
17 be restricted in the event it chooses to undertake enforcement action in the future.

18 4.2 As to alleged lead and lead compound exposures associated with Covered Products,
19 Mateel on behalf of itself, and its privies, agents, attorneys, representatives, successors and assigns,
20 waives all rights to institute or participate in, directly, or indirectly, any form of legal action, and
21 releases all claims as between Mateel and the Released Entities, including, without limitation, all
22 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, agreements,
23 promises, royalties, accountings, damages, costs, fines, penalties, losses, or expenses (including, but
24 not limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever, whether
25 known or unknown, fixed or contingent (collectively "claims"), against the Released Entities and
26 their parents, subsidiaries or affiliates, predecessors, officers, directors, shareholders, attorneys,
27 representatives, agents, employees, and all customers, manufacturers, distributors, wholesalers,
28 retailers, or any other person in the course of doing business involving the Covered Products, and the

1 successors and assigns of any of them, who may manufacture, use, maintain, handle, distribute or
2 sell the Covered Products or components found in the Covered Products, including, but not limited
3 to, any claims regarding exposure to, and/or failure to warn with respect to, the Covered Products. In
4 furtherance of the foregoing, Mateel hereby waives any and all rights and benefits which it now has,
5 or in the future may have respecting the Covered Products, conferred upon it with respect to claims
6 involving Covered Products by virtue of the provisions of Section 1542 of the California Civil Code,
7 which provides as follows:

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

13 4.3 Mateel understands and acknowledges that the significance and consequence of this
14 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages arising
15 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
16 including but not limited to any exposure to, or failure to warn with respect to exposure to lead or
17 lead compounds from, the Covered Products, Mateel will not be able to make any claim for those
18 damages against the Released Entities, their parents, subsidiaries or affiliates, predecessors, officers,
19 directors, shareholders, representatives, attorneys, agents, employees, and all customers,
20 manufacturers, distributors, wholesalers, retailers or any other person in the course of doing business
21 involving the Covered Products, and the successors and assigns of any of them, who may
22 manufacture, use, maintain, handle, distribute or sell the Covered Products. Furthermore, Mateel
23 acknowledges that it intends these consequences for any such claims and any other claims which
24 may exist as of the date of this release but which Mateel does not know exist, and which, if known,
25 would materially affect its decision to enter into this Consent Judgment, regardless of whether its
26 lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

27 **5.0 ENFORCEMENT OF JUDGMENT**

28 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
 including on behalf of the Released Entities. The parties may, by noticed motion before the Superior
 Court of San Francisco County, giving the notice required by law, enforce the terms and conditions

1 of this Consent Judgment. The parties agree that prior to any such enforcement proceeding, they will
2 notify each other of any perceived violation of this Consent Judgment. The parties further agree to
3 meet and confer in good faith in an effort for 30 days before such notice is given to resolve the
4 alleged violation.

5 **6.0 MODIFICATION OF JUDGMENT**

6 6.1 This Consent Judgment may be modified only upon written agreement of the parties
7 and upon entry of a modified Consent Judgment by the Court, or upon motion of any party as
8 provided by law and upon entry of a modified Consent Judgment by the Court. The California
9 Attorney General shall be entitled to at least 15 days' notice of any proposed modification before it
10 is presented to the Court for approval.

11 6.2 Notwithstanding any other term or provision of this Consent Judgment, if Plaintiff, or
12 the California Attorney General, and another (current or potential) defendant ("Future Settling
13 Party") agree to or is otherwise bound by injunctive relief terms or provisions relating to the
14 reformulation of, or provisions of Proposition 65 warnings for, products of like characteristics and
15 use to those of Covered Products, which are more favorable to the Future Settling Party than this
16 Consent Judgment otherwise provides to L.S. Starrett, then Plaintiff stipulates and agrees to not
17 oppose any effort by L.S. Starrett to seek amendment or adjustment of injunctive relief terms
18 provided for in Section 7 of this Consent Judgment to be modified to add such more favorable terms
19 or provisions as an option.

20 6.3 Mateel shall give notice to L.S. Starrett, per Section 12, of all consent judgments
21 entered into by Mateel described in Section 6.2 on or after the date of this Consent Judgment
22 involving similar products to those at issue in this Consent Judgment, unless such consent judgments
23 are posted on the public Proposition 65 web site maintained by the California Attorney General.

24 **7.0 INJUNCTIVE RELIEF – REFORMULATION/CLEAR AND REASONABLE 25 WARNING**

26 7.1 Covered Products' brass components shall be deemed to comply with Proposition 65
27 with respect to lead and lead compounds and be exempt from any Proposition 65 warning
28 requirements for these listed chemicals, if the brass that is part of the Covered Products is made of

1 an alloy which contains no intentionally added lead and no lead content by weight of more than
2 0.03% (300 parts per million, or “300 ppm”) or if the component containing leaded brass is not
3 touched by a person during intended and reasonably foreseeable use of the Covered Product.

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

14 7.3. Covered Products packaged for distribution or sale by or on behalf of L.S. Starrett
15 180 days or more following the Effective Date that do not meet the warning exemption standard set
16 forth in Section 7.1 of this Consent Judgment shall be accompanied by either of the following
17 warning statements:

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

21 or

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

25 Bracketed language may be omitted at L.S. Starrett’s option. The word “WARNING” shall
26 be in bold and may be preceded by the word “CALIFORNIA,” “PROP 65,” or

27 “CALIFORNIA PROP 65” at L.S. Starrett’s option provided such words are also in bold.

28 The bracketed words “Wash hands after handling this product” or “Wash hands after

1 handling” may be replaced with “Wash hands after use” and shall be underlined, in bold, or
2 italicized.

3 7.4 Any warning shall be prominently placed with such conspicuousness as
4 compared with other words, statements, designs, or devices as to render it likely to be read by an
5 ordinary individual under customary conditions before purchase or use. Any warning shall be
6 provided in a manner such that the ordinary competent consumer or user should understand to which
7 specific Covered Product the warning applies. Settling Defendant may provide warnings as specified
8 in Section 7.3 as follows:

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

16 Point of Sale Warnings. L.S. Starrett may alternatively perform its warning obligation by
17 arranging for the posting of the shelf labeling, signs, menus, warning slips or a combination
18 thereof as set forth in Health & Safety Code Section 25603.1 at retail outlets in the State of
19 California where Covered Products are sold. In such instances, the Settling Defendant shall
20 provide the warning specified in Section 7.3, and instructions for its use, with the shipping
21 materials containing the Covered Product or otherwise ensure the installation of fixed
22 adhesive warning placards on the Covered Product display shelves. Such warning and
23 instructions shall be included with or affixed to each package box or other container
24 containing Covered Product(s) or otherwise installed on the Covered Product display shelves
25 with fixed adhesive warning placards. For a Point of Sale Warning to be considered
26 reasonably calculated to be seen by an ordinary individual, the warning shall be posted at (1)
27 each location in the store where the Covered Products are displayed and visible when the
28 Covered Products are being viewed without the Covered Products being moved, or (2) for

1 stores with less than 7,500 square feet retail space, adjacent to each checkout counter, sales
2 register, cash stand, cash wrap or similar check out location in the store. All warning signs
3 must be displayed in such a manner that any potential purchaser would reasonably be
4 expected to see the warning and adequately distinguish between brass products for which
5 warnings are required and product which do not cause a lead exposure. If the point of sale
6 warning is not posted in such a manner, or any other manner otherwise agreed to by the
7 California Attorney General, the retail entity shall not benefit from the terms of this Consent
8 Judgment, including the release of claims contained therein.

9 7.5 If L.S. Starrett ships Brass Products packaged for distribution or sale after 180 days
10 following the Effective Date to a retailer or distributor outside of California that neither provide the
11 warnings specified in Section 7.3 nor meet the warning exemption standard specified in Section 7.1
12 of this Consent Judgment (“Non-Conforming Brass Products”), and if the retailer or distributor then
13 offers those Non-Conforming Brass Products for sale in California, then as to those Non-
14 Conforming Brass Products, that retailer or distributor, and their customers, are not released pursuant
15 to Sections 4.1 and 4.2 above.

16 7.6 For Covered Products packaged for distribution or sale by L.S. Starrett more than 180
17 days following the Effective Date, nothing in this Consent Judgment shall create a limitation on a
18 Proposition 65 enforcement action if such Covered Products are not in compliance with the
19 injunctive terms of this Consent Judgment.

20 **8.0 AUTHORITY TO STIPULATE**

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

24 **9.0 RETENTION OF JURISDICTION**

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

26 **10.0 ENTIRE AGREEMENT**

27 10.1 This Consent Judgment contains the sole and entire agreement and understanding of
28 the parties with respect to the Covered Products, and any and all prior discussions, negotiations,

1 commitments and understandings to them. No representations, oral or otherwise, express or implied,
2 other than those contained herein regarding the Covered Products have been made by any party. No
3 other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to
4 bind any of the parties with respect to the Covered Products.

5 **11.0 GOVERNING LAW**

6 11.1 The validity, construction and performance of this Consent Judgment shall be
7 governed by the laws of the State of California, without reference to any conflicts of law provisions
8 of California law.

9 **12.0 NOTICES**

10 12.1 Unless specified herein, all correspondence and notices required to be provided
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
12 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by
13 the other party at the following addresses:

14 **To Mateel:**
15 William Verick, Esq.
16 Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

17 **To L.S. Starrett:**
18 Lee N. Smith
19 Perkins, Mann & Everett
7815 North Palm Avenue, Suite 200
20 Fresno, CA 93711-5531

21 **13.0 COURT APPROVAL**

22 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
23 effect, and cannot be used in any proceeding for any purpose.

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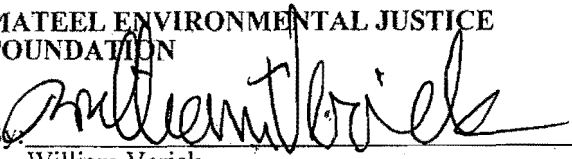
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IT IS SO STIPULATED:

Dated: April 29, 2015

**MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION**

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

Dated: April 29, 2015

THE L.S. STARRETT COMPANY

By: 

IT IS ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT