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17 **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,

Plaintiff,

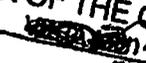
v.

CAMPBELL MANUFACTURING, LLC, *et*
al.,

Defendants.

Case No. CGC-10-502296

**CONSENT JUDGMENT
(AS TO CAMPBELL
MANUFACTURING, LLC)**

ENDORSED
FILED
San Francisco County Superior Court
APR 30 2012
CLERK OF THE COURT
BY:  Deputy Clerk

1. INTRODUCTION

1.1 On August 8, 2011, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel”) acting on behalf of itself and, pursuant to Health & Safety Code §25249.7, acting in the public interest, filed a First Amended Complaint for civil penalties and injunctive relief in San Francisco Superior Court, Case No. CGC-10-502296, against Defendant Campbell Manufacturing, LLC (“Campbell” or “Settling

1 Defendant”). The Complaint alleges, among other things, that Campbell violated
2 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
3 Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In particular, Mateel alleges
4 that Campbell knowingly and intentionally exposed persons to leaded brass products,
5 including by exposure from tools such as pressure test gauges (“brass products”) that are
6 made of or that include a component made of leaded brass, without first providing a clear
7 and reasonable warning to such individuals. Lead and lead compounds are chemicals
8 known to the State of California to cause cancer and birth defects or other reproductive
9 harm.

10 **1.2** On May 13, 2010, Mateel sent a Notice of Violation letter (“Notice
11 Letter”) to Campbell, the California Attorney General, all California District Attorneys,
12 and all City Attorneys of every California city with populations exceeding 750,000
13 concerning the brass products described in paragraph 1.1 above. On February 22, 2012,
14 Mateel sent a second 60 Day notice letter to Campbell, the California Attorney General,
15 all California District Attorneys, and all City Attorneys of every California city with
16 populations exceeding 750,000 describing the brass products referenced in paragraph 1.1
17 more completely. Upon entry of this consent judgment, the complaint in this action shall
18 be deemed amended to include claims included in the February 22, 2012, 60 day notice
19 letter. Reference to “Notice Letter” herein refers to the May 13, 2010 and February 22,
20 2012, notice letters collectively. A copy of each notice letter is attached hereto as Exhibit
21 A and Exhibit B, respectively.

22 **1.3** Settling Defendant is a business that employs ten or more persons and
23 manufactures, distributes or markets brass products that are distributed within the State of
24 California.

25 **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall
26 be defined as brass products described in the Notice Letter, including, without limitation,
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1 tools such as test gauges which are made of or have components made of brass, and which
2 are manufactured, distributed or otherwise marketed by Settling Defendant.

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

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

18 **2. SETTLEMENT PAYMENTS**

19 **2.1** In settlement of all of the claims referred to in this Consent Judgment,
20 Settling Defendant shall collectively pay an aggregate of \$20,000 (twenty thousand
21 dollars) in total monetary relief. Of the foregoing, a total of \$5,000 (five thousand dollars)
22 shall be paid by Settling Defendant in lieu of, and as an offset for, a larger civil penalty in
23 the form of two equal payments of \$2,500 each, one to the Ecological Rights Foundation,
24 and one to Californians for Alternatives to Toxics.

25 **2.2** In addition, a total amount of \$15,000 (fifteen thousand dollars) shall be
26 paid by the Settling Defendant to the Klamath Environmental Law Center ("KELC") as
27 reimbursement for attorneys fees and costs incurred by KELC on behalf of Plaintiff in
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1 investigating and prosecuting this matter and in negotiating this Consent Judgment on
2 behalf of itself and in the public interest. The payments described in Paragraphs 2.1 and
3 2.2 shall be made payable to the recipient, and lodged with counsel for Settling
4 Defendants at least 5 court days prior to any hearing on a motion to approve this
5 settlement, and sent by overnight mail on the day the settlement is approved, to William
6 Verick, 424 First Street, Eureka, CA 95501. If this Consent Judgment has not been
7 approved and entered by the Court within 120 days of the execution of the agreement by
8 the parties, the payments described above shall be promptly returned to Settling
9 Defendant and the terms of this agreement shall be null and void.

10 **2.3** MEJF and KELC represent and warrant that recipients of the offset
11 payments are tax exempt, section 501(c)(3) non-profit organizations and that funds
12 distributed to these organizations 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 **2.4** Except as specifically provided for in this Consent Judgment, each side
16 shall bear its own costs and attorney's fees.

17 **3. ENTRY OF CONSENT JUDGMENT**

18 **3.1** The parties hereby request that the Court promptly enter this Consent
19 Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive
20 their respective rights to a hearing or trial on the allegations of the Complaints.

21 **4. 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 and to its past, present and future parents, subsidiaries, affiliates, predecessors,
25 successors, and assigns (collectively, the "Released Entities") as to all claims and matters
26 raised in the Notice Letter.

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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 the Covered Products or
15 components found in the Covered Products, including, but not limited to, any claims
16 regarding exposure to, and/or failure to warn with respect to, the Covered Products. In
17 furtherance of the foregoing, Mateel on its own behalf hereby waives any and all rights
18 and benefits which it now has, or in the future may have respecting the Covered Products,
19 conferred upon it with respect to claims involving Covered Products by virtue of the
20 provisions of Section 1542 of the 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**
 KNOWN BY HIM OR HER MUST HAVE MATERIALLY
 AFFECTED HIS OR HER SETTLEMENT WITH THE
 DEBTOR."

25 Mateel understands and acknowledges that the significance and consequence of this
26 waiver of California Civil Code Section 1542 is that, except as expressly reserved in this
27 Consent Judgment, even if Mateel learns of past or future claims of which it is presently
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1 unaware arising out of or resulting from, or related directly or indirectly to, in whole or in
2 part, the Covered Products, including but not limited to any exposure to, or failure to warn
3 with respect to exposure to lead or lead compounds from, the Covered Products, Mateel
4 will not be able to make any claim for those damages against Settling Defendant, its
5 parents, subsidiaries or affiliates, predecessors, officers, directors, shareholders,
6 representatives, attorneys, agents, employees, and all customers, manufacturers,
7 distributors, wholesalers, retailers or any other person in the course of doing business
8 involving the Covered Products, and the successors and assigns of any of them, who may
9 manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel
10 acknowledges that it intends these consequences for any such claims and any other claims
11 which may exist as of the date of this release but which Mateel does not know exist, and
12 which, if known, would materially affect its decision to enter into this Consent Judgment,
13 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
14 negligence, or any other cause.

15 **5. ENFORCEMENT OF JUDGMENT**

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

24 **6. 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 any affiliated entity, or the California Attorney General and another (current or
5 potential) party (“Future Settling Party”) agrees to or is otherwise bound by injunctive
6 relief terms or provisions relating to the reformulation of, or provisions of Proposition 65
7 warnings for, products of like characteristics and use to those of Covered Products, which
8 are more favorable to the Future Settling Party than this Consent Judgment otherwise
9 provides to Settling Defendant, then the terms of injunctive relief provided for in Section
10 7 of this Consent Judgment shall automatically be deemed to have been modified to add
11 such more favorable terms or provisions as an option, which the Settling Defendant may
12 elect for compliance with this Consent Judgment.

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

18 **7. INJUNCTIVE RELIEF - REFORMULATION**

19 **7.1** Covered Products’ brass components shall be deemed to comply with the
20 warning requirements of Proposition 65 for lead and lead compounds (H&S Code
21 25249.6), and be exempt from any Proposition 65 warning requirements for these listed
22 chemicals after the Effective Date (November 1, 2012), if the brass that is part of the
23 Covered Products is made of an alloy which contains no intentionally added lead and no
24 lead content by weight of more than 0.03% (“300 parts per million,” or “300 ppm”).
25 Settling Defendant may comply with this requirement by relying in good faith on
26 information obtained from its suppliers regarding the content of the brass alloy from
27 which the brass components are made. Although good faith reliance regarding the brass
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1 alloy may also be established by other means, Mateel agrees that obtaining test results
2 showing that the lead content is no more than 0.03%, using a method of sufficient
3 sensitivity to establish a limit of quantification (as distinguished from detection) of less
4 than 300 ppm shall be deemed to establish good faith reliance.

5 **7.2** Beginning no later than the Effective Date, for Covered Products that do
6 not meet the warning exemption standard set forth in Section 7.1, the following
7 requirements shall apply:

8 (a) Where Settling Defendant, itself, ships the Covered Products
9 into California for retail sale or distribution, Settling Defendant shall
10 provide a warning as described in Section 7.3;

11 (b) Where Settling Defendant does not itself ship directly into
12 California, Settling Defendant shall inform its recipient distributors and
13 retail sellers that any such Covered Product sold in or distributed for use in
14 California must be accompanied by a warning as described in paragraph 7.3.

15 (c) No distributor or retail seller of Covered Products that Settling
16 Defendant manufactures, distributes, markets, sells or ships after the
17 Effective Date and which are sold for use inside the State of California shall
18 be released by or benefit from the releases of Sections 4.1 and 4.2 for
19 Covered Products sold in or distributed for use in California that do not
20 meet the warning exemption standard of section 7.1 or the warning
21 requirements of Sections 7.3 and 7.4. The warning requirements set forth in
22 paragraphs 7.3 and 7.4 shall apply only to Covered Products that Settling
23 Defendant manufactures, distributes, markets, sells or ships after the
24 Effective Date and which are sold for use inside the State of California.

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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
4 Covered Products manufactured or distributed prior to the Effective Date,
5 nothing in this Consent Judgment shall create a limitation on a Proposition
6 enforcement action based on future conduct if such future conduct is not
7 in compliance with the injunctive terms of this Consent Judgment.

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

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

22 (b) Point of Sale Warnings. Settling Defendant may perform its
23 warning obligation by arranging for the posting of the shelf labeling, signs,
24 menus, warning slips or a combination of thereof as set forth in Health &
25 Safety Code Section 25603.1 at retail outlets in the State of California where
26 Covered Products are sold. In such instances, Settling Defendant shall
27 provide the warning specified in Section 7.3, and instructions for its use,
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1 with the shipping materials containing the Covered Product. Such warning
2 and instructions shall be included with or affixed to each package box or
3 other container containing Covered Product(s). For a Point of Sale Warning
4 to be considered reasonably calculated to be seen by an ordinary individual,
5 the warning shall be posted at (1) each location in the store where the
6 Covered Products are displayed and visible when the Covered Products are
7 being viewed without the Covered Products being moved, or (2) for stores
8 with less than 7,500 square feet retail space, adjacent to each check out
9 counter, sales register, cash stand, cash wrap or similar check out location in
10 the 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 Attorney General, the retail entity shall not benefit from the
16 terms of this consent judgment, including the release of claims contained
17 therein;

18 (c) News Media Notices. Settling Defendant may perform its
19 warning obligation by placing notices in public news media per Health &
20 Safety Code section 25249.11 so long as the Attorney General has agreed,
21 upon review, that the size, location and frequency of any such warning(s)
22 meets with the Proposition 65's "clear and reasonable" warning
23 requirements; or

24 (d) Other Approved Warning Methods. Settling Defendant may
25 perform its warning obligations via any method specifically approved in
26 writing by California's Office of Attorney General.

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1 **8. AUTHORITY TO STIPULATE:** Each signatory to this Consent
2 Judgment certifies that he or she is fully authorized by the party he or she represents to
3 enter into this Consent Judgment and to execute it on behalf of the party represented and
4 legally to bind that party.

5 **9. RETENTION OF JURISDICTION:** This Court shall retain jurisdiction
6 of this matter to implement the Consent Judgment.

7 **10. ENTIRE AGREEMENT:** This Consent Judgment contains the sole and
8 entire agreement and understanding of the parties with respect to the entire subject matter
9 hereof, and any and all prior discussions, negotiations, commitments and understandings
10 related hereto. No representations, oral or otherwise, express or implied, other than those
11 contained herein have been made by any party hereto. No other agreements not
12 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of
13 the parties.

14 **11. GOVERNING LAW:** The validity, construction and performance of this
15 Consent Judgment shall be governed by the laws of the State of California, without
16 reference to any conflicts of law provisions of California law.

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

22 To Mateel:
23 William Verick, Esq.
24 Klamath Environmental Law Center
25 424 First Street
26 Eureka, CA 95501

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1 To Campbell:

2 Donna M. Weller
3 Chief Financial Officer
4 Campbell Manufacturing, LLC
5 127 E Spring Street
6 Bechtelsville, PA 19505-0207

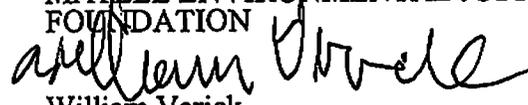
6 With a copy to:

7 John L. Kortum, Esq.
8 Archer Norris, PLC
9 2033 North Main Street, Suite 800
10 Walnut Creek, CA 94596

11 **13. COURT APPROVAL:** If this Consent Judgment is not approved by the
12 Court, it shall be of no force or effect, and cannot be used in any proceeding for any
13 purpose.

13 IT IS SO STIPULATED:

14 Dated: ^{April 27} ~~March~~ ___, 2012

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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

20
21 Dated: March ___, 2012

CAMPBELL MANUFACTURING, LLC

23 By:
24 Its:

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27
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1 To Campbell:

2 Donna M. Weller
3 Chief Financial Officer
4 Campbell Manufacturing, LLC
5 127 E Spring Street
6 Bechtelsville, PA 19505-0207

6 With a copy to:

7 John L. Kortum, Esq.
8 Archer Norris, PLC
9 2033 North Main Street, Suite 800
10 Walnut Creek, CA 94596

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

13 IT IS SO STIPULATED:

14 Dated: March ____, 2012

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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

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21 Dated: ~~March~~ ^{April} 27, 2012

CAMPBELL MANUFACTURING, LLC

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By: *Donna M Weller*
Its: CFO

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IT IS SO ORDERED, ADJUDGED AND DECREED:

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APR 30 2012

HAROLD KAHN

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Dated:

Judge Of The Superior Court