

**ENDORSED
FILED**
San Francisco County Superior Court

NOV 05 2010

CLERK OF THE COURT
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Deputy Clerk

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18 **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**

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

21 MATEEL ENVIRONMENTAL
22 JUSTICE FOUNDATION,

23 Plaintiff,

24 v.

25 APACHE HOSE & BELTING
26 COMPANY, et al.,

27 Defendants.

Case No. 495336

CONSENT JUDGMENT
**(Glenoit, LLC, and THE KEENEY
MANUFACTURING COMPANY)**

28
CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 1.1. On December 21, 2009, the MATEEL ENVIRONMENTAL JUSTICE
3 FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a
4 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior
5 Court, Case No. 495336, against Defendant Glenoit, LLC. ("Glenoit"). The Complaint
6 alleges, among other things, that Glenoit violated provisions of the Safe Drinking Water and
7 Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.*
8 ("Proposition 65"). In particular, Mateel alleges that Glenoit has knowingly and
9 intentionally exposed persons to home products, including napkin rings that are made of
10 brass that contains lead and/or lead compounds, without first providing a clear and
11 reasonable warning to such individuals.

12 1.2. On May 21, 2009, Mateel sent a 60-Day Notice letter ("Glenoit Notice Letter")
13 to Glenoit, the California Attorney General, all California District Attorneys, and all City
14 Attorneys of every California city with populations exceeding 750,000.

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

26 1.4. On August 3, 2010, Mateel acting on behalf of itself and the general public,
27 filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco
28 Superior Court, Case No. 502140, against Defendant The Keeney Manufacturing Company,

1 ("Keeney"). The Complaint alleges, among other things, that Keeney violated provisions of
2 the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
3 Sections 25249.5, et seq. ("Proposition 65"). In particular, Mateel alleges that Keeney has
4 knowingly and intentionally exposed persons to brass products, including brass hose fittings
5 and connectors that are made of brass that contains lead and/or lead compounds, without first
6 providing a clear and reasonable warning to such individuals.

7 1.5. On December 23, 2009, Mateel sent a 60 Day Notice letter ("Keeney Notice
8 Letter") to Keeney, the California Attorney General, all California District Attorneys, and all
9 City Attorneys of every California city with populations exceeding 750,000.

10 1.6. Keeney is a business that employs ten or more persons and manufactures,
11 distributes, and/or markets leaded brass products, including hose connectors and fittings,
12 within the State of California. Some of these products are alleged to contain lead and/or lead
13 compounds. Lead and lead compounds are chemicals known to the State of California to
14 cause cancer, and lead is a chemical known to the State of California to cause reproductive
15 toxicity pursuant to Health and Safety Code Section 25249.9. Under specified
16 circumstances, products containing lead and/or lead compounds that are sold or distributed in
17 the State of California are subject to the Proposition 65 warning requirement set forth in
18 Health and Safety Code Section 25249.6. Plaintiff Mateel alleges that brass products that are
19 made from leaded brass, or that have leaded brass components, are manufactured,
20 distributed, sold and/or marketed by Keeney for use in California and require a warning
21 under Proposition 65.

22 1.7. For purposes of this Consent Judgment, the term "Covered Products" shall be
23 defined as brass products that are made from leaded brass or that have leaded brass
24 components and are manufactured, distributed, marketed and/or sold by Keeney, including,
25 but not limited to those items listed on Exhibit A hereto, and those manufactured, distributed,
26 marketed and/or sold by Glenoit. The "Effective Date" shall be defined as 90 days after
27 entry of this Consent Judgment.

28 1.8. For purposes of this Consent Judgment, the parties stipulate that this Court has

1 jurisdiction over the allegations of violations contained in the Complaint and personal
2 jurisdiction over Glenoit and Keeney as to the acts alleged in the Complaint, that venue is
3 proper in the County of San Francisco and that this Court has jurisdiction to enter this
4 Consent Judgment as a full settlement and resolution of the allegations contained in the
5 Complaint and of all claims that were or could have been raised by any person or entity
6 based in whole or in part, directly or indirectly, on the facts alleged therein or arising
7 therefrom or related thereto.

8 1.9. This Consent Judgment resolves claims that are denied and disputed. The
9 parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
10 claims between the parties for the purpose of avoiding prolonged litigation. This Consent
11 Judgment shall not constitute an admission with respect to any material allegation of the
12 Complaint, each and every allegation of which Glenoit and Keeney deny, nor may this
13 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
14 misconduct, culpability or liability on the part of Keeney or Glenoit.

15 1.10. As part of this Consent Judgment, the complaint in this action shall be
16 amended to include Keeney as an added party defendant to this Action, and plaintiff Mateel
17 shall file a Request for Dismissal without prejudice of Keeney in the action Mateel v.
18 Keeney Manufacturing Company Superior Court Case No., CGC 10-502140.

19 **2. SETTLEMENT PAYMENT**

20 2.1. In settlement of all of the claims referred to in this Consent Judgment each
21 settling defendant, shall pay \$25,000 (twenty-five thousand dollars), in total monetary relief.
22 Of this amount, a total of \$8,000 (eight thousand dollars) shall be paid in lieu of and as an
23 offset for any civil penalty and shall be divided such that \$4,000 (four thousand dollars) shall
24 be made payable to Ecological Rights Foundation, and \$4,000 (four thousand dollars) shall be
25 made payable to Californians for Alternatives to Toxics. Also, \$17,000 (seventeen thousand
26 dollars) shall be made payable to the Klamath Environmental Law Center ("KELC") for
27 attorneys fees and costs incurred by KELC on behalf of Plaintiff in investigating and
28 prosecuting this matter and in negotiating this Consent Judgment on behalf of itself and in

1 the public interest. The payments described above shall be delivered at least 5 days prior to
2 any hearing on a motion to approve this settlement, to William Verick, 424 First Street,
3 Eureka, CA 95501. The payment obligation set forth in this paragraph 2.1 shall be several as
4 to Glenoit and Keeney. If payment has not been received as provided in this paragraph,
5 Plaintiff may withdraw any motion to approve and enter the agreement and the agreement
6 shall become null and void. If this Consent Judgment has not been approved and entered by
7 the Court within 120 days of the execution of the agreement by the parties, the payments
8 described above shall be promptly returned to Glenoit and Keeney, and the terms of this
9 agreement shall be null and void.

10 2.2. Mateel and KELC represent and warrant that Ecological Rights Foundation
11 and Californians for Alternatives to Toxics are each a tax exempt, section 501(c)(3) non-
12 profit organization and that funds distributed to this organization pursuant to this Consent
13 Judgment may only be spent to reduce harm from toxic chemicals, or to increase consumer,
14 worker and community awareness of health hazards posed by lead and other toxic chemicals.

15 2.3. Except as specifically provided in this Consent Judgment, each side shall bear
16 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, Glenoit, Keeney, and Mateel waive their
20 respective rights to a hearing or trial on the allegations of the Complaint.

21 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

22 4.1. This Consent Judgment is a full, final and binding resolution between Glenoit
23 and Keeney and Mateel, acting on behalf of itself and, as to those matters raised in the
24 Glenoit Notice Letter and Keeney Notice Letter, acting in the public interest pursuant to
25 Health and Safety Code section 25249.7(d), of all matters that are or that could have been
26 alleged in the Complaint, including any violation of Proposition 65, or the regulations
27 promulgated thereunder, to the fullest extent that any violation could have been asserted by
28 Mateel against Glenoit or Keeney based upon, arising out of, or relating to Glenoit's or

1 Keeney's compliance with Proposition 65, or regulations promulgated thereunder, with
2 respect to exposures to lead or lead compounds from the Covered Products (and components
3 thereof), whether based on actions committed by Glenoit or Keeney, or by any other entity
4 within the chain of manufacture, distribution and sale of the Covered Products. As to alleged
5 lead and lead compound exposures from Covered Products, as expressed in the Glenoit
6 Notice Letter and Keeney Notice Letter, compliance with the terms of this Consent Judgment
7 resolves any issue, now and in the future, concerning compliance by Glenoit or Keeney and
8 either's parents, subsidiaries or affiliates, divisions, predecessors, successors, assigns,
9 officers, directors, shareholders, attorneys, representatives, agents, employees, and all
10 manufacturers, customers, distributors, wholesalers, retailers or any other person in the
11 course of doing business involving the Covered Products, and the successors and assigns of
12 any of these who may manufacture, use, maintain, distribute, market or sell Covered
13 Products, with the current requirements and standards of Proposition 65. This Consent
14 Judgment also is a full, final and binding resolution between Plaintiff and Glenoit and
15 Keeney as to any other claims that could have been asserted against Glenoit or Keeney or
16 either's affiliates, parent or subsidiary corporations, divisions, successors, officers, directors,
17 shareholders, attorneys, representatives, agents, assigns, distributors, manufacturers,
18 retailers, or customers for failure to disclose the presence of lead (or lead compounds) in or
19 associated with use of the Covered Products.

20 4.2. As to alleged lead exposures associated with Covered Products, Mateel, acting
21 on behalf of itself, and its agents, attorneys, representatives, successors and assigns, waives
22 all rights to institute or participate in, directly, or indirectly, any form of legal action, and
23 releases all claims as between Mateel and Glenoit and Keeney, including, without limitation,
24 all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
25 agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or
26 expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of
27 any nature whatsoever, whether known or unknown, fixed or contingent (collectively
28 "claims"), against Glenoit or Keeney and either's parents, subsidiaries or affiliates,

CONSENT JUDGMENT

1 predecessors, officers, directors, shareholders, attorneys, representatives, agents, employees,
2 and all customers, manufacturers, distributors, wholesalers, retailers, or any other person in
3 the course of doing business involving the Covered Products, and the successors and assigns
4 of any of them, who may manufacture, use, maintain, distribute or sell the Covered Products
5 or components found in the covered products, including, but not limited to, any claims
6 regarding exposure to, and/or failure to warn with respect to, the Covered Products. In
7 furtherance of the foregoing, as to alleged violations of Proposition 65 and lead exposures to
8 Covered Products, Mateel hereby waives any and all rights and benefits which it now has, or
9 in the future may have respecting the Covered Products, conferred upon it with respect to
10 claims involving Covered Products by virtue of the provisions of Section 1542 of the
11 California Civil Code, which provides as follows:

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

18 Mateel understands and acknowledges that the significance and consequence
19 of this waiver of California Civil Code Section 1542 is that even if Mateel suffers future
20 damages arising out of or resulting from, or related directly or indirectly to, in whole or in
21 part, the Covered Products, including but not limited to any exposure to, or failure to warn
22 with respect to exposure to lead or lead compounds from Covered Products, Mateel will not
23 be able to make any claim for those damages against Glenoit or Keeney, or either’s parents,
24 subsidiaries or affiliates, predecessors, officers, directors, shareholders, representatives,
25 attorneys, agents, employees, and all customers, manufacturers, distributors, wholesalers,
26 retailers or any other person in the course of doing business involving the Covered Products,
27 and the successors and assigns of any of them, who may manufacture, use, maintain,
28 distribute or sell the Covered Products. Furthermore, Mateel acknowledges that it intends

1 these consequences for any such claims and any other claims for violations of Proposition 65
2 which may exist as of the date of this release but which Mateel does not know exist, and
3 which, if known, would materially affect its decision to enter into this Consent Judgment,
4 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
5 negligence, or any other cause.

6 **5. ENFORCEMENT OF JUDGMENT**

7 5.1. The terms of this Consent Judgment shall be enforced exclusively by the
8 parties hereto. The parties may, by noticed motion or order to show cause before the
9 Superior Court of San Francisco County, giving the notice required by law, enforce the terms
10 and conditions contained herein. The parties hereto agree that prior to any such enforcement
11 action, they will notify each other of any perceived violation of this Consent Judgment. The
12 parties further agree to take no enforcement action for 30 days after such notice is given, in
13 order to allow the parties to meet and confer in good faith in an effort to resolve the alleged
14 violation.

15 **6. MODIFICATION OF JUDGMENT**

16 6.1. Except as provided for in Paragraph 7.3(c), this Consent Judgment may be
17 modified only upon written agreement of the parties and upon entry of a modified Consent
18 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
19 entry of a modified Consent Judgment by the Court.

20 **7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

21 7.1. Covered Products brass components shall be deemed to comply with
22 Proposition 65 for lead and be exempt from any Proposition 65 warning requirements for
23 lead if the brass that is part of the Covered Products meets the following criteria: (a) the
24 brass alloy from which the brass fittings are made shall have a lead content by weight of no
25 more than 0.03% (300 parts per million, or "300 ppm"). Glenoit and Keeney may comply
26 with the above requirements by relying on information obtained from its suppliers regarding
27 the content of the brass alloy from which the Covered Products are made, provided such
28 reliance is in good faith. Obtaining test results showing that the lead content is no more than

1 0.03%, 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 7.2. Covered Products that do not meet the warning exemption standard set forth in
5 Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
6 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply only
7 to products Glenoit or Keeney manufactures, distributes, markets, sells or ships after the
8 Effective Date for sale or use inside the State of California.

9 7.3. Glenoit and Keeney shall each provide either Proposition 65 warnings as
10 follows:

11 (a) Either of the following:

12 **WARNING:** This product contains lead, a chemical known to the State of
13 California to cause cancer and birth defects or other reproductive harm. Do not place your
14 hands in your mouth after handling the product. Wash your hands after touching this product.

15 or

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

19 The word "WARNING" shall be in bold. The words "Wash hands after
20 handling" shall be in bold and italicized.

21 Glenoit and Keeney shall provide such warning with the unit package of the
22 Covered Products. Such warning shall be prominently affixed to or printed on each Covered
23 Product's label or package. The warning shall be at least the same size as the largest of any
24 other safety warnings, if any, on the product container. If printed on the label itself, the
25 warning shall be contained in the same section that states other safety warnings, if any,
26 concerning the use of the product.

27 (b) The requirements for product labeling, set forth in subparagraph (a)
28 above are imposed pursuant to the terms of this Consent Judgment. The parties recognize

1 that product labeling is not the exclusive method of providing a warning under Proposition
2 65 and its implementing regulations.

3 (c) If Proposition 65 warnings for lead or lead compounds should no longer
4 be required, Glenoit and Keeney shall have no further warning obligations pursuant to this
5 Consent Judgment. In the event that either Glenoit or Keeney ceases to implement or
6 modifies the warnings required under this Consent Judgment (because of a change in the law
7 or otherwise), that party shall provide written notice to Mateel (through KELC) of its intent
8 to do so, and of the basis for its intent, no less than thirty (30) days in advance. Mateel shall
9 notify that party in writing of any objection within thirty (30) days of its receipt of such
10 notice, or such objection by Mateel shall be waived.

11 (d) If after the Effective Date, either Glenoit or Keeney ships Covered
12 Products to a retailer or distributor outside of California that neither provide the warnings
13 specified in this paragraph nor meet the Reformulation Standard specified in paragraphs 7.1
14 through 7.3 of this Consent Judgment ("Non-Conforming Covered Products"), and if the
15 retailer or distributor then offers those Non-Conforming Covered Products for sale in
16 California, then as to those Non-Conforming Covered Products, that retailer or distributor,
17 and their customers, are not released pursuant to Sections 4.1 and 4.2 above.

18 (e) Except as provided in paragraph 4.2 hereof for Covered Products
19 manufactured or distributed prior to the Effective Date, nothing in this Consent Judgment
20 shall create a limitation on a Proposition 65 enforcement action based on future conduct if
21 such future conduct is not in compliance with the injunctive terms of this Consent Judgment.

22 **8. AUTHORITY TO STIPULATE**

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

26 **9. RETENTION OF JURISDICTION**

27 This Court shall retain jurisdiction of this matter to implement the Consent
28 Judgment.

1 **10. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and
3 understanding of the parties with respect to the entire subject matter hereof, and any and all
4 prior discussions, negotiations, commitments and understandings related hereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any party hereto. No other agreements not specifically referred to herein, oral
7 or otherwise, shall be deemed to exist or to bind any of the parties.

8 **11. GOVERNING LAW**

9 The validity, construction and performance of this Consent Judgment shall be
10 governed by the laws of the State of California, without reference to any conflicts of law
11 provisions of California law.

12 **12. NOTICES**

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

17
18 To Defendant Keeney:

19 Brian Zack, CMA
20 Keeney Manufacturing Company
21 1170 Main Street
Newington, CT 06111

To Mateel:

William Verick, Esq.
Klamath Env. Law Center
424 First Street
Eureka, CA 95501

22 Kurt Weissmuller, Esq.
23 Alston + Bird, LLP
24 333 S. Hope Street, 16th Floor
Los Angeles, CA 90071

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1 To Defendant Glenoit:

2 David North
3 Glenoit, LLC
4 1 Linde Drive
4 Goldshoro, NC 27530

5 Kurt Weissmuller, Esq.
6 Alston + Bird, LLP
7 333 S. Hope Street, 16th Floor
7 Los Angeles, CA 90071

8 **13. COURT APPROVAL**

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

11 **IT IS SO STIPULATED:**

12 DATED: _____

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

19
20 DATED: _____

GLENOIT, LLC

By:  10/14/10

Its: VP MARKETING

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DATED: 10/14/10

THE KEENEY MANUFACTURING
COMPANY

By: *Brian J. ...*

Its: Controller

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: NOV 05 2010

CHARLOTTE WALTER WOOLARD
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

PART NUMBERS	PART NUMBERS
PP25018	PP850-18
PP25019	PP850-19
PP25050	PP850-50
PP25052	PP850-52
PP25060	PP850-60
PP25061	PP850-61
PP25065	PP850-65
PP25066	PP850-66
PP25067	PP850-67
PP25069	PP850-69
PP25053	PP850-53
PP25064	PP850-64
PP25068	PP850-68
PP25080	PP850-80
PP25081	PP850-81
PP25017	PP850-17