

FEB 02 2015

CLERK OF THE COURT

BY: FELICIA M. GREEN
Deputy Clerk

1 WILLIAM VERICK, CSB #140972
2 KLAMATH ENVIRONMENTAL LAW
3 CENTER
4 FREDRIC EVENSON, CSB #198059
5 424 First Street
6 Eureka, CA 95501
7 Telephone (707) 268 - 8900
8 Facsimile (707) 268 - 8901
9 wverick@igc.org

6 DAVID H. WILLIAMS, CSB #144479
7 BRIAN ACREE, CSB #202505
8 1990 N. California Blvd, 8th Floor
9 Walnut Creek, CA 94596
10 Telephone: (510) 847 - 2356
11 Facsimile: (510) 271 - 0829
12 dwill7@gmail.com

10 Attorneys For Plaintiff
11 MATEEL ENVIRONMENTAL JUSTICE
12 FOUNDATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

15 MATEEL ENVIRONMENTAL JUSTICE)
16 FOUNDATION,)

17 Plaintiff,)

18 v.)

19 APEX TOOL GROUP, LLC, et al.,)

20 Defendants.)

Case No. CGC-14-539537

CONSENT JUDGMENT AS TO
DEFENDANT APEX TOOL GROUP,
LLC

22 1. INTRODUCTION

23 1.1 On May 29, 2014, the Mateel Environmental Justice Foundation ("Plaintiff
24 MEJF") acting on behalf of itself and the general public, filed a Complaint for civil penalties and
25 injunctive relief ("Complaint") in San Francisco Superior Court, Case No. CGC-14-539537,
26 against defendant Apex Tool Group, LLC (referred to as "Apex" or "Defendant"), among others.
27 The Complaint alleges, among other things, that Apex violated provisions of the Safe Drinking
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1 Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq.
2 (Proposition 65) by failing to give clear and reasonable warnings to those residents of California
3 who handle and use brass products that consist of, or which incorporate components made of,
4 leaded brass and/or bronze, that handling and use of these products causes those residents to be
5 exposed to lead and/or lead compounds. Lead is known to the State of California to cause cancer
6 and/or birth defects or other reproductive harm. The Complaint was based upon a 60-Day Notice
7 letter, dated March 6, 2014, sent by MEJF to Apex, the California Attorney General, all District
8 Attorneys, and all City Attorneys with populations exceeding 750,000.

9 1.2 Apex is a business that employs more than ten persons, and manufactures,
10 distributes, and sells plumb bobs that contain lead. Pursuant to Health and Safety Code Section
11 25249.8, lead and lead compounds are chemicals known to the State of California to cause cancer
12 and reproductive toxicity. Plaintiff MEJF alleges that plumb bobs that are sold by Apex for use in
13 California require a warning under Proposition 65, pursuant to Health and Safety Code Section
14 25249.6. Apex denies that a warning is required. For purposes of this Consent Judgment, the
15 parties stipulate that this Court has jurisdiction over the allegations of violations contained in the
16 Complaint and personal jurisdiction over Apex as to the acts alleged in the Complaint, that venue
17 is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
18 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of
19 all claims which were or could have been raised by any person or entity based in whole or in part,
20 directly or indirectly, on the facts alleged therein or arising therefrom or related to.

21 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
22 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
23 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment
24 shall not constitute an admission with respect to any material allegation of the Complaint, each
25 and every allegation of which Apex denies, nor may this Consent Judgment or compliance with it
26 be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Apex.

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1 1.4 For purposes of this Consent Judgment, the term "Covered Products" means
2 plumb bobs that are manufactured or marketed by Apex for consumer use in the State of
3 California.

4 1.5 The term "Effective Date" means the date that this Consent Judgment is entered by
5 the Court.

6 **2. SETTLEMENT PAYMENT**

7 2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the
8 Complaint concerning Covered Products, Apex shall pay \$26,000 in total monetary relief, to be
9 allocated as follows:

10 2.1.1 \$2,000 shall be paid in civil penalties. Mateel waives right to receive
11 twenty-five (25%) of this payment, and, accordingly, the entire \$2,000 shall be paid to the Office
12 of Environmental Health Hazard Assessment ("OEHHA").

13 2.1.2 \$16,000 shall be paid to the Klamath Environmental Law Center ("KELC")
14 to cover Plaintiff's attorneys' fees.

15 2.1.3 An additional \$8,000 shall be paid by Apex in lieu of, and as an offset for,
16 what would have been a larger reimbursement of Mateel's attorneys' under Code of Civil
17 Procedure Section 1021.5. By this settlement, Mattel waives its right to file such a motion. Such
18 payment shall be made in the form of two equal payments of \$4,000 each, one to the Ecological
19 Rights Foundation and one to Californians for Alternatives to Toxics. MEJF and KELC represent
20 and warrant that Californians for Alternatives to Toxics and the Ecological Rights Foundation are
21 tax exempt, section 501(c)(3) non-profit organizations and that funds distributed to these
22 organizations pursuant to this Consent Judgment may only be spent to reduce harm from toxic
23 chemicals, or to increase consumer, worker and community awareness of health hazards posed by
24 lead and other toxic chemicals. The parties agree and acknowledge that the charitable
25 contributions made pursuant to this section shall not be construed as a credit against the personal
26 claims of absent third parties for restitution against the Apex.

27 2.2 At least five days prior to the hearing date scheduled for approval of this Consent
28 Judgment, Apex shall forward the total settlement payment required under Section 2.1 to the trust

1 account of Fulbright & Jaworski LLP. Fulbright & Jaworski LLP shall make the payments due
2 under this Consent Judgment within five business days of its approval by the Court.

3 2.3 Except as specifically provided in this Consent Judgment, each side shall bear its
4 own costs and attorneys' fees.

5 **3. ENTRY OF CONSENT JUDGMENT**

6 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.
7 Upon entry of the Consent Judgment, Apex and MEJF waive their respective rights to a hearing
8 or trial on the allegations of the Complaint.

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

10 4.1 As to Covered Products and exposures to lead and lead compounds, this Consent
11 Judgment is a final and binding resolution between MEJF, acting on behalf of itself and (as to
12 those matters raised in the 60-Day Notice Letter) the general public, and Apex of any violations
13 of Proposition 65 that were or could have been asserted against Apex or its parents, subsidiaries
14 or affiliates, and all of their suppliers, customers, distributors, wholesalers, retailers, or any other
15 person in the course of doing business, and the successors and assigns of any of them, who may
16 use, maintain, distribute or sell Covered Products ("Released Entities"), based on its or their
17 exposure of persons to lead or lead compounds from Covered Products or their failure to provide
18 a clear and reasonable warning of exposure to such individuals through the Effective Date. As to
19 alleged exposures to lead or lead compounds from Covered Products, compliance with the terms
20 of this Consent Judgment resolves any issue, now and in the future, concerning compliance by
21 Apex and the Released Entities, with the requirements of Proposition 65 with respect to exposure
22 to lead or lead compounds from Covered Products.

23 4.2 As to alleged exposures to lead or lead compounds from Covered Products, MEJF,
24 by and on behalf of itself and its respective agents, successors and assigns, waives any and all
25 rights to institute any form of legal action, and releases all claims against Apex and the Released
26 Entities, and all of their respective parents, subsidiaries or affiliates, and all of their suppliers,
27 customers, distributors, wholesalers, retailers, or any other person in the course of doing business,
28 and the successors and assigns of any of them, who may use, maintain, distribute or sell the

1 Covered Products, whether, under Proposition 65 or otherwise, arising out of or resulting from, or
2 related directly or indirectly to, in whole or in part, the Covered Products, including but not
3 limited to any exposure to, or failure to warn with respect to, the Covered Products (referred to
4 collectively in this Section as the "Claims"). In furtherance of the foregoing, as to alleged
5 exposures to Covered Products, MEJF hereby waives any and all rights and benefits which it now
6 has, or in the future may have, conferred upon it with respect to the Claims by virtue of the
7 provisions of section 1542 of the California Civil Code, 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 FAVOR AT
10 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
11 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
12 DEBTOR.

13 4.3 MEJF understands and acknowledges that the significance and consequence of this
14 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising
15 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
16 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
17 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for
18 those damages against Apex or the Released Entities. Furthermore, MEJF acknowledges that it
19 intends these consequences for any such Claims as may exist as of the date of this release but
20 which MEJF does not know exist, and which, if known, would materially affect their decision to
21 enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of
22 ignorance, oversight, error, negligence, or any other cause.

23 **5. ENFORCEMENT OF JUDGMENT**

24 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
25 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
26 San Francisco County, giving the notice required by law, enforce the terms and conditions
27 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
28 only after that Party first provides 30 days' notice to the Party allegedly failing to comply with the

1 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
2 comply in an open and good faith manner.

3 5.2 In any proceeding to enforce this Consent Judgment, Apex and the Released
4 Entities shall not be subject to monetary penalties or sanctions under this Consent Judgment, if it
5 or they have relied in good faith upon analytical testing of the lead content of the Covered
6 Product(s).

7 5.3 In any proceeding brought by either party to enforce this Consent Judgment, such
8 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
9 violation of this Consent Judgment.

10 6. MODIFICATION OF JUDGMENT

11 6.1 This Consent Judgment may be modified only upon written agreement of the
12 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
13 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

14 7. INJUNCTIVE RELIEF

15 7.1 **Implementation.** Covered Products that are manufactured and shipped by Apex
16 for sale in California more than 180 days after the Effective Date, shall comply with the
17 requirements of Section 7.2 or 7.3.

18 7.2 **Warning Exemptions.** Covered Products that contain brass made of an alloy that
19 contains no intentionally added lead and lead content by weight of no more than 0.03% (300 parts
20 per million, or "300 ppm") shall be deemed to comply with Proposition 65 and be exempt from
21 any Proposition 65 warning requirements.

22 7.3 **Warnings.** Covered Products manufactured more than 180 days after the
23 Effective Date that do not meet the warning exemption of Section 7.2 shall be accompanied by a
24 warning that contains one of the warning statements in Section 7.3.1, and shall be provided by the
25 method in Section 7.3.2.

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7.3.1 The warning statements shall be:

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

Bracketed language may be omitted at Apex’s option. The word “WARNING” shall be in bold text.

7.3.2 The warning shall be prominently affixed to or printed on the Covered Product or packaging or labeling and displayed with such conspicuousness, as compared with other words, statements, designs, or devices on the Covered Product, or its packaging or labeling, as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging or labeling that contains other safety warnings, if any, concerning the use of the Covered Product, or near its displayed price and/or UPC code. The type size of the warning must be legible, but need not be any larger than any other warning provided for the Covered Product, and its relative size may take into account the nature, immediacy, and acuteness of the risks for which other warnings are provided.

7.3.3 If the Proposition 65 warning regulations in effect as of the Effective Date (27 Cal. Code Regs. § 25601 et seq.) are subsequently amended to provide for different warning messages and/or methods, Apex may, at its option, provide warnings for Covered Products that comply with any amended safe harbor or mandatory regulations, in lieu of the provisions of Sections 7.3.1 and 7.3.2.

8. RETENTION OF JURISDICTION

8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms this Consent Judgment.

9. AUTHORITY TO STIPULATE

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

1 **10. DUTIES LIMITED TO CALIFORNIA**

2 10.1 This Consent Judgment shall have no effect on Covered Products sold by Apex
3 outside the State of California.

4 **11. SERVICE ON THE ATTORNEY GENERAL**

5 11.1 KELC shall serve a copy of this Consent Judgment, signed by both parties, on the
6 California Attorney General on behalf of the parties so that the Attorney General may review this
7 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
8 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
9 and in the absence of any written objection by the Attorney General to the terms of this Consent
10 Judgment, the parties may then submit it to the Court for approval.

11 **12. ENTIRE AGREEMENT**

12 12.1 This Consent Judgment contains the sole and entire agreement and understanding
13 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
14 negotiations, commitments and understandings related hereto. No representations, oral or
15 otherwise, express or implied, other than those contained herein have been made by any party
16 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
17 deemed to exist or to bind any of the parties.

18 **13. GOVERNING LAW**

19 13.1 The validity, construction and performance of this Consent Judgment shall be
20 governed by the laws of the State of California, without reference to any conflicts of law
21 provisions of California law.

22 **14. EXECUTION AND COUNTERPARTS**

23 14.1 This Consent Judgment may be executed in counterparts and by means of
24 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
25 one document.

26 **15. COURT APPROVAL**

27 15.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of
28 no force or effect, and cannot be used in any proceeding for any purpose.

1 **16. NOTICES**

2 16.1 Any notices under this Consent Judgment shall be by email, personal delivery or
3 First Class Mail.

4 If to MEJF: William Verick, Esq.
5 Klamath Environmental Law Center
6 424 First Street
Eureka, CA 95501
wverick@igc.org

7 If to Apex: Michael Munn
8 Vice President & General Counsel
9 Apex Tool Group, LLC
10 1000 Lufkin Rd.
Apex, NC 27539
Michael.Munn@apextoolgroup.com

11 With a copy to:
12 Jeffrey B. Margulies
13 FULBRIGHT & JAWORSKI, LLP
14 555 S. Flower Street, 41st Floor
Los Angeles, California 90071
Jeff.margulies@nortonrosefulbright.com

15 **IT IS SO STIPULATED:**

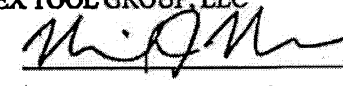
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17 DATED: Jan 13, 2015

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

18 BY: 
19 WILLIAM VERICK

20
21 DATED: December 18, 2014

APEX TOOL GROUP, LLC

22 BY: 
23 ITS: VP + General Counsel

24
25 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

26 DATED: FEB 02 2015

ERNEST H. GOLDSMITH

JUDGE OF THE SUPERIOR COURT