

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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TEXT JUDGMENT

MATEEL ENVIROMENTAL JUSTICE FOUNDATION VS. APEX TOOL GROUP LLC
et al

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18 FOUNDATION

19
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.R. STARRETT COMPANY; WEEMS & PLATH,
INC.,

Defendants.

F I L E D

Superior Court of California
County of San Francisco

MAR 06 2015

CLERK OF THE COURT

BY: *Allen Han*
Deputy Clerk

Case No. CGC-14-539537

CONSENT JUDGMENT

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 OHAUS CORP. (“Ohaus”). Mateel and Ohaus are collectively referred to herein as the “parties”.
6 The Complaint alleges, among other things, that Ohaus manufactures or sells products made of, or
7 containing components that are made of, leaded brass in violation of provisions of the Safe Drinking
8 Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq.
9 (“Proposition 65”). In particular, Mateel alleges that Ohaus knowingly and intentionally exposed
10 persons to products which are made of, or with components that are handled and made of, leaded
11 brass, such as balance weights (collectively, “Brass Products”), without first providing a clear and
12 reasonable warning to such individuals. Lead and lead compounds are chemicals known to the State
13 of California to cause cancer and birth defects or other reproductive harm.

14 1.2 On March 6, 2014, Mateel sent a Notice of Violation letter concerning the allegations
15 set forth in Paragraph 1.1 above pursuant to Health and Safety Code section 25249.7(d) (“Notice
16 Letter”) to Ohaus, the California Attorney General, all California District Attorneys, and all City
17 Attorneys of every California city with populations exceeding 750,000.

18 1.3 Mateel alleges that Ohaus manufactures and/or sells Brass Products; Ohaus is a
19 business that employ ten or more persons and manufactures, distributes, and/or markets Brass
20 Products within the State of California. These products are alleged to contain lead and/or lead
21 compounds. Under specified circumstances, businesses that use products containing lead and/or lead
22 compounds in the State of California are subject to the Proposition 65 warning requirement set forth
23 in Health and Safety Code Section 25249.6. Mateel alleges that Brass Products that are made from
24 leaded brass, or that have leaded brass components, are manufactured, distributed, sold and/or
25 marketed by Ohaus for use in California, such that a warning is required under Proposition 65.

26 1.4 On May 29, 2014, following the expiration of the 60-day period following its issuance
27 of the March 6, 2014 Notice Letter to Ohaus without an authorized public prosecutor of Proposition
28 65 having filed and enforcement action against Ohaus for the claims alleged therein, Mateel filed the

1 Complaint in which Ohaus is included as a defendant. In the Complaint, Mateel alleges that Ohaus
2 violated Cal. Health & Safety Code Section 25249.6 by knowingly and intentionally exposing
3 persons to Brass Products made of brass, or which include a component made of brass, that contains
4 lead and/or lead compounds, without first providing a clear and reasonable warning to such
5 individuals.

6 1.5 For purposes of settlement and the entry of this Consent Judgment only, the parties
7 stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint
8 and personal jurisdiction over Ohaus as to the acts alleged in the Complaint, that venue is proper in
9 the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a
10 full settlement and resolution of the allegations contained in the Complaint and of all claims that
11 were or could have been raised by any person or entity based in whole or in part, directly or
12 indirectly, on the facts alleged in, arising from, or related to the Complaint. For purposes of this
13 Consent Judgment, "Covered Products" is defined to include Brass Products manufactured,
14 distributed, sold or otherwise marketed for sale or use in California by Ohaus which are not required
15 to comply with AB 1953 (California Health & Safety Code §116875) or equivalent Federal law.
16 Products which are the subject of AB 1953 or equivalent Federal law are expressly not addressed by
17 this Consent Judgment, and no inference regarding compliance or violation with the requirements of
18 Proposition 65 by such products is intended by this judgment. Regardless of whether or not they are
19 subject to AB 1953 or equivalent Federal law, Covered Products also do not include products that
20 are addressed in the Consent Judgment this Court previously entered in *People v. American*
21 *Standard, et al.*, No. 948017.

22 1.6 This Consent Judgment resolves claims that are denied and disputed. The parties
23 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
24 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
25 not constitute an admission with respect to any material allegation of the Complaint, each and every
26 allegation of which Ohaus denies, nor may this Consent Judgment or compliance with it be used as
27 evidence of any wrongdoing, misconduct, culpability or liability on the part of Ohaus.

28 1.7 This Consent Judgment shall be effective on entry by the Court, the "Effective Date."

1 **2.0 SETTLEMENT PAYMENTS**

2 2.1 In settlement of all of the claims referred to in this Consent Judgment, Ohaus shall
3 pay an aggregate of \$26,000.00 in total monetary relief, inclusive of Paragraph 2.2, below. Of the
4 foregoing, a total of \$2,000.00 shall be paid in civil penalties. Mateel waives its right to receive 25
5 percent of this payment, and, accordingly, the entire \$2,000 shall be paid to the Office of
6 Environmental Health Hazard Assessment (“OEHHA”).

7 2.2 A total amount of \$16,000.00 shall be paid by Ohaus to the Klamath Environmental
8 Law Center (“KELC”) as reimbursement for attorney’s fees and costs incurred by KELC on behalf
9 of Plaintiff in investigating and prosecuting this matter and in negotiating this Consent Judgment on
10 behalf of itself and in the public interest. An additional total of \$8,000.00 shall be paid by Ohaus in
11 lieu of, and as an offset for, what may have been a larger reimbursement of Mateel’s attorneys fees
12 had Mateel filed a motion for attorneys’ fees under Civil Procedure Code Section 1021.5. By this
13 settlement, Mateel waives its right to file such a motion. The aforementioned \$8,000 payment in
14 lieu of attorneys’ fees shall be made in the form of two equal payments of \$4,000.00 each, one to the
15 Ecological Rights Foundation and one to Californians for Alternatives to Toxics. The payments
16 described in Paragraph 2.1 above and this Paragraph 2.2 shall be delivered within 5 court days after
17 the Effective Date to William Verick, 424 First Street, Eureka, CA 95501.

18 2.3 Mateel and KELC represent and warrant that Californians for Alternatives to Toxics
19 and the Ecological Rights Foundation are tax exempt, section 501(c)(3) non-profit organizations and
20 that funds distributed to these organizations pursuant to this Consent Judgment may only be spent to
21 reduce harm from toxic chemicals, or to increase consumer, worker and community awareness of
22 health hazards posed by lead and other toxic chemicals.

23 2.4 Except as specifically provided in this Consent Judgment, each side shall bear its own
24 costs and attorney’s fees.

25
26 **3.0 ENTRY OF CONSENT JUDGMENT**

27 3.1 The parties hereby request that the Court promptly enter this Consent Judgment
28 which shall constitute a full and final adjudication of all claims asserted or that could have been

1 asserted in Plaintiff's Complaint. Upon entry of the Consent Judgment, the parties waive their
2 respective rights to a hearing or trial on the allegations of the Complaint.

3 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

4 4.1 As to lead and lead compounds from Covered Products, this Consent Judgment
5 provides a full release of liability on behalf of the public interest to Ohaus as well as its past, present
6 and future subsidiaries, affiliates, predecessors, successors, assigns, distributors, wholesalers and
7 retailers (collectively, "Released Entities"), from all claims for violations of Proposition 65 up
8 through the Effective Date of this Consent Judgment based upon exposure to lead from Covered
9 Products as set forth in Mateel's March 6, 2014 Notice of Violation letter. Compliance with the
10 terms of this Consent Judgment by Ohaus following its entry by the Court shall be deemed to
11 constitute compliance with Proposition 65 as to lead and lead compounds in its Covered Products,
12 provided, however, that the authority and discretion of the Office of the California Attorney General
13 shall not be restricted in the event it chooses to undertake enforcement action in the future.

14 4.2 As to alleged lead and lead compound exposures associated with Covered Products,
15 Mateel on behalf of itself, and its privies, agents, attorneys, representatives, successors and assigns,
16 waives all rights to institute or participate in, directly, or indirectly, any form of legal action, and
17 releases all claims as between Mateel and the Released Entities, including, without limitation, all
18 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, agreements,
19 promises, royalties, accountings, damages, costs, fines, penalties, losses, or expenses (including, but
20 not limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever, whether
21 known or unknown, fixed or contingent (collectively "claims"), against the Released Entities and
22 their parents, subsidiaries or affiliates, predecessors, officers, directors, shareholders, attorneys,
23 representatives, agents, employees, and all customers, manufacturers, distributors, wholesalers,
24 retailers, or any other person in the course of doing business involving the Covered Products, and the
25 successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the
26 Covered Products or components found in the Covered Products, including, but not limited to, any
27 claims regarding exposure to, and/or failure to warn with respect to, the Covered Products. In
28 furtherance of the foregoing, Mateel hereby waives any and all rights and benefits which it now has,

1 or in the future may have respecting the Covered Products, conferred upon it with respect to claims
2 involving Covered Products by virtue of the provisions of Section 1542 of the California Civil Code,
3 which provides as follows:

4 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
6 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
7 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
8 SETTLEMENT WITH THE DEBTOR."

9 4.3 Mateel understands and acknowledges that the significance and consequence of this
10 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages arising
11 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
12 including but not limited to any exposure to, or failure to warn with respect to exposure to lead or
13 lead compounds from, the Covered Products, Mateel will not be able to make any claim for those
14 damages against the Released Entities, their parents, subsidiaries or affiliates, predecessors, officers,
15 directors, shareholders, representatives, attorneys, agents, employees, and all customers,
16 manufacturers, distributors, wholesalers, retailers or any other person in the course of doing business
17 involving the Covered Products, and the successors and assigns of any of them, who may
18 manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel
19 acknowledges that it intends these consequences for any such claims and any other claims which
20 may exist as of the date of this release but which Mateel does not know exist, and which, if known,
21 would materially affect its decision to enter into this Consent Judgment, regardless of whether its
22 lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

23 **5.0 ENFORCEMENT OF JUDGMENT**

24 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
25 including on behalf of the Released Entities. The parties may, by noticed motion before the Superior
26 Court of San Francisco County, giving the notice required by law, enforce the terms and conditions
27 of this Consent Judgment. The parties agree that prior to any such enforcement proceeding, they will
28 notify each other of any perceived violation of this Consent Judgment. The parties further agree to
meet and confer in good faith in an effort for 30 days before such notice is given to resolve the
alleged violation.

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6.0 MODIFICATION OF JUDGMENT

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

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

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

7.0 INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNING

7.1 Covered Products' brass components shall be deemed to comply with Proposition 65 with respect to lead and lead compounds and be exempt from any Proposition 65 warning requirements for these listed chemicals, if the brass that is part of the Covered Products is made of an alloy which contains no intentionally added lead and no lead content by weight of more than 0.03% (300 parts per million, or "300 ppm") or if the component containing leaded brass is not touched by a person during intended and reasonably foreseeable use of the Covered Product.

7.2 Mateel agrees, on its own behalf only, that for purposes of this Consent Judgment, as

1 to the lead content of the brass components of any reformulated Covered Product, Ohaus and any
2 other Released Entities may rely upon the representations of their respective manufacturers,
3 suppliers, distributors, official product certification organizations (such as IAPMO) or any other
4 person in the course of doing business that manufactures, supplies or otherwise distributes the
5 reformulated Covered Product(s), provided that the reliance is in good faith. Although good faith
6 reliance regarding the brass alloy may also be established by other means, Mateel agrees that
7 obtaining test results showing that the lead content is no more than .003% (300 ppm), using a
8 method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection)
9 of less than 300 ppm shall be deemed to establish good faith reliance.

10 7.3. Covered Products packaged for distribution or sale by Ohaus 180 days or more
11 following the Effective Date that do not meet the warning exemption standard set forth in Section
12 7.1 of the Consent Judgment shall be accompanied by either of the following warning statements:

13 **WARNING:** Handling this product can result in exposure to lead, a substance known
14 to the State of California to cause [cancer and] birth defects or other reproductive
15 harm. [Wash hands thoroughly after handling.]

16 or

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

20
21 Bracketed language may be omitted at Ohaus's option. The word "WARNING" shall be in
22 bold and may be preceded by the word "CALIFORNIA," "PROP 65," or "CALIFORNIA
23 PROP 65" at Ohaus's option provided such words are also in bold. The bracketed words
24 "Wash hands thoroughly after handling" or "Wash hands after handling" may be replaced
25 with "Wash hands after use" or "Wash hands after installing or removing this product." . If
26 Ohaus had begun to use the regulatory safe harbor warning language specified in 27 CCR §
27 25603.2, a combination of the cancer and reproductive warning language formulations
28 specified therein, or one of the warning statements set forth above but without a specific

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

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

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

16 Point of Sale Warnings. Ohaus may alternatively perform its warning obligation by arranging
17 for the posting of the shelf labeling, signs, menus, warning slips or a combination thereof as
18 set forth in Health & Safety Code Section 25603.1 at retail outlets in the State of California
19 where Covered Products are sold. In such instances, the Settling Defendant shall provide the
20 warning specified in Section 7.3, and instructions for its use, with the shipping materials
21 containing the Covered Product or otherwise ensure the installation of fixed adhesive
22 warning placards on the Covered Product display shelves. Such warning and instructions
23 shall be included with or affixed to each package box or other container containing Covered
24 Product(s) or otherwise installed on the Covered Product display shelves with fixed adhesive
25 warning placards. For a Point of Sale Warning to be considered reasonably calculated to be
26 seen by an ordinary individual, the warning shall be posted at (1) each location in the store
27 where the Covered Products are displayed and visible when the Covered Products are being
28 viewed without the Covered Products being moved, or (2) for stores with less than 7,500

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

9 7.5 If Ohaus 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 Ohaus more than 180 days
17 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 carrier 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 Ohaus:**

18 Michelle Proia-Roe
19 General Counsel - Americas and Secretary
Mettler-Toledo, LLC
20 1900 Polaris Parkway
Columbus, Ohio 43240

21 **With a copy to:**

22 Chad A. Stegeman, Esq.
23 Carroll, Burdick & McDonough, LLP
24 44 Montgomery Street, Suite 400
San Francisco, CA 94104-4606

26 **13.0 COURT APPROVAL**

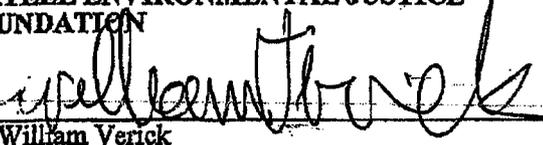
27 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
28 effect, and cannot be used in any proceeding for any purpose.

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IT IS SO STIPULATED:

Dated: February 10, 2015

**MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION**

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

Dated: February 10, 2015

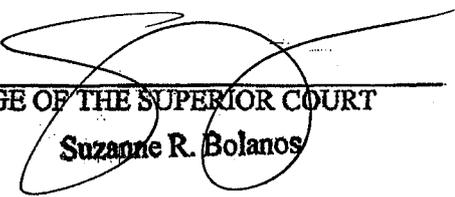
OHAUS CORPORATION,

By: 
Michelle Proia-Roe
General Counsel - Americas and Secretary
Mettler-Toledo, LLC
Parent to Ohaus Corporation

IT IS SO STIPULATED:

IT IS ORDERED, ADJUDGED, AND DECREED:

DATED: 3/6/15


Suzanne R. Bolanos
JUDGE OF THE SUPERIOR COURT