

1 William Verick (SBN 140972)
KLAMATH ENVIRONMENTAL LAWCENTER
2 Fredric Evenson (SBN 198059)
LAW OFFICE OF FREDRIC EVENSON
3 424 First Street
Eureka, CA 95501
4 Telephone: (707) 268-8900
Facsimile: (707) 268-8901
5 wverick@igc.org
ecorights@earthlink.net

6
7 DAVID WILLIAMS (SBN 144479)
BRIAN ACREE (SBN 202505)
370 Grand Avenue, Suite 5
8 Oakland, CA 94610
9 Telephone: (510) 271-0826
Facsimile: (510) 271-0829
10 davidhwilliams@earthlink.net
brianacree@earthlink.net

11 Attorneys For Plaintiff
MATEEL ENVIRONMENTAL JUSTICE
12 FOUNDATION

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

16 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION,)	Case No. CGC-11-512045
17)	
18 Plaintiff,)	CONSENT JUDGMENT AS TO
19)	SAMAR COMPANY, INC. AND
20 v.)	MANLEY PERFORMANCE
21 LEHR INCORPORATED, et al.,)	PRODUCTS, INC.
22)	
)	
)	

23 **1. INTRODUCTION**

24 1.1 On June 28, 2011, the Mateel Environmental Justice Foundation ("Plaintiff
25 MEJF") acting on behalf of itself and the general public, filed a Complaint for civil penalties and
26 injunctive relief ("Complaint") in San Francisco Superior Court, Case No. CGC-11-512045,
27 against Samar, Inc. ("Samar"), Manley Performance Products, Inc., ("Manley") (collectively

1 referred to as "Settling Defendants") and others. The Complaint alleges, among other things, that
2 Settling Defendants violated provisions of the Safe Drinking Water and Toxic Enforcement Act
3 of 1986, Health and Safety Code Sections 25249.5, et seq. (Proposition 65) by failing to give
4 clear and reasonable warnings to those residents of California who handle and use products made
5 of, or incorporate parts made of, brass and/or bronze, that handling and use of these products
6 causes those residents to be exposed to lead and/or lead compounds. Lead is known to the State
7 of California to cause cancer and/or birth defects or other reproductive harm. The Complaint was
8 based upon a 60-Day Notice letter, dated November 20, 2008, sent by MEJF to Samar, and a 60-
9 Day Notice letter dated March 3, 2011, sent by MJEF to Manley. Copies of both 60-Day Notice
10 letters also were sent to the California Attorney General, all District Attorneys, and all City
11 Attorneys with populations exceeding 750,000.

12 1.2 Settling Defendants are businesses that employ more than ten persons, and
13 manufacture, distribute and/or market brass tools, including but not limited to air hoses and air
14 hose accessories (as to Samar) and including but not limited to fishing scales and other fishing
15 tools (as to Manley) (collectively "Brass Products"). Brass Products contain components
16 manufactured from brass that contains lead and/or lead compounds. Pursuant to Health and
17 Safety Code Section 25249.8, lead and lead compounds are chemicals known to the State of
18 California to cause cancer and reproductive toxicity. Plaintiff MEJF alleges that Brass Products
19 with components containing lead-containing brass that are sold by Settling Defendants for use in
20 California require a warning under Proposition 65, pursuant to Health and Safety Code Section
21 25249.6. Settling Defendants deny that their products violate any statute, rule or regulation and
22 deny that a warning is required. For purposes of this Consent Judgment only, the parties stipulate
23 that this Court has jurisdiction over the allegations of violations contained in the Complaint and
24 personal jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue
25 is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
26 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of

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1 all claims which were or could have been raised by any person or entity based in whole or in part,
2 directly or indirectly, on the facts alleged therein or arising therefrom or related to.

3 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
4 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
5 between the parties for the purpose of avoiding prolonged litigation. The Settling Defendants
6 deny all material, factual, and legal allegations contained in the 60-Day Notice letters and the
7 Complaint, and maintain that all of the products they have manufactured, imported, distributed,
8 shipped, offered for sale and/or sold in California, including any products that are the subject of
9 this Consent Judgment, have been and are in compliance with all laws. Nothing in this Consent
10 Judgment or any actions taken to comply with it shall be construed as an admission by any
11 Released Entity of any fact, finding, conclusion, issue of law, or any wrongdoing, misconduct,
12 culpability or violation of law, the same being specifically denied, nor may this Consent
13 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability
14 or liability on the part of any Released Entity in this action or in any other action or proceeding.

15 1.4 For purposes of this Consent Judgment, the term "Covered Products" means Brass
16 Products as described in paragraph 1.2, that contain one or more components manufactured from
17 brass, and that are manufactured, marketed or sold by Settling Defendants.

18 1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

19 **2. SETTLEMENT PAYMENTS**

20 2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the
21 Complaint concerning Covered Products, Samar and Manley each shall pay \$8,062 to the
22 Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally,
23 Samar and Manley each shall pay \$1,000 to the Ecological Rights Foundation, and \$1,000 to
24 Californians for Alternatives to Toxics, for use toward reducing exposures to toxic chemicals and
25 other pollutants, and toward increasing consumer, worker and community awareness of health
26 hazards posed by lead and other toxic chemicals. The parties agree and acknowledge that the
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1 charitable contributions made pursuant to this section shall not be construed as a credit against the
2 personal claims of absent third parties for restitution against the defendant.

3 2.2 Samar and Manley each shall also pay \$500 in civil penalties. Mateel waives its
4 entitlement to 25% of this amount, and thus the entire amount of civil penalties shall be made
5 payable, pursuant to the statute, to the Office of Environmental Health Hazard Assessment
6 (OEHHA).

7 2.3 The above described payments shall be forwarded by Settling Defendants to their
8 respective counsel so that they are received at least 5 days prior to the hearing date scheduled for
9 approval of this Consent Judgment. Settling Defendants' counsel shall notify Klamath
10 Environmental Law Center, via email, upon receipt of the funds. If the Consent Judgment is not
11 approved within 120 days of the date scheduled for approval, the above described payments shall
12 be returned and the provisions of this Consent judgment shall become null and void. If the
13 Consent Judgment is approved and entered by the Court, on that day Settling Defendant's counsel
14 shall ensure the above described payments are delivered, via UPS or FedEx for next business day
15 delivery, to Klamath Environmental Law Center.

16 **3. ENTRY OF CONSENT JUDGMENT**

17 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.
18 Upon entry of the Consent Judgment, Settling Defendants and MEJF waive their respective rights
19 to a hearing or trial on the allegations of the Complaint.

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

21 4.1 As to alleged exposures to lead or lead compounds from Covered Products, this
22 Consent Judgment provides a full release of liability on behalf of the Public Interest to Samar and
23 Manley, (as well as their past, present and future parents, subsidiaries affiliates, predecessors,
24 successors, and assigns "Released Entities"), as to all claims and matters raised in the Notices of
25 Violation.

26 4.2 As to alleged exposures to lead or lead compounds from Covered Products and any
27 failure to warn of such exposures, MEJF, by and on behalf of itself and its respective agents,

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1 successors and assigns, waives any and all rights to institute any form of legal action, and releases
2 all claims against Settling Defendants and the Released Entities, and all of their respective
3 parents, subsidiaries or affiliates, and all of their suppliers, customers, distributors, wholesalers,
4 retailers, or any other person in the course of doing business, and the successors and assigns of
5 any of them, who may use, maintain, distribute or sell the Covered Products, whether, under
6 Proposition 65, any statute, common law or otherwise, arising out of or resulting from, or related
7 directly or indirectly to, in whole or in part, the Covered Products, including but not limited to
8 any exposure to, or failure to warn with respect to, the Covered Products (referred to collectively
9 in this paragraph as the "Claims"). In furtherance of the foregoing, as to alleged exposures to
10 Covered Products, MEJF hereby waives any and all rights and benefits which it now has, or in the
11 future may have, conferred upon it with respect to the Claims by virtue of the provisions of
12 section 1542 of the California Civil Code, which provides as follows:

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

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

1 **5. ENFORCEMENT OF JUDGMENT**

2 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
3 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
4 San Francisco County, giving the notice required by law, enforce the terms and conditions
5 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
6 only after that Party first provides 30days notice to the Party allegedly failing to comply with the
7 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
8 comply in an open and good faith manner.

9 5.2 In any proceeding brought by either party to enforce this Consent Judgment, such
10 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
11 violation of Proposition 65 or this Consent Judgment.

12 **6. MODIFICATION OF JUDGMENT**

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

16 6.2 If, with respect to brass containing lead, the Attorney General of the State of
17 California or Plaintiff permit any other reformulation standard by way of settlement or
18 compromise with any other person in the course of doing business, or any other entity, or if
19 another reformulation standard for brass is incorporated by way of final judgment as to any other
20 person in the course of doing business, or any other entity, then Settling Defendants are entitled to
21 seek a modification to this Consent Judgment on the same terms as provided in those settlements,
22 compromises or judgments.

23 **7. INJUNCTIVE RELIEF**

24 7.1 The requirements of this paragraph 7 shall apply only to Covered Products that are
25 manufactured by Settling Defendants after the Effective Date.

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1 7.2 As to any Covered Product that contains a component made from brass that
2 contains lead as an intentionally added ingredient, where such brass comes into contact with the
3 user, a warning that contains one of the following warning statements shall be provided:

4 (a) **“WARNING: This product contains chemicals, including lead, known to**
5 **the State of California to cause birth defects and other reproductive harm. *Wash hands after***
6 ***handling*”** or

7 (b) **“WARNING: Handling the brass parts of this product will expose you to**
8 **lead, a chemical known to the State of California to cause birth defects and other reproductive**
9 **harm. *Wash hands after handling.*”**

10 The word “WARNING” shall be in bold text, and the phrase “Wash hands after handling”
11 shall be in bold italic text.

12 (c) The warning statements required in paragraph 7.2 shall be affixed to or
13 printed on the Covered Product itself or to the Covered Product’s packaging, labeling, or
14 instruction booklet, if any. The warning shall be prominently affixed to or printed on the Covered
15 Product or packaging, labeling, or instruction booklet, and displayed with such conspicuousness,
16 as compared with other words, statements, designs, or devices on the Covered Product, or its
17 packaging, labeling, or instruction booklet, as to render it likely to be read and understood by an
18 ordinary individual under customary conditions of purchase or use. For purposes of this
19 paragraph, a warning may be contained in the same section of the packaging, labeling, or
20 instruction booklet that contains other safety warnings, if any, concerning the use of the Covered
21 Product, or near its displayed price and/or UPC code. The type size of the warning must be
22 legible, but need not be any larger than any other warning provided for the Covered Product, and
23 its relative size may take into account the nature, immediacy, and acuteness of the risks for which
24 other warnings are provided.

25 (d) Notwithstanding the above, Settling Defendants and any of their
26 downstream customers may continue to sell-through products that are currently in stock and that
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1 carry the following warning statement: "Warning: This product contains chemicals known by the
2 State of California to cause cancer, birth defects, or other reproductive harm."

3 **8. TERMINATION AND RETENTION OF JURISDICTION**

4 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
5 terms this Consent Judgment.

6 **9. AUTHORITY TO STIPULATE**

7 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
9 the party represented and legally to bind that party.

10 **10. DUTIES LIMITED TO CALIFORNIA**

11 10.1 This Consent Judgment shall have no effect on Covered Products sold outside the
12 State of California.

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

14 11.1 KELC shall serve a copy of this Consent Judgment, signed by both parties, on the
15 California Attorney General on behalf of the parties so that the Attorney General may review this
16 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
17 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
18 and in the absence of any written objection by the Attorney General to the terms of this Consent
19 Judgment, the parties may then submit it to the Court for approval.

20 **12. ENTIRE AGREEMENT**

21 12.1 This Consent Judgment contains the sole and entire agreement and understanding
22 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
23 negotiations, commitments and understandings related hereto. No representations, oral or
24 otherwise, express or implied, other than those contained herein have been made by any party
25 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
26 deemed to exist or to bind any of the parties.

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1 **13. GOVERNING LAW**

2 13.1 The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.

5 **14. EXECUTION AND COUNTERPARTS**

6 14.1 This Consent Judgment may be executed in counterparts and by means of
7 facsimile, which taken together shall be deemed to constitute one document.

8 **15. COURT APPROVAL**

9 15.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of
10 no force or effect, and cannot be used in any proceeding for any purpose.

11 **16. NOTICES**

12 16.1 Any notices under this Consent Judgment shall be by personal delivery or First
13 Class Mail addressed as follows:

14
15 If to MEJF: William Verick, Esq.
16 Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

17 If to Samar: Samar Company, Inc., Attn: William Selby
18 240 Cushing Street
Stoughton, MA 02072-0870

19 With copy to:

20 John L. Kortum
21 Archer Norris
2033 North Main Street, Suite 800
22 Walnut Creek, CA 94596

23 If to Manley: Manley Performance Products, Inc.
1960 Swarthmore Avenue
24 Lakewood NJ 08701
Attn: Gil Morejon, CFO

25 With copy to:

26 Paul S. Rosenlund
27 Duane Morris LLP
1 Market Plaza, Spear Tower, Suite 2200
28 San Francisco, CA 94105

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IT IS SO STIPULATED:

DATED: 8/2/12

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

BY: 
WILLIAM VERICK

DATED: _____

SAMAR COMPANY, INC.

BY: _____

ITS: _____

DATED: _____

MANLEY PERFORMANCE PRODUCTS,
INC.

BY: _____

ITS: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

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IT IS SO STIPULATED:

DATED: _____

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

BY: _____
WILLIAM VERICK

DATED: _____

SAMAR COMPANY, INC.

BY: William Kelly

ITS: PRESIDENT

DATED: _____

MANLEY PERFORMANCE PRODUCTS,
INC.

BY: _____

ITS: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

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IT IS SO STIPULATED:

DATED: _____

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

BY: _____
WILLIAM VERICK

DATED: _____

SAMAR COMPANY, INC.

BY: William Kelly

ITS: PRESIDENT

DATED: 4/27/12

MANLEY PERFORMANCE PRODUCTS,
INC.

BY: H.D. Manley

ITS: V.P.

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT