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7 Attorney for Plaintiff, Darren Kenny

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10	DARREN KENNY, an individual,)	CASE NO. BC543696
11)	
11	Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
12)	
12	v.)	Judge: Hon. Richard E. Rico
13	APEX SUPPLY COMPANY, a corporation,)	Dept.: "17"
13	and DOES 1 through 100, inclusive,)	Compl. Filed: April 25, 2014
14)	
14	Defendants.)	Unlimited Jurisdiction
15)	
16)	
17)	

18 **1. Definitions**

19 1.1 "Covered Products" means brass plumbing fittings, including, but not limited to,
20 pipes, nipples, plugs, caps, nuts, unions, reducing unions, swivels, tees, adapters, elbows, and
21 3/8" flare x 3/4" MIP Adapter "C48612; AP 14972."

22 1.2 The term "Effective Date" means the date on which this Consent Judgment is
23 entered by the Court.

24 1.3 The term "Prop 65" means The Safe Drinking Water and Toxic Enforcement Act
25 of 1986, California Health & Safety Code §§ 25249.5, *et seq.*

26 1.4 The term "Plaintiff" means Plaintiff Darren Kenny.

27 1.5 The term "Defendant" means Defendant Apex Supply Company.

28 1.6 The term "Parties" means Plaintiff and Defendant.

1 **2. Introduction**

2 2.1 This Consent Judgment is entered into by and between the Parties.

3 2.2 Plaintiff is a citizen of the State of California with an interest in protecting the
4 environment, improving human health and the health of ecosystems, and supporting
5 environmentally sound practices, which includes promoting awareness of exposure to toxic
6 chemicals and reducing exposure to hazardous substances found in consumer products.

7 2.3 For purposes of this Consent Judgment, Defendant employs ten (10) or more
8 employees and is a person doing business in California for the purpose of Prop 65.

9 2.4 On or about February 8, 2014, Plaintiff served Defendant with a document
10 entitled "60-Day Notice of Violation" under Prop 65 pursuant to Health & Safety Code §
11 25249.7(d) (the "Notice") alleging that Defendant was in violation of Prop 65.

12 2.5 The Notice alleges that Defendant manufactures, distributes, and/or sells in
13 California certain plumbing products that expose consumers to lead and lead compounds without
14 the requisite Prop 65 warnings, or has done so in the past, and that its conduct violates Health &
15 Safety Code § 25249.6, the warning provisions of Prop 65.

16 2.6 On April 25, 2014, in the interest of the general public, Plaintiff filed a Complaint
17 against Defendant in the above-captioned action alleging violation of Prop 65 with respect to the
18 Covered Products.

19 2.7 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
20 Court has jurisdiction over the allegations of violation contained in the Complaint and personal
21 jurisdiction over Defendant as to the acts alleged in the Complaint; (ii) venue is proper in the
22 County of Los Angeles; and (iii) this Court has jurisdiction to enter this Consent Judgment.

23 2.8 The Parties enter into this Consent Judgment to resolve all claims of Prop 65
24 violations regarding lead and lead compounds in the Covered Products, based on the Notice and
25 Complaint, up through the Effective Date of this agreement.

26 2.9 It is the Parties' intention that nothing in this Consent Judgment shall be
27 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation
28 of law, nor shall compliance with this Consent Judgment constitute or be construed as an

1 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.

2 2.10 Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
3 remedy, argument, or defense the Parties may have in any other or future legal proceedings,
4 except as provided in this Consent Judgment.

5 **3. Injunctive Relief – Product Labeling**

6 3.1 On or before the Effective Date, to the extent it has not already done so,
7 Defendant shall not ship or deliver for sale or distribution in California Covered Products that
8 contain lead and/or lead compounds, unless such Covered Products are shipped or delivered with
9 a clear and reasonable warning as described in Sections 3.2 and 3.3.

10 3.2 Each warning required by Section 3.1 shall be placed upon each unit of the
11 Covered Products or its label or package, near the product name, price, or UPC code, in a
12 manner reasonably calculated to be seen by the ordinary consumer.

13 3.3 Product labeling. The following language, with the capitalized, emboldened and
14 italicized wording, or something in substantially similar form, shall be applied to each unit of the
15 Covered Products in the manner described in Section 3.2:

16 “**WARNING:** This product contains chemicals, including lead, known to the
17 State of California to cause cancer, birth defects and other reproductive harm. ***Do***
18 ***not use in connection with drinking water. Wash hands after handling.***”

19 **4. PAYMENTS**

20 4.1 Civil Penalty. In settlement of all causes of action in Plaintiff’s Complaint,
21 Defendant shall pay a total civil penalty of Three Thousand Dollars (\$3,000) to be allocated in
22 accordance with California Health & Safety Code Sections 15249.12(c)(1) & (d), with seventy
23 five percent (75%) of the funds remitted to the California Office of Environmental Health
24 Hazard Assessment (“OEHHA”) and the remaining twenty five percent (25%) remitted to
25 Plaintiff. Within five (5) business days of the Effective Date, Defendant shall issue two checks
26 to satisfy the payment of the civil penalties; one check in the amount of Two Thousand Two
27 Hundred Fifty Dollars (\$2,250.00) made payable to OEHHA, and a second check in the amount
28 of Seven Hundred Fifty Dollars (\$750.00) made payable to “Law Offices of Lucas T. Novak in

1 Trust for Darren Kenny.”

2 4.2 Reimbursement of Plaintiff’s Fees and Costs. Defendant shall reimburse
3 Plaintiff’s reasonable experts’ and attorneys’ fees and costs incurred in prosecuting the instant
4 action for all work performed through execution and entry of this Consent Judgment in the
5 amount of twenty two thousand dollars (\$22,000.00). Said payment shall be made in two (2)
6 installments, as follows: Defendant shall remit the first installment of \$11,000.00 within five (5)
7 business days of the Effective Date, and Defendant shall remit the second installment of
8 \$11,000.00 within the next thirty-five (35) calendar days.

9 4.3 Payment Procedures. All payments shall be delivered to:

10 Lucas T. Novak, Esq.
11 LAW OFFICES OF LUCAS T. NOVAK
12 8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

13 **5. Claims Covered and Released**

14 5.1 Plaintiff’s Release Of Defendant. Plaintiff, acting in his individual capacity, his
15 past and current agents, representatives, attorneys, successors, and/or assignees, and in the
16 interest of the general public, in consideration of the promises and monetary payments contained
17 herein, hereby releases Defendant, and each of its parents, shareholders, directors, officers,
18 employees, attorneys, and any and all successors and assigns (“Defendant Releasees”), all
19 entities to whom it or they directly or indirectly distribute or sell, or have in the past directly or
20 indirectly distributed or sold, Covered Products, including, but not limited to, distributors,
21 wholesalers, customers, and retailers (“Downstream Defendant Releasees”) from the claims
22 asserted in Plaintiff’s Complaint and the Notice regarding violation of Prop 65 with respect to
23 the Covered Products up through the Effective Date.

24 5.2 Compliance. Compliance with the terms of this Consent Judgment constitutes
25 compliance with Prop 65 with respect to the exposures to lead or lead compounds from the
26 Covered Products.

27 5.3 General Release. Each of the Parties acknowledges that it is familiar with Section
28 1542 of California Civil Code which provides as follows:

1 “A general release does not extend to claims which the creditor does not know or
2 suspect to exist in his or her favor at the time of executing the release, which if
3 known by him or her must have materially affected his or her settlement with the
4 debtor.”

5 Each of the parties waives and relinquishes any right or benefit it has or may have under Section
6 1542 of California Civil Code or any similar provision under the statutory or non-statutory law
7 of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits
8 pertaining to the claims in this Consent Judgment. The Parties acknowledge that each may
9 subsequently discover facts in addition to, or different from, those that it believes to be true with
10 respect to the claims released herein. The Parties agree that this Consent Judgment and the
11 releases contained herein shall be and remain effective in all respects notwithstanding the
12 discovery of such additional or different facts.

13 5.4 Defendant’s Release. On behalf of itself, Defendant Releasees, and Defendant
14 Downstream Releasees, Defendant waives all rights to institute any form of action against
15 Plaintiff, his past and current agents, representatives, attorneys, experts, successors, and/or
16 assignees, for actions or statements made or undertaken, whether in the course of investigating
17 claims or seeking enforcement of Prop 65 against Defendant in this matter.

18 **6. Entire Agreement**

19 6.1 This Consent Judgment contains the sole and entire agreement and understanding
20 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
22 and therein.

23 6.2 No representations, oral or otherwise, express or implied, other than those
24 specifically referred to in this Consent Judgment have been made by any party hereto.

25 6.3 No supplementation, modification, waiver, or termination of this Consent
26 Judgment shall be binding unless executed in writing by the party to be bound thereby.

27 6.4 No waiver of any provision of this Consent Judgment shall be deemed or shall
28 constitute a waiver of any of the other provisions hereof, whether similar or not, nor shall such

1 waiver constitute a continuing waiver.

2 **7. Governing Law and Application**

3 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
4 California and shall apply only to Covered Products that are sold or offered for sale in the State
5 of California.

6 7.2 This Consent Judgment shall apply to and be binding upon the Parties and their
7 successors and assigns.

8 7.3 The Parties, including their counsel, have participated in the preparation of this
9 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

10 7.4 This Consent Judgment was subject to revision and modification by the Parties
11 and has been accepted and approved as to its final form by the Parties and their counsel.

12 7.5 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment
13 shall not be interpreted against any party as a result of the manner of the preparation of this
14 Consent Judgment.

15 **8. Provision of Notice**

16 All notices required pursuant to this Consent Judgment and correspondence shall be sent
17 to the following:

18 TO DEFENDANT: 19 Ronie M. Schmelz, Esq. 20 EDWARDS WILDMAN PALMER LLP 21 1901 Avenue of the Stars, Suite 1700 22 Los Angeles, CA 90067	23 TO PLAINTIFF: 24 Lucas T. Novak, Esq. 25 LAW OFFICES OF LUCAS T. NOVAK 26 8335 W Sunset Blvd., Suite 217 27 Los Angeles, CA 90069
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28 **9. Execution and Counterparts**

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

10. Compliance with Health and Safety Code Section 25249.7(f)

Plaintiff agrees to comply with the reporting form requirements referenced in California

1 Health and Safety Code Section 25249.7(f).

2 **11. Court Approval**

3 11.1 This Consent Judgment shall become effective upon entry by the Court.

4 11.2 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a
5 noticed Motion for Approval & Entry of Consent Judgment in the above-entitled Court. This
6 Consent Judgment is not effective until it is approved and entered by the Court and shall be null
7 and void, and shall never be introduced into evidence or otherwise used in any proceeding for
8 any purpose if, for any reason, it is not approved and entered by the Court within one (1) year
9 after its full execution by all Parties. It is the intention of the Parties that the Court approve this
10 Consent Judgment, and in furtherance of obtaining such approval, the Parties and their respective
11 counsel agree to mutually employ their best efforts to support the entry of this agreement in a
12 timely manner, including cooperating on drafting and filing any papers in support of the required
13 motion for judicial approval.

14 **12. Authorization**

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

18 **13. Severability**

19 Subsequent to Court approval of this Consent Judgment, should any part or provision of
20 this Consent Judgment or Prop 65, for any reason, be declared by the California legislature or a
21 Court to be invalid, void, or unenforceable, the remaining portions and provisions shall continue
22 in full force and effect.

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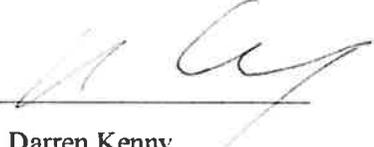
The undersigned have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

Except as explicitly provided herein, each party to bear his or its own fees and costs.

AGREED TO:

Date: September 5, 2014

Plaintiff Darren Kenny

By: 
Darren Kenny

Date: September __, 2014

Defendant Apex Supply Company

By: _____
Its: _____

ORDER AND JUDGMENT

Based upon the Stipulated Consent Judgment between Plaintiff Darren Kenny, on the one hand, and Defendant Apex Supply Company, on the other hand, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: _____

Judge of the Los Angeles Superior Court

1 The undersigned have read, understood, and agree to all of the terms and conditions of
2 this Consent Judgment.

3 Except as explicitly provided herein, each party to bear his or its own fees and costs.

4 AGREED TO:

5 Date: September __, 2014

Plaintiff Darren Kenny

6
7 By: _____

8 Darren Kenny

9
10 Date: September 4, 2014

Defendant Apex Supply Company

11
12 By: *[Signature]*
13 Its: *vice President*

14
15 **ORDER AND JUDGMENT**

16 Based upon the Stipulated Consent Judgment between Plaintiff Darren Kenny, on the one
17 hand, and Defendant Apex Supply Company, on the other hand, the settlement is approved and
18 the clerk is directed to enter judgment in accordance with the terms herein.

19
20 Dated: _____

21 Judge of the Los Angeles Superior Court