

JAN 31 2011

CLERK OF THE COURT
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18 MATEEL ENVIRONMENTAL JUSTICE
19 FOUNDATION

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF SAN FRANCISCO

22 MATEEL ENVIRONMENTAL
23 JUSTICE FOUNDATION..

24 Plaintiff,

25 v.

26 APACHE HOSE & BELTING
27 COMPANY, INC., et al.,

28 Defendants.

Case No. CGC – 10 - 497228

CONSENT JUDGMENT

(APACH HOSE & BELTING
COMPANY, INC., and FERRELLGAS
L.P., dba, BLUE RHINO)

1. INTRODUCTION

1.1 On December 21, 2009, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. 495336, against, inter alia, Apache Hose & Belting Company, Inc., (Apache), and Ferrellgas, L.P., a Delaware Limited Partnership, dba Blue Rhino

1 (Blue Rhino), each referred to individually as a Settling Defendant and collectively as
2 Settling Defendants. The Complaint alleges, among other things, that Settling Defendants
3 violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,
4 Health and Safety Code Sections 25249.5, et seq. ("Proposition 65"). In particular,
5 Mateel alleges that Settling Defendants have knowingly and intentionally exposed persons
6 to products that are made of brass or which incorporate components which are made of
7 brass, and the brass contains lead and/or lead compounds, without first providing a clear
8 and reasonable warning to such individuals. Lead and lead compounds are chemicals
9 known to the State of California to cause cancer and birth defects or other reproductive
10 harm.

11 1.2 On April 1, 2009, Mateel sent a 60-Day Notice letter ("Notice Letter") to
12 Blue Rhino, the California Attorney General, all California District Attorneys, and all City
13 Attorneys of every California city with populations exceeding 750,000.

14 1.3 On May 21, 2009, Mateel sent a 60-Day Notice letter to Apache, the
15 California Attorney General, all California District Attorneys, and all City Attorneys of
16 every California city with populations exceeding 750,000.

17 1.4 Each Settling Defendant is a business that employs ten or more persons and
18 manufactures, distributes, and/or markets leaded brass products within the State of
19 California. Some of these products are alleged to contain lead and/or lead compounds.
20 Lead and lead compounds are chemicals known to the State of California to cause cancer,
21 and lead is a chemical known to the State of California to cause reproductive toxicity
22 pursuant to Health and Safety Code Section 25249.9. Under specified circumstances,
23 products containing lead and/or lead compounds that are sold or distributed in the State of
24 California are subject to the Proposition 65 warning requirement set forth in Health and
25 Safety Code Section 25249.6. Plaintiff Mateel alleges that products that are made from
26 leaded brass, or that have leaded brass components, are manufactured, distributed, sold
27 and/or marketed by Settling Defendants for use in California and require a warning under
28 Proposition 65.

1 1.5 For purposes of this Consent Judgment, the term "Covered Products" shall
2 be defined as brass products that are made from leaded brass or that have leaded brass
3 components and are manufactured, distributed, marketed and/or sold by a Settling
4 Defendant as set out in the Notice Letters. The "Effective Date" shall be defined as 90
5 days after entry of this Consent Judgment.

6 1.6 For purposes of this Consent Judgment, the parties stipulate that this Court
7 has jurisdiction over the allegations of violations contained in the Complaint and personal
8 jurisdiction over each Settling Defendant as to the acts alleged in the Complaint, that
9 venue is proper in the County of San Francisco and that this Court has jurisdiction to enter
10 this Consent Judgment as a full settlement and resolution of the allegations contained in
11 the Complaint and of all claims that were or could have been raised by any person or
12 entity based in whole or in part, directly or indirectly, on the facts alleged therein or
13 arising therefrom or related thereto. This Consent Judgment resolves claims that are
14 denied and disputed. The parties enter into this Consent Judgment pursuant to a full and
15 final settlement of any and all claims between the parties for the purpose of avoiding
16 prolonged litigation. This Consent Judgment shall not constitute an admission with
17 respect to any material allegation of the Complaint, each and every allegation of which
18 each Settling Defendant denies, nor may this Consent Judgment or compliance with it be
19 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of a
20 Settling Defendant.

21 2. SETTLEMENT PAYMENT

22 2.1 In settlement of all of the claims referred to in this Consent Judgment
23 Settling defendants, shall pay forty-five thousand dollars(\$45,000), in total monetary
24 relief. Of this amount, a total of fifteen thousand dollars (\$15,000) (nine thousand
25 (\$9,000) to be paid by Blue Rhino and six thousand (\$6,000) to be paid by Apache) shall
26 be paid in lieu of and as an offset for any civil penalty and shall be divided such that seven
27 thousand five hundred dollars (\$7,500) shall be made payable to Californians for
28 Alternatives to Toxics, and seven thousand five hundred dollars (\$7,500) shall be made

1 payable to Ecological Rights Foundation. Also, thirty thousand dollars (\$30,000) (sixteen
2 thousand (\$16,000) to be paid by Blue Rhino and fourteen thousand (\$14,000) to be paid
3 by Apache) shall be made payable to the Klamath Environmental Law Center ("KELC")
4 for attorneys fees and costs incurred by KELC on behalf of Plaintiff in investigating and
5 prosecuting this matter and in negotiating this Consent Judgment on behalf of itself and in
6 the public interest. The payments described above shall be delivered at least ten (10) days
7 prior to any hearing on a motion to approve this settlement. to William Verick, Esq.,
8 Klamath Environmental Law Center, 424 First Street, Eureka, CA 95501. If payment has
9 not been received as provided in this paragraph, Plaintiff may withdraw any motion to
10 approve and enter the agreement and the agreement shall become null and void. If this
11 Consent Judgment has not been approved and entered by the Court within 120 days of the
12 execution of the agreement by the parties, the payments described above shall be promptly
13 returned to the Settling Defendants, and the terms of this agreement shall be null and void.

14 2.2 MEJF and KELC represents and warrants that recipients of the offset
15 payments are each a tax exempt, section 501(c)(3) non-profit organization and that funds
16 distributed to each organization pursuant to this Consent Judgment may only be spent to
17 reduce harm from toxic chemicals, or to increase consumer, worker and community
18 awareness of health hazards posed by lead and other toxic chemicals.

19 2.3 Except as specifically provided in this Consent Judgment, each side shall
20 bear its own costs and attorney's fees.

21 3. ENTRY OF CONSENT JUDGMENT

22 3.1 The parties hereby request that the Court promptly enter this Consent
23 Judgment. Upon entry of the Consent Judgment, Settling Defendants and Mateel waive
24 their respective rights to a hearing or trial on the allegations of the Complaint.

25 4. MATTERS COVERED BY THIS CONSENT JUDGMENT

26 4.1 This Consent Judgment is a full, final and binding resolution between
27 Settling Defendants and Mateel, acting on behalf of itself and, as to those matters raised in
28 the 60 Day Notice Letter, acting in the public interest pursuant to Health and Safety Code

1 section 25249.7(d), of all matters that are or that could have been alleged in the
2 Complaint, including any violation of Proposition 65, or the regulations promulgated
3 thereunder, to the fullest extent that any violation could have been asserted by Mateel
4 against the Settling Defendant based upon, arising out of, or relating to Settling
5 Defendant's compliance with Proposition 65, or regulations promulgated thereunder, with
6 respect to exposures to lead or lead compounds from the Covered Products (and
7 components thereof), whether based on actions committed by Settling Defendant, or by
8 any other entity within the chain of manufacture, distribution and sale of the Covered
9 Products. As to alleged lead and lead compound exposures from Covered Products, as
10 expressed in the 60 Day Notice Letters, compliance with the terms of this Consent
11 Judgment resolves any issue, now and in the future, concerning compliance by Settling
12 Defendant and its parents, subsidiaries or affiliates, divisions, predecessors, successors,
13 assigns, officers, directors, shareholders, attorneys, representatives, agents, employees,
14 and all manufacturers, customers, distributors, wholesalers, retailers or any other person in
15 the course of doing business involving the Covered Products, and the successors and
16 assigns of any of these who may manufacture, use, maintain, distribute, market or sell
17 Covered Products, with the current requirements and standards of Proposition 65. This
18 Consent Judgment also is a full, final and binding resolution between Plaintiff and Settling
19 Defendant as to any other claims that could have been asserted against Settling Defendant
20 or its affiliates, parent or subsidiary corporations, divisions, successors, officers, directors,
21 shareholders, attorneys, representatives, agents, assigns, distributors, manufacturers,
22 retailers, or customers for failure to disclose the presence of lead (or lead compounds) in
23 or associated with use of the Covered Products.

24 4.2 As to alleged lead exposures associated with Covered Products, Mateel,
25 acting on behalf of itself, and its agents, attorneys, representatives, successors and
26 assigns, waives all rights to institute any form of legal action, and releases all claims
27 against each Settling Defendant and its parents, subsidiaries or affiliates, predecessors,
28 officers, directors, shareholders, attorneys, representatives, agents, employees, and all

1 customers, manufacturers, distributors, wholesalers, retailers, or any other person in the
2 course of doing business involving the Covered Products, and the successors and assigns
3 of any of them, who may manufacture, use, maintain, distribute or sell the Covered
4 Products or components found in the Covered Products, including, but not limited to, any
5 claims regarding exposure to, and/or failure to warn with respect to, the Covered Products.

6 In furtherance of the foregoing, as to alleged violations of Proposition 65 and lead
7 exposures to Covered Products, Mateel hereby waives any and all rights and benefits
8 which it now has, or in the future may have respecting the Covered Products, conferred
9 upon it with respect to claims involving Covered Products by virtue of the provisions of
10 Section 1542 of the California Civil Code, which provides as follows:

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

18 Mateel understands and acknowledges that the significance and consequence of
19 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
23 not be able to make any claim for those damages against each Settling Defendant, its
24 parents, subsidiaries or affiliates, predecessors, officers, directors, shareholders,
25 representatives, attorneys, agents, employees, and all customers, manufacturers,
26 distributors, wholesalers, retailers or any other person in the course of doing business
27 involving the Covered Products, and the successors and assigns of any of them, who may
28 manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel

1 acknowledges that it intends these consequences for any such claims and any other claims
2 for violations of Proposition 65 which may exist as of the date of this release but which
3 Mateel does not know exist, and which, if known, would materially affect its decision to
4 enter into this Consent Judgment, regardless of whether its lack of knowledge is the result
5 of ignorance, oversight, error, 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
10 terms and conditions contained herein. The parties hereto agree that prior to any such
11 enforcement action, they will notify each other of any perceived violation of this Consent
12 Judgment. The parties further agree to take no enforcement action for 30 days after such
13 notice is given, in order to allow the parties to meet and confer in good faith in an effort to
14 resolve the alleged 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 the
22 requirements of Proposition 65 for lead and be exempt from any Proposition 65 warning
23 requirements for lead if the brass that is part of the Covered Products meets the following
24 criteria: (a) the brass alloy from which the brass fittings are made shall have a lead
25 content by weight of no more than 0.03% (300 parts per million, or "300 ppm"). Each
26 Settling Defendant may comply with the above requirements by relying on information
27 obtained from its suppliers regarding the content of the brass alloy from which the brass
28 fittings are made, provided such reliance is in good faith. Obtaining test results showing

1 that the lead content is no more than 0.03%, using a method of sufficient sensitivity to
2 establish a limit of quantification (as distinguished from detection) of less than 300 ppm
3 shall be deemed to establish good faith reliance.

4 7.2 Covered Products that do not meet the warning exemption standard set forth
5 in 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
7 only to products a Settling Defendant manufactures, distributes, markets, sells or ships
8 after the Effective Date for sale or use inside the State of California.

9 7.3 Each Settling Defendant shall provide Proposition 65 warnings as follows:

10 (a) Each Settling Defendant shall provide either of the following warning
11 statements:

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
14 not place your hands in your mouth after handling the product. *Wash your*
15 *hands after touching this product.*

16 or

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

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

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

1 (b) The requirements for product labeling, set forth in subparagraph (a)
2 above are imposed pursuant to the terms of this Consent Judgment. The
3 parties recognize that product labeling is not the exclusive method of
4 providing a warning under Proposition 65 and its implementing regulations.

5 (c) Except as otherwise provided for herein, this Consent Judgment may
6 be modified only upon written agreement of the parties and upon entry of a
7 modified judgment by the Court thereon, or upon motion of any party as
8 provided by law and upon entry of a modified judgment by the Court.

9 Mateel agrees to stipulate by written agreement to a modification if it agrees
10 that the law has changed such that Proposition 65 warnings for lead or lead
11 compounds are no longer required.

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

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

25 **8. AUTHORITY TO STIPULATE**

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

1 9. RETENTION OF JURISDICTION

2 This Court shall retain jurisdiction of this matter to implement the Consent
3 Judgment.

4 10. ENTIRE AGREEMENT

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

11 11. GOVERNING LAW

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

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12. NOTICES

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

To Plaintiff Mateel:
William Verick, Esq.
Klamath Env. Law Center
424 First Street
Eureka, CA 95501

To Defendant Apache:
Apache Hose & Belting Company, Inc.
Attention: Tom Pientok
4805 Bowling Street SW
Cedar Rapids, Iowa 52404

To Defendant Blue Rhino:
Trent Hampton
Ferrellgas
7500 College Boulevard, Suite 1000
Overland Park, KS 66210

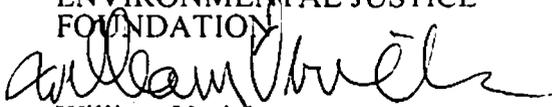
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13. COURT APPROVAL

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

IT IS SO STIPULATED:

DATED:

MATEEL
ENVIRONMENTAL JUSTICE
FOUNDATION

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

DATED:

APACHE HOSE & BELTING
COMPANY, INC

By:
Its:

DATED:

FERRELLGAS, L.P.
(dba BLUE RHINO)

By:
Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT

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13. COURT APPROVAL

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

IT IS SO STIPULATED:

DATED:

MATEEL
ENVIRONMENTAL JUSTICE
FOUNDATION

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

DATED:

APACHE HOSE & BELTING
COMPANY, INC

By:
Its:

DATED: 1-14-11

FERRELLGAS, L.P.
(dba BLUE RHINO)


By: Trent Hampton
Its: VP - LEGAL

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT

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13. COURT APPROVAL

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

IT IS SO STIPULATED:

DATED:

MATEEL
ENVIRONMENTAL JUSTICE
FOUNDATION

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

DATED:

APACHE HOSE & BELTING
COMPANY, INC

By:

Its:


PRESIDENT & CEO

DATED:

FERRELLGAS, L.P.
(dba BLUE RHINO)

By:

Its:

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

A. JAMES ROBERTSON, II
JUDGE OF THE SUPERIOR COURT
A. JAMES ROBERTSON, II

JAN 3 1 2011