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**ENDORSED
FILED**
San Francisco County Superior Court

FEB 15 2007

GORDON PARK-LI, Clerk
BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11
12 FOR THE COUNTY OF SAN FRANCISCO

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15 MATEEL ENVIRONMENTAL JUSTICE
16 FOUNDATION,

17 Plaintiff,

18 vs.

19 BELL SPORTS, INC., et al.

20 Defendants.
21
22

) Case No. CGC-06-454917

) ~~PROPOSED~~ CONSENT JUDGMENT

23 1. INTRODUCTION

24 1.1 On or about October 17, 2005 and April 24, 2006, the Mateel Environmental Justice
25 Foundation ("MEJF") and its attorneys, Klamath Environmental Law Center ("KELC") sent 60-day
26 notice letters to the Office of the California Attorney General of the State of California ("California
27
28

1 Attorney General”), all California counties’ District Attorneys and all City Attorneys of California
2 cities with populations exceeding 750,000, (“Notice Letters”), charging defendant K2, Inc. (“K2” or
3 “Defendant”) with violating the Safe Drinking Water and Toxic Enforcement Act of 1986,
4 California Health and Safety Code Section 25249.5 et seq. (“Proposition 65”), in its manufacture,
5 distribution and/or sale of bicycles and tricycles (collectively, “Bicycles”). MEJF charged, *inter*
6 *alia*, that persons handling plastic handlebar grips (“Grips”) and/or brake or derailleur cables that are
7 housed in thermoplastic (collectively, “Cables”) on Bicycles were exposed to lead and lead
8 compounds, which are chemicals listed under Proposition 65.

9 1.2 On August 8, 2006, MEJF (“Plaintiff”), acting on behalf of itself, the public interest,
10 and the general public for the matters described in the Notice Letters, filed a Complaint for civil
11 penalties and injunctive relief (“Complaint”) in the San Francisco Superior Court fashioned
12 *Mateel v. Bell Sports, Inc. et al.*, Case No. CGC-06-454917, based on the Notice Letter. The
13 Complaint alleged, among other things, that Defendant violated Proposition 65 by manufacturing,
14 marketing and/or distributing to California residents Covered Products (as defined in Paragraph 1.4
15 below) and failing to provide clear and reasonable warnings to California residents who handle and
16 use such products that the handling and use of those products in their normally intended manner will
17 cause those persons to be exposed to Proposition 65 Chemicals.

18 1.3 For purposes of this Consent Judgment, unless otherwise set forth herein, the terms
19 described in this Paragraph 1.3 shall have the following meanings. Plaintiff and Defendant are
20 collectively referred to as the “Parties,” with each of them a “Party.” The term “Covered Products”
21 means Bicycles and/or Bicycle Accessory Products manufactured, distributed, marketed or sold by
22 Defendant. The term “Covered Products” includes products which are or were manufactured,
23 distributed, marketed and/or sold by Defendant either under its own name or brand or under the
24 name or brand of another (e.g., privately labeled products). The term “PVC Components” refers to
25 Grips and Cables that are composed of or housed in thermoplastic and that are (i) on the Bicycle at
26 the time it is sold to consumers or (ii) sold separately as replacement parts for those components.
27 MEJF has alleged that (a) Defendant is a business that employs more than ten persons and
28 manufactures, distributes and/or sells or makes available for sale Covered Products into the State of

1 California, and (b) the Covered Products offered for sale in California by Defendant contain one or
2 more Proposition 65 Chemicals. Defendant denies these and all of MEJF's other allegations.

3 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
4 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
5 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of San
6 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and
7 final resolution of the allegations contained in the Complaint and Notice Letters and of all claims
8 which were or could have been raised by any person or entity based in whole or in part, directly or
9 indirectly, on the facts alleged therein, arising therefrom or related thereto.

10 1.5 The Parties enter into this Consent Judgment pursuant to a full and final settlement of
11 any and all claims between the Parties for the purpose of avoiding prolonged litigation. This
12 Consent Judgment shall not constitute an admission with respect to any material allegation in the
13 Complaint, each and every allegation of which Defendant denies; nor may this Consent Judgment or
14 compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on
15 the part of Defendant.

16 2. **SETTLEMENT PAYMENT**

17 In settlement of all of the claims that are alleged, or could have been alleged, in the Complaint
18 concerning Defendant, within 10 days following the Court's entry of a final judgment, Defendant
19 shall pay \$30,000 to the Klamath Environmental Law Center ("KELC") to cover Plaintiff's
20 attorneys' fees. Additionally, within 10 days following the Court's entry of a final judgment,
21 including any third-party appeals to the entry of the judgment, Defendant shall pay \$15,000 to
22 Californians for Alternatives to Toxics; and \$15,000 to the Ecological Rights foundation for use
23 toward reducing exposures to toxic chemicals and other pollutants, and toward increasing consumer,
24 worker and community awareness of health hazards posed by lead and other toxic chemicals.
25 Defendant shall not be required to pay a civil penalty pursuant to Health and Safety Code section
26 25249.7(b).

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1 3. **ENTRY OF CONSENT JUDGMENT**

2 The Parties request that the Court promptly enter this Consent Judgment and waive their
3 respective rights to a hearing or trial on the allegations of the Complaint.

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

5 4.1 For purposes of Section 4 of this Consent Judgment, the term Defendant shall include
6 K2, Inc. and its past, present and future parents, divisions, subdivisions, subsidiaries and affiliates
7 and the predecessors, successors and assigns of any of them, as well as their past, present and future
8 officers, directors, employees, agents, attorneys, representatives, shareholders and assigns. For
9 purposes of this Section 4, the term Defendant shall also be deemed to include Defendant's direct
10 and indirect suppliers of Covered Products, but only with respect to those Covered Products that
11 such direct or indirect supplier manufactures for Defendant. In addition, for purposes of this Section
12 4, the term Defendant also includes, with respect to Defendant's Covered Products only, Defendant's
13 chain of distribution, including, but not limited to, customers, wholesale or retail sellers or
14 distributors and any other person in the course of doing business.

15 4.2 As to all matters addressed in the Notice Letters and Complaint, this Consent
16 Judgment constitutes a final and binding resolution and release of liability between Plaintiff acting
17 on behalf of itself and in the public interest pursuant to Health and Safety Code Section 25249.7(d)
18 and Defendant or its parents, subsidiaries or affiliates, and all of their customers, distributors,
19 wholesalers, retailers, and the successors and assigns of any of them, of any violation of
20 Proposition 65 with respect to exposures to the Proposition 65 Chemicals associated with the use or
21 handling of Covered Products.

22 4.3 This Consent Judgment also constitutes a final and binding resolution and release of
23 liability between Plaintiff and Defendant with respect to any other statutory or common law claim
24 that could have been asserted against Defendant or its parents, subsidiaries or affiliates, and all of
25 their customers, distributors, wholesalers, retailers, and the successors and assigns of any of them,
26 based on its or their exposure of persons to chemicals contained in or otherwise associated with the
27 use of Covered Products manufactured, sold or distributed by, for or on behalf of Defendant and/or
28 its alleged failure to provide a clear and reasonable warning of such exposure to such individuals.

1 4.4 As to all matters addressed in the Notice Letters and Complaint, any claims,
2 violations (except violations of this Consent Judgment), actions, damages, costs, penalties, or causes
3 of action which may arise or have arisen after the original date of entry of this Consent Judgment,
4 compliance by Defendant with the terms of this Consent Judgment shall be deemed to constitute its
5 full and complete compliance with Proposition 65 and shall bar such claims or the re-litigation of
6 issues underlying such claims under the doctrines of res judicata and collateral estoppel.

7 4.5 As to the alleged exposures to Covered Products, compliance with the terms of this
8 Consent Judgment resolves any issue, now and in the future, concerning compliance by Defendant or
9 its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers,
10 and the successors and assigns of any of them with the requirements of Proposition 65 with respect
11 to Covered Products and any alleged resulting exposure. Nothing in this Consent Judgment shall be
12 deemed to release, from past liability under Proposition 65, any entity which incorporates
13 Components obtained from Defendant into a Covered Product.

14 4.6 Defendant waives all rights to institute any form of legal action against Plaintiff, its
15 officers, directors, attorneys, consultants and representatives for all actions undertaken or statements
16 made in the course of this Action as of the Effective Date of this Consent Judgment.

17 4.7 MEJF, by and on behalf of itself and its respective agents, successors and assigns,
18 waives any and all rights to institute any form of legal action, and releases all claims against
19 Defendant, its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers,
20 retailers, and the successors and assigns of any of them, who may use, maintain, distribute or sell the
21 Covered Products, whether under Proposition 65 or otherwise, arising out of or resulting from, or
22 related directly or indirectly to, in whole or in part, the Covered Products, including by not limited to
23 an exposure to, or failure to warn with respect to, the Covered Products (referred collectively in the
24 paragraph as the "Claims"). In furtherance of the foregoing, MEJF hereby waives any and all rights
25 and benefits which it now has, or in the future may have, conferred upon it with respect to the
26 Claims by virtue of the provisions of Section 1542 of the California Civil Code, which provides as
27 follows:
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
2 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
3 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

4 MEJF understands and acknowledges that the significance and consequence of this waiver of
5 California Civil Code Section 1542 is that even if MEJF suffers future damages arising out of or
6 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, including
7 but not limited to any exposure to, or failure to warn with respect to exposure, the Covered Products,
8 MEJF will not be able to make any Claim for those damages against Defendant or its parents,
9 subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers, and the
10 successors and assigns of any of them. Furthermore, MEJF acknowledges that it intends these
11 consequences for any such Claims as may exist as of the date of this release buy which MEJF does
12 not know exist, and which, if known would materially affect their decision to enter into this Consent
13 Judgment, regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
14 negligence, or any other cause.

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17 5. **ENFORCEMENT OF JUDGMENT**

18 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
19 hereto by means of noticed motion or order to show cause before the Superior Court of San
20 Francisco County.

21 6. **MODIFICATION OF JUDGMENT**

22 This Consent Judgment may be modified only upon written agreement of the Parties and
23 upon entry of a modified amended Consent Judgment by the Court, or upon motion of any Party as
24 provided by law and upon entry of a modified amended Consent Judgment by the Court; any such
25 stipulation shall be served on the California Attorney General no less than 15 days prior to its filing
26 with the Court and any such motion shall be served on the California Attorney General when it is
27 filed with the Court.

1 **7. INJUNCTIVE RELIEF**

2 On and after January 1, 2007, if Defendant sells any Covered Products for resale or use in
3 California these Covered Products will meet the following criteria:

4 (a) the Surface Contact Layers of PVC Components shall have no lead as an
5 intentionally added constituent; and

6 (b) the Surface Contact Layer of PVC Components shall have lead content by weight
7 as follows:

8 (i) for PVC Components on Bicycles having wheels that measure over 20 inches
9 in diameter, and for all other PVC Components, no more than 0.03% (300
parts per million);

10 (ii) for PVC Components on Bicycles having wheels that measure 20 inches or
11 less in diameter, no more than 0.003% (30 parts per million).

12 7.2 Defendant may comply with the criteria set forth in Paragraph 7.1 above
13 (“Reformulation Levels”) by relying on information obtained from its suppliers regarding the
14 content of the Surface Contact Layer of the PVC Components and Painted Components, provided
15 such reliance is in good faith. Obtaining test results showing that the lead content does not exceed
16 the Reformulation Levels using a method of sufficient sensitivity to establish a limit of
17 quantification (as distinguished from detection) of less than the Reformulation Level required for
18 each Covered Product, shall be deemed to establish good faith reliance. Nothing in the preceding
19 two sentences shall preclude Defendant from establishing good faith reliance by an alternative
20 means

21 **8. APPLICATION OF JUDGMENT**

22 As to all matters addressed in the Notice Letters and the Complaint, the obligations of this
23 Consent Judgment shall apply to and be binding upon all plaintiffs acting in the public interest
24 pursuant to Health and Safety Code section 25249.7(d), and Defendant and its successors or assigns.
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1 9. **AUTHORITY TO STIPULATE**

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

5 10. **NOTICES**

6 Any notices under this Consent Judgment shall be by personal delivery of First Class Mail.

7 If to MEJF: William Verick, Esq.
8 Klamath Environmental Law Center
9 424 First Street
Eureka, CA 95501

10 If to K2, Inc.: Monte H. Baier, Vice President
11 K2, Inc.
12 5818 El Camino Real
Carlsbad, California 92000

13 With copies to:
14 Thomas J.P. McHenry
15 Gibson, Dunn & Crutcher LLP
16 333 South Grand Avenue, 49th Floor
Los Angeles, CA 90071

17
18 11. **RETENTION OF JURISDICTION**

19 This Court shall retain jurisdiction of this matter to implement the terms of injunctive relief
20 provided for in this Consent Judgment and hear any motion or application properly made by a party
21 hereto.

22 12. **ENTIRE AGREEMENT**

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

1 **13. GOVERNING LAW**

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

4 **14. COURT APPROVAL**

5 If this Consent Judgment is not approved and entered by the Court, or if the entry of this
6 Consent Judgment is successfully challenged, this Consent Judgment shall be of no force or effect,
7 and cannot be used in any proceeding for any purpose.

8 **15. COUNTERPARTS**

9 This Consent Judgment may be executed in any number of counterparts, each of which shall
10 be deemed to be an original and all of which taken together shall be deemed to be one and the same
11 instrument.

12 IT IS SO STIPULATED:

13 DATED: 12/27/06

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

14
15 By: William Verick
16 William Verick
Attorney for Plaintiff

17 DATED: Dec. 1, 2006

18 K2, INC.

19
20 By: John D. Flynn
John D. Flynn
Assoc. General Counsel

21 IT IS SO ORDERED, ADJUDGED AND DECREED:

22 DATED: FEB 15 2007

23 _____
PETER J. BUSCH
24 JUDGE OF THE SUPERIOR COURT

25 PETER J. BUSCH
26
27
28

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10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

14
15 MATEEL ENVIRONMENTAL JUSTICE
16 FOUNDATION,

17 Plaintiff,

18 vs.

19 BELL SPORTS, INC., et al.,

20 Defendants.

CASE NO. 454917

[proposed] ORDER APPROVING
SETTLEMENT

Date: February 15, 2007
Time: 9:30 a.m.
Dept. No.: 301

21
22 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
23 noticed motion on February 15, 2007. The court finds that:

- 24 1. The reformulation requirements of the Consent Judgment comply with the
25 requirements of Proposition 65;
26 2. The payments in lieu of civil penalty specified in the Consent Judgment are
27 reasonable based on the criteria in Cal Health & Safety Code §25249.7(b)(2); and
28

**ENDORSED
FILED**
San Francisco County Superior Court

FEB 15 2007

GORDON PARK-LI, Clerk
BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

