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Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

JAN 1 4 2008

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION, Plaintiff, vs. KENNETH COLE PRODUCTIONS, INC., Defendant.	Case No. 463859 ~~[PROPOSED]~~ **CONSENT JUDGMENT**

1. INTRODUCTION

1.0 On May 31, 2007, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Plaintiff" or "MEJF") 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. 463859, against defendant, KENNETH COLE PRODUCTIONS, INC. ("Defendant" or "KCP"), among others. (MEJF and KCP are collectively referred to as "the Parties.") The

Complaint alleges that KCP violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5, et seq. (Proposition 65), and Business and Professions Code sections 17200 et seq. (the "Unfair Competition Act"), by, among other things, knowingly and intentionally exposing persons to products containing lead and/or lead compounds, which are chemicals known to the State of California to cause cancer and/or birth defects or other reproductive harm, without first providing a clear and reasonable warning to such individuals. The Complaint was based upon a 60-Day Notice letter, dated March 15, 2007, sent by MEJF to KCP, the California Attorney General, all District Attorneys, and all City Attorneys with populations exceeding 750,000. A copy of the 60-Day Notice letter is attached as Exhibit A to the complaint in this action.

1.1 KCP filed a timely answer to the Complaint denying each and every allegation set forth therein and asserting numerous affirmative defenses.

1.2 Defendant is a business that employs more than ten persons and, itself or through its manufacturers, customers, licensees and business partners, manufactures, distributes and/or markets within the State of California children's jackets made with lead-containing polyvinyl chloride, neoprene and/or other plastic materials ("PVC Materials"). Pursuant to Proposition 65, lead and lead compounds are chemicals known to the State of California to cause cancer and reproductive toxicity. Products containing lead and/or lead compounds that are sold or distributed in the State of California may be, under specified circumstances, subject to the Proposition 65 warning requirement set forth in Health and Safety Code section 25249.6. Plaintiff alleges that children's jackets made with lead-containing PVC Materials ("PVC Jackets") that are manufactured, distributed, sold and/or marketed by KCP for use in California, require a warning under Proposition 65.

1.3 For purposes of this Consent Judgment, the term "Covered Products" shall be defined as PVC Jackets that: (i) are distributed, sold or used within the State of California, and (ii) either (a) bear a KCP trademark, or (b) are otherwise manufactured, distributed or sold by or on behalf of KCP.

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

1.5 KCP disputes that it has violated Proposition 65 as described in the 60-Day Notice Letter, the Complaint, or otherwise. This Consent Judgment shall not constitute an admission with respect to any material allegation of the Complaint, each and every allegation of which KCP denies, nor may this Consent Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of KCP.

2. SETTLEMENT PAYMENT

2.0 In settlement of all of the claims that are alleged, or could have been alleged, in the Complaint KCP shall pay $20,000 to the Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally, KCP shall pay $20,000 to the Ecological Rights Foundation for use toward reducing exposures to toxic chemicals and other pollutants, and toward increasing consumer, worker and community awareness of health hazards posed by lead and other toxic chemicals. The parties agree and acknowledge that the charitable contributions made pursuant to this section shall not be construed as a credit against personal claims by absent third parties, if any, for restitution against Defendant. KCP shall not be required to pay a civil penalty pursuant to Health and Safety Code section 25249.7(b). The above described payments shall be forwarded by Defendant so that they are received at least 5 days prior to the hearing date scheduled for approval of this Consent Judgment. If the Consent Judgment is not approved with 120 days of the date scheduled for approval, the above-described payments shall be returned and the provisions of this Consent judgment shall become null and void.

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3. ENTRY OF CONSENT JUDGMENT

3.0 The Parties hereby request that the Court enter this Consent Judgment forty-five (45) days after the Consent Judgment is served on the Attorney General in accordance with Title 11, California Code of Regulations, section 3003(a). Upon the Court's entry of a final judgment, including any third-party appeals to the entry of the judgment, MEJF and KCP waive their respective rights to a hearing or trial on the allegations in the Complaint.

4. MATTERS COVERED BY THIS CONSENT JUDGMENT

4.0 This Consent Judgment, once entered by the Court, is a final and binding resolution between MEJF, acting on behalf of itself and (as to those matters raised in the Notice Letter) the general public, and KCP of: (i) any violation of Proposition 65 or the Unfair Competition Act (including but not limited to the claims made in the Complaint); and (ii) any other statutory or common law claim to the fullest extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any person or entity against KCP or its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell Covered Products ("Released Entities"), based on its or their exposure of persons to Covered Products or their failure to provide a clear and reasonable warning of exposure to such individuals; and (iii) as to alleged exposures to Covered Products, any other claim based in whole or in part on the facts alleged in the Complaint, whether based on actions or omissions by the Released Entities. As to alleged exposures to Covered Products, compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by KCP and the Released Entities, with the requirements of Proposition 65 and the Unfair Competition Act with respect to Covered Products, and any alleged resulting exposure.

4.1 As to alleged exposures to Covered Products and other claims in the Complaint, MEJF, by and on behalf of itself, and its respective agents, successors, attorneys and assigns, waives any and all rights to institute any form of legal action, and releases all claims against KCP and the Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of

their customers, distributors, wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell the Covered Products, whether, under Proposition 65, the Unfair Competition Act or any other statute, provision of common law or any theory or issue, arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not limited to any exposure to, or failure to warn with respect to, the Covered Products (referred to collectively in this paragraph as the "Claims"). In furtherance of the foregoing, as to alleged exposures to Covered Products, MEJF hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it with respect to the Claims by virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:

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

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

5. ENFORCEMENT AND PRECLUSIVE EFFECT OF JUDGMENT

5.0 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of

San Francisco County, giving the notice required by law, enforce the terms and conditions contained herein. In any proceeding brought by either party to enforce this Consent Judgment, such Party may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation of Proposition 65 or this Consent Judgment. Additionally, if in such a proceeding the Court finds that KCP failed to comply with the reformulation requirements as specified in Section 7 of this Consent Judgment, and notwithstanding any other provision of this Consent Judgment, then as to such Covered Products, KCP shall not benefit from any release from liability specified in any provision of this Consent Judgment.

6. MODIFICATION OF JUDGMENT

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

7. INJUNCTIVE RELIEF

7.0 On and after January 1, 2008, the PVC Materials in all Covered Products manufactured by KCP, itself or through its manufacturers, licensees and business partners, for distribution or use in California, shall meet the following criteria:

(a) The PVC Materials shall have no lead as an intentionally added constituent;

(b) A representative sample of the bulk PVC Materials used to manufacture the Covered Products shall have been tested for lead, and must have shown lead content by weight of less than 0.003% (30 parts per million "30 ppm"), using a test method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 30 ppm.

7.1 KCP and the Released Entities may comply with the above requirements by relying on information obtained from its suppliers of the Covered Products, and the PVC Materials utilized in their manufacture, so long as such reliance is in good faith. Demonstration of good faith reliance may include, but is not limited to e-mails or other written correspondence from suppliers attesting to compliance with the provisions of this Section.

7.2 In the event that MEJF settles another actual or potential claim concerning the alleged failure of a business to provide adequate Proposition 65 warnings concerning its manufacture, distribution or sale of PVC Clothing in California, and agrees to a standard for reformulation that allows for lead content by weight of greater than 30 ppm in the PVC Materials, KCP's compliance with the less stringent standard will be deemed to meet the requirements of Sections 7.0(b) above. MEJF shall notify KCP of any and each such settlement by written notice pursuant to Section 15, within 10 days of execution of such settlement or consent judgment.

8. AUTHORITY TO STIPULATE

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

9. RETENTION OF JURISDICTION

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

10. SERVICE ON THE ATTORNEY GENERAL

10.0 MEJF shall serve a copy of this Consent Judgment, signed by both parties, on the California Attorney General on behalf of the parties so that the Attorney General may review this Consent Judgment. MEJF, in compliance with Title 11, California Code of Regulations, section 3003(a), also shall file and serve notice of the motion for approval of this Consent Judgment.

11. ENTIRE AGREEMENT

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

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12. **GOVERNING LAW**

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

13. **COURT APPROVAL**

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

14. **NOTICES**

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

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

If to Kenneth Cole: General Counsel
Kenneth Cole Productions, Inc.
603 West 50th Street
New York, New York 10019

IT IS SO STIPULATED:

Dated: 11/29/07

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

By William Verick
WILLIAM VERICK

Dated:

KENNETH COLE PRODUCTIONS, INC.

By: _____
DAVID EDELMAN
CHIEF FINANCIAL OFFICER

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: JAN 14 2008

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT

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Klamath Environmental Law Center
424 First Street
Eureka, CA 95501

If to Kenneth Cole: General Counsel
Kenneth Cole Productions, Inc.
603 West 50th Street
New York, New York 10019

IT IS SO STIPULATED:

Dated: MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

By:_____
WILLIAM VERICK

Dated: KENNETH COLE PRODUCTIONS, INC.

By: David P. Edelman
DAVID EDELMAN
CHIEF FINANCIAL OFFICER

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: See Proceedings PF
JUDGE OF THE SUPERIOR COURT

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Attorneys for Plaintiff
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

JAN 14 2008

GORDON PARK-LI, Clerk

BY: _____ Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION, Plaintiff, vs. KENNETH COLE PRODUCTIONS, INC., et al., Defendant. _____/	CASE NO. 463859 ~~[Proposed]~~ ORDER APPROVING SETTLEMENT AS TO DEFENDANT **KENNETH COLE PRODUCTIONS, INC.,** Date: January 14, 2007 Time: 9:30 a.m. Dept. No.: 301

Plaintiff's motion for approval of settlement and entry of Consent Judgment as to Defendant KENNETH COLE PRODUCTIONS, INC., was heard on regular noticed motion on January 14, 2007, at 9:30 a.m. in Department No. 301. Having reviewed the pleadings and the moving papers, having reviewed the terms of the proposed consent judgment and having considered the arguments of counsel, the Court finds as follows:

ENDORSED
FILED
San Francisco County Superior Court

JAN 14 2008

GORDON PARK-LI, Clerk

By _____
Deputy Clerk

1. The reformulation standards and warnings the Consent Judgment requires comply with the requirements of Proposition 65.

2. The offset payments in lieu of civil penalties specified in the Consent Judgment are reasonable and conform to the criteria of Health and Safety Code § 25249.7(b)(2).

3. The attorneys fees awarded under the Consent Judgment and the underlying hourly rates, time expended, and costs incurred are reasonable.

IT IS SO ORDERED.

Dated: JAN 14 2008

PETER J. BUSCH

Judge of the Superior Court