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**ENDORSED
 FILED
 ALAMEDA COUNTY
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CLERK OF THE SUPERIOR COURT
 By LINDNELL WILLIAMS
 Deputy

10 Attorneys for Plaintiff
 11 MATEEL ENVIRONMENTAL JUSTICE
 FOUNDATION

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 13 **FOR THE COUNTY OF SAN FRANCISCO**

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 16 **MATEEL ENVIRONMENTAL
 JUSTICE FOUNDATION,,**

Case No. RG 07355984

17 **Plaintiff,**

**CONSENT JUDGMENT AS TO
 DEFENDANT CROSMAN
 CORPORATION**

18 **v.**

19 **CROSMAN CORPORATION,**

20 **Defendant.**

21
 22 **1. INTRODUCTION**

23 **1.1 On November 13, 2007, the MATEEL ENVIRONMENTAL JUSTICE**
 24 **FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a**
 25 **Complaint for civil penalties and injunctive relief ("Complaint") in Alameda County**
 26 **Superior Court, Case No. RG 07355984, against Defendant Crosman Corporation**
 27 **("Crosman" or "Defendant"). The Complaint alleges, among other things, that Defendant**
 28 **violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,**

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1 Health and Safety Code Sections 25249.5, *et seq.* ("Proposition 65"). In particular,
2 Mateel alleges that Crosman has knowingly and intentionally exposed persons to paintball
3 guns and accessories that utilize fittings made of brass containing lead and/or lead
4 compounds (hereinafter "leaded brass"), which are chemicals known to the State of
5 California to cause cancer and birth defects or other reproductive harm, without first
6 providing a clear and reasonable warning to such individuals.

7 1.2 On May 10, 2007, a 60-Day Notice letter ("Notice Letter") was sent by
8 Mateel to Crosman, the California Attorney General, all California District Attorneys, and
9 all City Attorneys of every California city with populations exceeding 750,000.

10 1.3 Crosman is a business that employs ten or more persons and manufactures,
11 distributes, and/or markets paintball guns and accessories, within the State of California.
12 Some of those products are alleged to contain lead and/or lead compounds. Lead and lead
13 compounds are chemicals known to the State of California to cause cancer, and lead is a
14 chemical known to the State of California to cause reproductive toxicity pursuant to
15 Health and Safety Code Section 25249.9. Under specified circumstances, products
16 containing lead and/or lead compounds that are sold or distributed in the State of
17 California are subject to the Proposition 65 warning requirement set forth in Health and
18 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass fittings on
19 paintball guns and their accessories manufactured, distributed, sold and/or marketed by
20 Crosman for use in California require a warning under Proposition 65.

21 1.4 For purposes of this Consent Judgment, the term "Covered Products" shall
22 be defined as BB guns, pellet guns and paintball guns and the accessories for such guns
23 that utilized leaded-brass fittings, to the extent such products are distributed and sold
24 within the state of California, and that are manufactured, distributed, marketed and/or sold
25 by Crosman, regardless of whether they bear Crosman labels.

26 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court
27 has jurisdiction over the allegations of violations contained in the Complaint and personal
28 jurisdiction over Crosman as to the acts alleged in the Complaint, that venue is proper in
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1 the County of San Francisco and that this Court has jurisdiction to enter this Consent
2 Judgment as a full settlement and resolution of the allegations contained in the Complaint
3 and of all claims that were or could have been raised by any person or entity based in
4 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
5 related thereto.

6 1.6 This Consent Judgment resolves claims that are denied and disputed. The
7 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
8 all claims between the parties for the purpose of avoiding prolonged litigation. This
9 Consent Judgment shall not constitute an admission with respect to any material allegation
10 of the Complaint, each and every allegation of which Crosman denies, nor may this
11 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
12 misconduct, culpability or liability on the part of Crosman or any other Defendant.

13 **2. SETTLEMENT PAYMENT**

14 2.1 In settlement of all of the claims referred to in this Consent Judgment
15 against the Settling Defendant, within thirty (30) business days of notice entry of this
16 Consent Judgment, Crosman shall pay \$20,000 to the Klamath Environmental Law Center
17 ("KELC") to cover Mateel's attorneys' fees and costs.

18 2.2 Within thirty (30) business days of notice of entry of this Consent Judgment,
19 Crosman shall pay \$10,000 to the Ecological Rights Foundation and \$10,000 to
20 Californians for Alternatives to Toxics. Both are California non-profit environmental
21 organizations that advocate for workers' and consumers' safety, and for awareness and
22 reduction of toxic exposures.

23 **3. ENTRY OF CONSENT JUDGMENT**

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

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

1 **4.1** This Consent Judgment is a final and binding resolution between Mateel,
2 acting on behalf of itself and the general public, and Crosman, of: (i) any violation of
3 Proposition 65 with respect to the Covered Products, and (ii) any other statutory or
4 common law claim, to the fullest extent that any of the foregoing described in (i) or (ii)
5 were or could have been asserted by any person or entity against Crosman based upon,
6 arising out of or relating to Crosman's compliance with Proposition 65, or regulations
7 promulgated thereunder, with respect to the Covered Products, and any other claim based
8 in whole or part on the facts alleged in the Complaint, whether based on actions
9 committed by Crosman, or by any other Defendant or entity within the chain of
10 distribution, including, but not limited to, manufacturers, wholesale or retail sellers or
11 distributors and any other person in the course of doing business. As to alleged exposures
12 to Covered Products, compliance with the terms of this Consent Judgment resolves any
13 issue, now and in the future, concerning compliance by Crosman and its parents,
14 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their
15 manufacturers, customers, distributors, wholesalers, retailers or any other person in the
16 course of doing business, and the successors and assigns of any of these who may
17 manufacture, use, maintain, distribute, market or sell Covered Products, with the
18 requirements of Proposition 65.

19 **4.2** As to alleged exposures to Covered Products, Mateel, acting on behalf of
20 itself and the general public, and its agents, successors and assigns, waives all rights to
21 institute any form of legal action, and releases all claims against Crosman and its parents,
22 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its
23 customers, manufacturers, distributors, wholesalers, retailers or any other person in the
24 course of doing business, and the successors and assigns of any of them, who may
25 manufacture, use, maintain, distribute or sell the Covered Products, whether under
26 Proposition 65 or otherwise, arising out of or resulting from, or related directly or
27 indirectly to, in whole or in part, the Covered Products and claims identified in Mateel's
28 Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself hereby
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1 waives any and all rights and benefits which it now has, or in the future may have,
2 conferred upon it with respect to the Covered Products by virtue of the provisions of
3 Section 1542 of the California Civil Code, which provides as follows:

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

10 Mateel understands and acknowledges that the significance and consequence of this
11 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
12 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
13 Covered Products, it will not be able to make any claim for those damages against
14 Crosman, its parents, subsidiaries or affiliates, predecessors, officers, directors,
15 employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or
16 any other person in the course of doing business, and the successors and assigns of any of
17 them, who may manufacture, use, maintain, distribute or sell the Covered Products.
18 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
19 which may exist as of the date of this release but which Mateel does not know exist, and
20 which, if known, would materially affect its decision to enter into this Consent Judgment,
21 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
22 negligence, or any other cause.

23 5. **ENFORCEMENT OF JUDGMENT**

24 5.1 The terms of this Consent Judgment shall be enforced exclusively by the
25 parties hereto. The parties may, by noticed motion or order to show cause before the
26 Superior Court of San Francisco County, giving the notice required by law, enforce the
27 terms and conditions contained herein.

1 **6. MODIFICATION OF JUDGMENT**

2 Except as provided for in Paragraph 7.2(c), this Consent Judgment may be
3 modified only upon written agreement of the parties and upon entry of a modified Consent
4 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
5 entry of a modified Consent Judgment by the Court.

6 **7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

7 **7.1** Covered Products shall be deemed to comply with Proposition 65 and be
8 exempt from any Proposition 65 warning requirements if the brass fittings that are part of
9 the Covered Products meet the following criteria: (a) the brass alloy from which the
10 brass fittings are made shall have no lead as an intentionally added constituent; and (b) the
11 brass alloy from which the brass fittings are made shall have a lead content by weight of
12 no more than 0.03% (300 parts per million, or "300 ppm"). Crosman may comply with
13 the above requirements by relying on information obtained from its suppliers regarding
14 the content of the brass alloy from which the brass fittings are made, provided such
15 reliance is in good faith. Obtaining test results showing that the lead content is no more
16 than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification
17 (as distinguished from detection) of less than 300 ppm shall be deemed to establish good
18 faith reliance.

19 **7.2** Covered Products that do not meet the warning exemption standard set forth
20 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
21 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply
22 only to: (1) Covered Products that Crosman ships for distribution after 270 days after
23 entry of this Consent Judgment ("the Effective Date"); and (2) Covered Products
24 manufactured, distributed, marketed, sold or shipped for sale or use inside the State of
25 California.

26 **7.3** Crosman shall provide Proposition 65 warnings as follows:

- 27 (a) Defendant Crosman shall provide either of the following warning
28 statements:

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1 **WARNING:** This product contains lead, a chemical known to the State of
2 California to cause cancer and birth defects or other reproductive harm. Do
3 not place your hands in your mouth after handling the product. *Wash your*
4 *hands after touching this product.*

5 or

6 **WARNING:** This product contains one or more chemicals known to the
7 State of California to cause cancer and birth defects or other reproductive
8 harm. *Wash hands after handling.*

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

11 Crosman shall provide such warning with the unit package of the
12 Covered Products. Such warning shall be prominently affixed to or printed
13 on each Covered Product's label or package. The warning shall be at least
14 the same size as the largest of any other safety warnings, if any, on the
15 product container. If printed on the label itself, the warning shall be
16 contained in the same section that states other safety warnings, if any,
17 concerning the use of the product.

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

22 (c) If Proposition 65 warnings for lead or lead compounds should no
23 longer be required, Crosman shall have no further warning obligations
24 pursuant to this Consent Judgment. In the event that Crosman ceases to
25 implement or modifies the warnings required under this Consent Judgment
26 (because of a change on the law or otherwise), Crosman shall provide
27 written notice to Mateel (through KELC) of its intent to do so, and of the
28 basis for its intent, no less than thirty (30) days in advance. Mateel shall

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notify Crosman in writing of any objection within thirty (30) days of its receipt of such notice, or such objection by Mateel shall be waived.

8. AUTHORITY TO STIPULATE

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

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

10. ENTIRE AGREEMENT

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 any 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.

11. GOVERNING LAW

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.

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12. 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: *Dec. 17, 2007*

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION


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

DATED: *November 27, 2007*

CROSMAN CORPORATION


By: *Ken D'Appa*
Its: *President & CEO*

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: **FEB 15 2008**

DAVID B. HUNTER

JUDGE OF THE SUPERIOR COURT

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

3. The attorneys fees awarded under the Consent Judgment are reasonable as are the rates awarded the attorneys.

Based on these findings, the settlement and the Consent Judgment are approved.

IT IS SO ORDERED.

Dated: **FEB 15 2008**

DAVID E. HUNTER

Judge of the Superior Court

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**ENDORSED
 FILED
 ALAMEDA COUNTY**

FEB 15 2008

**CLERK OF THE SUPERIOR COURT
 By LINDNELL WILLIAMS**

Deputy

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16 Attorneys for Plaintiff
 17 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF ALAMEDA

20 MATEEL ENVIRONMENTAL JUSTICE
 21 FOUNDATION,

CASE NO. RG 07355984

22 Plaintiff,

~~PERCEC~~ ORDER APPROVING
 CONSENT JUDGMENT

23 vs.

Date: February 15, 2008
 Time: 9:30 a.m.
 Dept. No.: 520

24 CROSMAN CORPORATION,

25 Defendants.

26
 27 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
 28 noticed motion on February 15, 2008. The court finds that:

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

Order Approving Settlement.

Mateel v. Crosman Corporation, Case No. RG 07355984