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12 ENVIRONMENTAL JUSTICE FOUNDATION

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

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,

17 Plaintiff,

18 vs.

19 GOSS, INC.; O.K.I. SUPPLY CO.; and
20 ORS NASCO CO., et al., ,

21 Defendants.

Case No: CGC 08-482731

CONSENT JUDGMENT

(As to GOSS, INC.)

**ENFORCED
FILED**
San Francisco County Superior Court

SEP 03 2009

GORDON PARK II, Clerk
BY: JHILIERONE
Deputy Clerk

1 **1. INTRODUCTION**

2 **1.1** On or about July 17, 2008, a 60 Day Notice Letter (“Notice Letter”) was
3 sent by Mateel to Defendant Goss, Inc., (“Goss,” or “Settling Defendant”) the California
4 Attorney General, all California District Attorneys, and all City Attorneys of each
5 California city with a population exceeding 750,000. The 60 Day Notice provides notice,
6 among other things, that Settling Defendant violated the provisions of the Safe Drinking
7 Water and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5, et
8 seq. (“Proposition 65”). In particular, Mateel asserts and provides notice that Settling
9 Defendant has knowingly and intentionally exposed persons to leaded brass components
10 of equipment used in connection with torches and welding equipment which contain lead
11 and/or lead compounds, which are chemicals known to the State of California to cause
12 cancer and birth defects or other reproductive harm, without first providing a clear and
13 reasonable warning to such individuals as required by Health and Safety Code Section
14 25249.6 For purposes of this Consent Judgment, “Covered Products” are defined as
15 those products identified in the 60 Day Notice, described as leaded brass components of
16 equipment used in connection with torches and welding equipment which contain lead
17 and/or lead compounds, which are or have been manufactured, distributed or otherwise
18 marketed by Settling Defendant. (Products which meet the physical description but were
19 not manufactured, distributed or otherwise marketed by Settling Defendant are not
20 Covered Products.)

21 **1.2** No action being taken by any public enforcer, on or about December 8,
22 2008, MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel”) acting on
23 behalf of itself and the general public, filed a complaint for civil penalties and injunctive
24 relief in the above captioned matter in San Francisco County Superior Court, against
25 several defendants, including Goss, Inc. The Complaint is based upon the 60 Day Notice
26 letter identified in section 1.1, above, and alleges, among other things, that Settling
27 Defendant violated the provisions of the Safe Drinking Water and Toxic Enforcement Act
28 of 1986, Health and Safety Code Section 25249.5, et seq. (“Proposition 65”), by

1 knowingly and intentionally exposing persons to Covered Products which contain lead
2 and/or lead compounds, which are chemicals known to the State of California to cause
3 cancer and birth defects or other reproductive harm, without first providing a clear and
4 reasonable warning to such individuals as required by Health and Safety Code Section
5 25249.6

6 **1.3** Settling Defendant is a business that employs ten or more persons and
7 manufactures, distributes, supplies and/or otherwise markets Covered Products within the
8 State of California, which are alleged to contain lead and/or lead compounds. Lead and
9 lead compounds are chemicals known to the State of California to cause cancer, and lead
10 is a chemical known to the State of California to cause reproductive toxicity pursuant to
11 Health and Safety Code Section 25249.9.

12 **1.4** For purposes of this Consent Judgment, the parties stipulate that this Court
13 has jurisdiction over the allegations of violations contained in the Complaint and personal
14 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is
15 proper in the County of San Francisco and that this Court has jurisdiction to enter this
16 Consent Judgment as a full settlement and resolution of the allegations contained in the
17 Complaint and of all claims that were or could have been raised by Mateel against Settling
18 Defendant, or as to those matters included in the 60 Day Notice, raised by a member of
19 the general public against Settling Defendant.

20 **1.5** This Consent Judgment resolves claims that are denied and disputed. The
21 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
22 all claims between the parties for the purpose of avoiding prolonged litigation. This
23 Consent Judgment shall not constitute an admission with respect to any material allegation
24 of the Complaint, each and every allegation of which Settling Defendant denies, nor may
25 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
26 misconduct, culpability or liability on the part of Settling Defendant.

1 **2. SETTLEMENT PAYMENT.**

2 **2.1 As a payment in lieu of and to offset any civil penalty, Settling Defendant**
3 **shall pay \$7,500. to The Center for Race Poverty and the Environment, a California non**
4 **profit, corporation for work informing California consumers about issues concerning**
5 **toxics.**

6 **2.2 As a partial payment of the fees and costs incurred by plaintiff Mateel**
7 **Environmental Justice Foundation, Settling Defendant shall pay to Klamath Environmental**
8 **Law Center, \$12,500.**

9 **2.3 All payments shall be made by check, payable to the above specified payee**
10 **and mailed, or sent, so as to arrive no later than 40 days after the signing of this Consent**
11 **Judgment by Settling Defendant, to William Verick, Esq., Klamath Environmental Justice**
12 **Foundation, 424 First Street, Eureka, CA 95501. In the event this consent judgment has**
13 **not been approved within 120 days of the signing of this consent judgment by Settling**
14 **Defendant, the above payments shall be returned.**

15 **3. ENTRY OF CONSENT JUDGMENT**

16 **3.1 The parties hereby request that the Court promptly enter this Consent**
17 **Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive**
18 **their respective rights to a hearing or trial on the allegations of the Complaint.**

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

20 **4.1 This Consent Judgment is a final and binding resolution between Settling**
21 **Defendant and Mateel, acting on behalf of itself and, as to those matters raised in the 60**
22 **Day Notice Letter, the general public, of any violation of Proposition 65, or the**
23 **regulations promulgated thereunder, to the fullest extent that any violation could have**
24 **been asserted by Mateel against the Settling Defendant based upon, arising out of, or**
25 **relating to Settling Defendant's compliance with Proposition 65, or regulations**
26 **promulgated thereunder, with respect to the Covered Products, whether based on actions**
27 **committed by Settling Defendant, or by any other entity within the chain of distribution of**
28 **the Covered Products, including, but not limited to, manufacturers, wholesale or retail**

1 sellers or distributors and any other person in the course of doing business that
2 manufactured, sold, or distributed the Covered Products. As to alleged chemical
3 exposures listed in the 60 Day Notice from Covered Products, compliance with the terms
4 of this Consent Judgment resolves any issue, now and in the future, concerning
5 compliance by Settling Defendant and its parents, subsidiaries or affiliates, predecessors,
6 successors, assigns, officers, directors, employees, and all manufacturers, customers,
7 distributors, wholesalers, retailers or any other person in the course of doing business
8 involving the Covered Products, and the successors and assigns of any of these who may
9 manufacture, use, maintain, distribute, market or sell Covered Products, with the
10 requirements of Proposition 65.

11 **4.2** As to alleged chemical exposures identified in the 60 Day Notice Letter
12 from Covered Products, Mateel, acting on behalf of itself and, as to the matters in the 60
13 Day Notice Letter, on behalf of the general public, and its agents, successors and assigns,
14 waives all rights to institute any form of legal action, and releases all claims which were
15 or could have been brought against Settling Defendant and its parents, subsidiaries or
16 affiliates, predecessors, officers, directors, employees, and all customers, manufacturers,
17 distributors, wholesalers, retailers or any other person in the course of doing business
18 involving the Covered Products, and the successors and assigns of any of them, who may
19 manufacture, use, maintain, distribute or sell the Covered Products. This release of
20 claims by the general public is not understood to extend beyond the claims included in the
21 60 Day Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself
22 and the general public, hereby waives any and all rights and benefits which it now has, or
23 in the future may have, conferred upon it with respect to the Covered Products by virtue
24 of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

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

15 **5. ENFORCEMENT OF JUDGMENT**

16 **5.1** The injunctive terms of this Consent Judgment shall be enforced exclusively
17 by the parties hereto. The parties may, by noticed motion or order to show cause before
18 the Superior Court of San Francisco County, giving the notice required by law, enforce
19 the injunctive terms and conditions contained herein.

20 **5.2** In the event that Mateel acting on behalf of itself and/or the general public
21 and its agents, successors and assigns, or others, identifies an alleged violation(s) of
22 Section 7, it shall notify Goss in writing, and pursuant to Paragraph 13.0, of the date, time,
23 place and nature of the alleged violation(s), and include any testing data pertaining to the
24 alleged violation(s). The Notice must be served within 60 days of the date of the alleged
25 violation(s). The parties will meet and confer in good faith for a period of not less than
26 30 days to investigate and attempt to resolve issues regarding alleged violation(s) before
27 seeking relief from the court pursuant to this section.
28

1 **6. MODIFICATION OF JUDGMENT**

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

6 **7. INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNINGS**

7 7.1 The warning requirements set forth in Paragraph 7.2 shall not be required if
8 the Covered Products meet the following standard:

9
10 a) The Covered Product is made of a brass alloy which contains less
than 600 ppm lead, or,

11 b) Any reformulation standard agreed to by the Attorney General and
12 approved by the Court:

13 7.2 Except as provided in paragraph 7.1 above, all products manufactured for
14 sale in California 90 days after entry of this Consent Judgment, Defendant shall provide a
15 Proposition 65 Warning for Covered Products as described below, or according to any
16 warning agreed to by the California Attorney General:

17 **PROP 65 WARNING: This product contains lead and lead compounds,**
18 **known to the State of California to cause [cancer, and] birth defects or**
other reproductive harm. *Wash your hands after handling this product.*

19 or

20 **PROP 65 WARNING: Handling the brass material on this product exposes**
21 **you to lead, a chemical known to the State of California to cause [cancer,**
and] birth defects or other reproductive harm. *Wash hands after use.*

22 or

23 **PROP 65 WARNING: This product contains chemicals, including lead,**
24 **known to the State of California to cause [cancer, and] birth defects or other**
reproductive harm. *Wash hands after use.*

- 25 (a) The phrase "PROP 65" may be excluded, or exchanged for
26 "CALIFORNIA PROPOSITION 65" or PROPOSITION 65 at the
27 Defendant's discretion. If included, the phrase "PROP 65" shall be
28 in capitals. The word "WARNING" shall be in capitals. The words

1 “*Wash hands after handling this product*” or “*Wash hands after use,*”
2 shall be italicized or underlined. Inclusion of the bracketed words
3 “cancer, and” in the above warning shall be at Settling Defendant’s
4 option. The foregoing does not preclude Settling Defendant from
5 adding a warning for additional Proposition 65 listed chemicals
6 unless the Attorney General takes the position that such a warning
7 would be misleading or an over-warning. Such warning shall be
8 prominently affixed to or printed on each Covered Product, its label,
9 or package and contained in the same section of the label or package
10 that contains other safety warnings, if any, concerning the use of the
11 Covered Product or near its displayed price and/or UPC code, and
12 with such conspicuousness, as compared with other words,
13 statements, designs, or devices on the Covered Product, its label,
14 package or display as to render it likely to be read and understood by
15 an ordinary individual.

16 (b) Where a Proposition 65 warning has been provided for another listed
17 chemicals or exposure, the language set forth above may be
18 added to the currently used warning.

19
20 **8. AUTHORITY TO STIPULATE**

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

24 **9. RETENTION OF JURISDICTION**

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

1 **10. ENTIRE AGREEMENT**

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

8 **11. GOVERNING LAW**

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

12 **12. FEES AND EXPENSES**

13 The parties acknowledge and agree that, except as set provided in Section 2.1 of
14 this Consent Judgment, each party shall bear its own costs and attorneys fees.
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1 **13. NOTICES**

2 All notices and other communications hereunder shall be communicated to all
3 parties in writing and shall be delivered or mailed by registered or certified mail,
4 postage prepaid and with return receipt requested. Hand-delivered notices shall be
5 deemed communicated when received. Mailed notices shall be deemed
6 communicated as of three (3) full business days after mailing, if mailed, on a
7 business day to the following respective addresses:

8
9 **GOSS, INC.:** Calvin J. Goss, Vice President
10 Goss, Inc.
11 1511 Route 8
12 Glenshaw, PA 15116

13
14 Bradley S. Tupi, Esq.
15 Tucker Arensberg, P.C.
16 1500 One PPG Place
17 Pittsburgh, PA 15222

18
19 **MATEEL:** William Verick, Esq.
20 Klamath Environmental Law Center
21 424 First Street
22 Eureka, CA 95501

1 **14. COURT APPROVAL**

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

4 **IT IS SO STIPULATED:**

5
6 Dated:

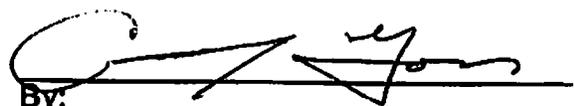
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

7
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11 Dated:

GOSS, INC.,



By:
Its:

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16 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

17
18 Dated:

SEP 03 2009

HAROLD KAHN

JUDGE OF THE SUPERIOR COURT

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