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San Francisco County Superior Court

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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 JT SPORTS LLC,

27 Defendant.

Case No. 485693

CONSENT JUDGMENT AS TO
DEFENDANT JT SPORTS

28 1. INTRODUCTION

1.1 On March 4, 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 County Superior Court, Case No. 485693, against Defendant JT Sports LLC ("JT Sports" or "Defendant"). The Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and

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

7 1.2 On December 18, 2008, a 60-Day Notice letter ("Notice Letter") was sent
8 by Mateel to JT Sports, the California Attorney General, all California District Attorneys,
9 and all City Attorneys of every California city with populations exceeding 750,000.

10 1.3 JT Sports 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 JT
20 Sports 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 paintball guns and the accessories for such guns that utilize leaded-brass
23 fittings, to the extent such products are distributed and sold within the State of California,
24 and that are manufactured, distributed, marketed and/or sold by JT Sports, regardless of
25 whether they bear JT Sports 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 JT Sports 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 JT Sports 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 JT Sports or any other person or entity
13 related to the Defendant.

14 **2. SETTLEMENT PAYMENT**

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

19 **2.2** Within thirty (10) business days of notice of entry of this Consent Judgment,
20 JT Sports shall pay \$7,500 to the Ecological Rights Foundation and \$7,500 to Californians
21 for Alternatives to Toxics. Both are California non-profit environmental organizations
22 that advocate for workers' and consumers' safety, and for awareness and reduction of
23 toxic exposures.

24 **3. ENTRY OF CONSENT JUDGMENT**

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

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4. MATTERS COVERED BY THIS CONSENT JUDGMENT

4.1 This Consent Judgment is a final and binding resolution between Mateel, acting on behalf of itself and the public interest, and JT Sports, of: (i) any violation of Proposition 65 with respect to the Covered Products, 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 JT Sports based upon, arising out of or relating to JT Sports's compliance with Proposition 65, or regulations promulgated thereunder, with respect to lead exposures allegedly caused by Covered Products, and any other claim based in whole or part on the facts alleged in the Complaint, whether based on actions committed by JT Sports, or by any other person or entity within JT Sport's chain of distribution of the Covered Products, including, but not limited to, manufacturers, distributors, wholesale or retail sellers, and any other person in the course of doing business. As to lead exposures allegedly arising from the Covered Products, compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by JT Sports and its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their manufacturers, customers, distributors, wholesalers, retailers, or any other person in the course of doing business, and the successors and assigns of any of these who may manufacture, use, maintain, distribute, market or sell Covered Products, with the requirements of Proposition 65.

4.2 As to lead exposures allegedly caused by Covered Products, Mateel, acting on behalf of itself and the public interest, and its agents, successors and assigns, waives all rights to institute any form of legal action, and releases all claims against JT Sports and its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers, distributors, wholesalers, retailers or any other person in the course of doing business, and the successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the Covered Products, whether under Proposition 65 or otherwise, arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products and claims identified in Mateel's

1 Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself hereby
2 waives any and all rights and benefits which it now has, or in the future may have,
3 conferred upon it with respect to the Covered Products by virtue of the provisions of
4 Section 1542 of the California Civil Code, which provides as follows:

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

11 Mateel understands and acknowledges that the significance and consequence of this
12 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages
13 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
14 Covered Products, it will not be able to make any claim for those damages against JT
15 Sports, its parents, subsidiaries or affiliates, predecessors, officers, directors, employees,
16 and all of its customers, manufacturers, distributors, wholesalers, retailers or any other
17 person in the course of doing business, and the successors and assigns of any of them,
18 who may manufacture, use, maintain, distribute or sell the Covered Products.

19 Furthermore, Mateel acknowledges that it intends these consequences for any such claims
20 which may exist as of the date of this release but which Mateel does not know exist, and
21 which, if known, would materially affect its decision to enter into this Consent Judgment,
22 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
23 negligence, or any other cause.

24 **5. ENFORCEMENT OF JUDGMENT**

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

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6. MODIFICATION OF JUDGMENT

Except as provided for in Paragraph 7.2(c), 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 - CLEAR AND REASONABLE WARNING

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

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

7.3 JT Sports shall provide Proposition 65 warnings as follows:

- (a) Defendant JT Sports shall provide either of the following warning statements:

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

or

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

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

JT Sports shall provide such warning with the unit package of the Covered Products. Such warning shall be prominently affixed to or printed on each Covered Product's label or package. If printed on the label itself, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the Covered Product.

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

(c) If Proposition 65 warnings for lead or lead compounds should no longer be required, JT Sports shall have no further warning obligations pursuant to this Consent Judgment. Except as provided in section 7.1 above, in the event that JT Sports ceases to implement or modifies the warnings required under this Consent Judgment (because of a change on the law or otherwise), JT Sports shall provide written notice to Mateel (through KELC) of its intent to do so, and of the basis for its intent, no less than thirty (30) days in advance. Mateel shall notify JT Sports in writing of any objection

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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:

**MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION**



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

JT SPORTS LLC



By: *John Peterson*
As: *General Manager*
JT Sports LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

APR 2 8 2009

PETER J. BUSCH.

DATED:

JUDGE OF THE SUPERIOR COURT