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Attorneys for Plaintiff  
MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

ENDORSED  
FILED  
San Francisco County Superior Court

OCT 16 2009

GORDON PARK-LI, Clerk  
BY: \_\_\_\_\_ Deputy Clerk

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

MATEEL ENVIRONMENTAL  
JUSTICE FOUNDATION,,  
  
Plaintiff,  
  
v.  
  
BELL AUTOMOTIVE PRODUCTS,  
INC., et al.,  
  
Defendants.

Case No. CGC-09-486368  
**CONSENT JUDGMENT AS TO NSI  
INTERNATIONAL, INC.**

1           **1.     INTRODUCTION**

2           1.1     On March 20, 2009, the MATEEL ENVIRONMENTAL JUSTICE  
3 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a  
4 complaint for civil penalties and injunctive relief (“Complaint”) in San Francisco County  
5 Superior Court, Case No.CGC-09-486368, against, among others, defendant NSI  
6 International, Inc. (“NSI” or “Defendant”). The Complaint alleges, among other things,  
7 that NSI violated provisions of the Safe Drinking Water and Toxic Enforcement Act of  
8 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In particular,  
9 Mateel alleged that NSI knowingly and intentionally exposed persons to tools that consist  
10 of, or which incorporate components made of, leaded brass and/or bronze (hereinafter  
11 “leaded-brass tools”). Mateel further alleged that lead and lead compounds are chemicals  
12 known to the State of California to cause cancer and birth defects or other reproductive  
13 harm, without first providing a clear and reasonable warning to such individuals.

14           1.2     On December 23, 2008, Mateel sent a 60-Day Notice Letter to NSI, the  
15 California Attorney General, all California District Attorneys, and all City Attorneys of  
16 every California city with populations exceeding 750,000 containing its allegations  
17 concerning the same leaded-brass tools offered for sale in California by NSI.

18           1.3     In August 2005, NSI purchased the assets of Natural Science Industries Ltd.  
19 (“Natural Science”), another defendant named in the Complaint. Included in the purchased  
20 assets were the leaded-brass tools referred to in the Complaint.

21           1.4     NSI is a business that employs ten or more persons and manufactures,  
22 distributes, markets, and/or offers for sale within the State of California certain  
23 woodburning tools and/or tool kits containing brass components which are alleged to  
24 contain lead and/or lead compounds. Lead and lead compounds are chemicals known to  
25 the State of California to cause cancer, and lead is a chemical known to the State of  
26 California to cause reproductive toxicity pursuant to Health and Safety Code Section  
27 25249.9. Under specified circumstances, products containing lead and/or lead compounds  
28 that are sold or distributed in the State of California are subject to the Proposition 65

1 warning requirement set forth in Health and Safety Code Section 25249.6. Plaintiff  
2 Mateel alleges that leaded brass tools, including woodburning tools and kits manufactured,  
3 distributed, sold and/or marketed by NSI for use in California require a warning under  
4 Proposition 65.

5 1.5 For purposes of this Consent Judgment, the term "Covered Products" shall  
6 be defined as tools, including woodburning tools or associated tools sold in woodburning  
7 kits, that utilize leaded brass, to the extent such products are distributed and sold within the  
8 State of California, and that are manufactured, distributed, marketed and/or sold by NSI,  
9 regardless of whether they bear NSI labels.

10 1.6 For purposes of this Consent Judgment, the parties stipulate that this Court  
11 has jurisdiction over the allegations of violations contained in the Complaint and personal  
12 jurisdiction over NSI as to the acts alleged in the Complaint, that venue is proper in the  
13 County of San Francisco and that this Court has jurisdiction to enter this Consent  
14 Judgment as a full settlement and resolution of the allegations contained in the Complaint  
15 and of all claims that were or could have been raised by any person or entity based in  
16 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or  
17 related thereto.

18 1.7 This Consent Judgment resolves claims that are denied and disputed. The  
19 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
20 all claims between the parties for the purpose of avoiding prolonged litigation. This  
21 Consent Judgment shall not constitute an admission with respect to any material allegation  
22 of the Complaint, each and every allegation of which NSI denies; nor may this Consent  
23 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct,  
24 culpability or liability on the part of NSI or any other person or entity related to the  
25 Defendant.

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**2. SETTLEMENT PAYMENTS**

2.1 In settlement of all of the claims that are alleged, or could have been alleged, in the Complaint concerning Covered Products, NSI shall pay \$17,500 to the Klamath Environmental Law Center (“KELC”) to cover Plaintiff’s attorneys’ fees. Additionally, NSI shall pay \$2,500 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 the personal claims of absent third parties for restitution against the defendant. The above described payment shall be forwarded by NSI so that it is received at least 5 days prior to the hearing date scheduled for approval of this Consent Judgment. If the Consent Judgment is not approved within 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.

2.2 NSI shall not be required to pay a civil penalty pursuant to Health and Safety Code Section 25249.7(b).

**3. ENTRY OF CONSENT JUDGMENT**

3.1 The parties hereby request that the Court promptly enter this Consent Judgment. Upon entry of the Consent Judgment, NSI and Mateel waive their respective rights to a hearing or trial on the allegations of the Complaint. As the products sold by Natural Science were the same as the products sold by NSI, Mateel shall of its own accord thereafter promptly dismiss Natural Science from the Complaint.

**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 NSI of any violation of Proposition 65 with respect to lead exposures allegedly arising from the Covered Products whether based on actions committed by NSI, or by any other person or entity within NSI’s chain of distribution of the Covered Products, including, but not limited to, manufacturers,

1 distributors, wholesale or retail sellers, and any other person in the course of doing  
2 business (and specifically including, among others, Fat Brain Toys LLC, and Michaels  
3 Stores, Inc.). As to lead exposures allegedly arising from the Covered Products,  
4 compliance with the terms of this Consent Judgment resolves any issue, now and in the  
5 future, concerning compliance by NSI and its parents, subsidiaries or affiliates,  
6 predecessors, officers, directors, employees, and all of their manufacturers, customers,  
7 distributors, wholesalers, retailers, or any other person in the course of doing business, and  
8 the successors and assigns of any of these who may manufacture, use, maintain, distribute,  
9 market or sell Covered Products, with the requirements of Proposition 65.

10 4.2 As to lead exposures allegedly arising from the Covered Products, Mateel,  
11 acting on behalf of itself and its agents, successors and assigns, waives all rights to  
12 institute any form of legal action, and releases all claims against NSI and its parents,  
13 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of its  
14 customers, manufacturers, distributors, wholesalers, retailers or any other person in the  
15 course of doing business, and the successors and assigns of any of them, who may  
16 manufacture, use, maintain, distribute or sell the Covered Products, whether under  
17 Proposition 65 or otherwise. In furtherance of the foregoing, Mateel, acting on behalf of  
18 itself hereby waives any and all rights and benefits which it now has, or in the future may  
19 have, conferred upon it with respect to the Covered Products by virtue of the provisions of  
20 Section 1542 of the California Civil Code, which provides as follows:

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

27 Mateel understands and acknowledges that the significance and consequence of this  
28 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages

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

12           **5. ENFORCEMENT OF JUDGMENT**

13           5.1 The terms of this Consent Judgment shall be enforced exclusively by the  
14 parties hereto. The parties may, by noticed motion or order to show cause before the  
15 Superior Court of San Francisco County, giving the notice required by law, enforce the  
16 terms and conditions contained herein.

17           **6. MODIFICATION OF JUDGMENT**

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

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

23           7.1 Covered Products shall be deemed to comply with Proposition 65 and be  
24 exempt from any Proposition 65 warning requirements if the subject brass components  
25 meet the following criteria: (a) the brass shall have no lead as an intentionally added  
26 constituent; and (b) the brass shall have a lead content by weight of no more than 0.03%  
27 (300 parts per million, or "300 ppm"). NSI may comply with the above requirements by  
28 relying on information obtained from its suppliers regarding the content of the brass

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1 component, provided such reliance is in good faith. Obtaining test results showing that the  
2 lead content is no more than 0.03%, using a method of sufficient sensitivity to establish a  
3 limit of quantification (as distinguished from detection) of less than 300 ppm shall be  
4 deemed to establish good faith reliance.

5 7.2 Covered Products that do not meet the warning exemption standard set forth  
6 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in  
7 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply only  
8 to: (1) Covered Products that NSI ships for distribution after 90 days after entry of this  
9 Consent Judgment (“the Effective Date”); and (2) Covered Products manufactured,  
10 distributed, marketed, sold or shipped for sale or use inside the State of California.

11 7.3 NSI shall provide Proposition 65 warnings as follows:

12 (a) NSI shall provide either of the following warning statements:

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

17 or

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

21 The word “WARNING” shall be in bold. The words “Wash hands after  
22 handling” shall be in bold and italicized.

23 NSI shall provide such warning directly on or with the unit package of the  
24 Covered Products. Such warning shall be prominently affixed to or printed  
25 on each Covered Product or its label or package. If printed on the label  
26 itself, the warning shall be contained in the same section that states other  
27 safety warnings, if any, concerning the use of the Covered Product.  
28

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

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

14 **8. AUTHORITY TO STIPULATE**

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

18 **9. RETENTION OF JURISDICTION**

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

21 **10. ENTIRE AGREEMENT**

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

**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:

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION



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

DATED:

NSI International, Inc.

By: Frank Landi  
Its:

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

DATED:

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JUDGE OF THE SUPERIOR COURT

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DATED:

**MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION**

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

DATED:

NSI International, Inc.  
  
\_\_\_\_\_  
By: Frank Landi  
Its: President

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

**OCT 16 2009**  
DATED:

**CHARLOTTE WALTER WOOLARD**  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT