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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN FRANCISCO

12

13 MATEEL ENVIRONMENTAL JUSTICE)	No. 454917
FOUNDATION,)	
14)	[PROPOSED] CONSENT JUDGMENT AS
Plaintiff,)	TO DEFENDANTS ROCKY MOUNTAIN
15)	BICYCLE AND GROUPE PROCYCLE,
vs.)	INC.
16)	
BELL SPORTS, INC., et al.)	
17)	
Defendants.)	
18)	

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20 1. **INTRODUCTION**

21 1.1 On or about October 17, 2005, the Mateel Environmental Justice Foundation
22 (“MEJF”) and its attorneys, Klamath Environmental Law Center (“KELC”) sent 60-day notice
23 letters to the Office of the California Attorney General of the State of California (“California
24 Attorney General”), all California counties’ District Attorneys and all City Attorneys of California
25 cities with populations exceeding 750,000, (“Notice Letters”), charging defendant Rocky Mountain
26 Bicycles and Groupe Procycle, Inc. (hereinafter referred to collectively as “Rocky Mountain” or
27 “Defendant”) with violating the Safe Drinking Water and Toxic Enforcement Act of 1986,
28 California Health and Safety Code Section 25249.5 et seq. (“Proposition 65”), in its manufacture,

1 distribution and/or sale of bicycles and tricycles (collectively, “Bicycles”). MEJF charged, *inter*
2 *alia*, that persons handling plastic handlebar grips (“Grips”) and/or brake or derailleur cables that are
3 housed in thermoplastic (collectively, “Cables”) on Bicycles were exposed to lead and lead
4 compounds, which are chemicals listed under Proposition 65.

5 1.2 On August 8, 2006, MEJF (“Plaintiff”), acting on behalf of itself, the public interest,
6 and the general public for the matters described in the Notice Letters, filed a Complaint for civil
7 penalties and injunctive relief (“Complaint”) in the San Francisco Superior Court fashioned
8 *Mateel v. Bell Sports, Inc. et al.*, Case No. CGC-06-454917, based on the Notice Letter. The
9 Complaint alleged, among other things, that Defendant violated Proposition 65 by manufacturing,
10 marketing and/or distributing to California residents Covered Products (as defined in Paragraph 1.4
11 below) and failing to provide clear and reasonable warnings to California residents who handle and
12 use such products that the handling and use of those products in their normally intended manner will
13 cause those persons to be exposed to Proposition 65 Chemicals.

14 1.3 For purposes of this Consent Judgment, unless otherwise set forth herein, the terms
15 described in this Paragraph 1.3 shall have the following meanings. Plaintiff and Defendant are
16 collectively referred to as the “Parties,” with each of them a “Party.” The term “Covered Products”
17 means Bicycles and/or Bicycle Accessory Products manufactured, distributed, marketed or sold by
18 Defendant. The term “Covered Products” includes products which are or were manufactured,
19 distributed, marketed and/or sold by Defendant either under its own name or brand or under the
20 name or brand of another (e.g., privately labeled products). The term “PVC Components” refers to
21 Grips and Cables that are composed of or housed in thermoplastic and that are (i) on the Bicycle at
22 the time it is sold to consumers or (ii) sold separately as replacement parts for those components.
23 MEJF has alleged that (a) Defendant is a business that employs more than ten persons and
24 manufactures, distributes and/or sells or makes available for sale Covered Products into the State of
25 California, and (b) the Covered Products offered for sale in California by Defendant contain one or
26 more Proposition 65 Chemicals. Defendant denies these and all of MEJF’s other allegations.

27 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction

1 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of San
2 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and
3 final resolution of the allegations contained in the Complaint and Notice Letters and of all claims
4 which were or could have been raised by any person or entity based in whole or in part, directly or
5 indirectly, on the facts alleged therein, arising therefrom or related thereto.

6 1.5 The Parties enter into this Consent Judgment pursuant to a full and final settlement of
7 any and all claims between the Parties for the purpose of avoiding prolonged litigation. This
8 Consent Judgment shall not constitute an admission with respect to any material allegation in the
9 Complaint, each and every allegation of which Defendant denies; nor may this Consent Judgment or
10 compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on
11 the part of Defendant.

12 2. **SETTLEMENT PAYMENT**

13 In settlement of all of the claims that are alleged, or could have been alleged, in the Complaint
14 concerning Defendant, within 10 days following the Court's entry of a judgment, Defendant shall pay
15 \$20,000 to the Klamath Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees.
16 Additionally, within 10 days following the Court's entry of a judgment, Defendant shall pay \$10,000
17 to the Ecological Rights Foundation for use toward reducing exposures to toxic chemicals and other
18 pollutants, and toward increasing consumer, worker and community awareness of health hazards
19 posed by lead and other toxic chemicals. Defendant shall not be required to pay a civil penalty
20 pursuant to Health and Safety Code section 25249.7(b).

21 3. **ENTRY OF CONSENT JUDGMENT**

22 The Parties request that the Court promptly enter this Consent Judgment and waive their
23 respective rights to a hearing or trial on the allegations of the Complaint.

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

25 4.1 For purposes of Section 4 of this Consent Judgment, the term Defendant shall include
26 Rocky Mountain, and its past, present and future parents, divisions, subdivisions, subsidiaries and
27 affiliates and the predecessors, successors and assigns of any of them, as well as their past, present
28 and future officers, directors, employees, agents, attorneys, representatives, shareholders and

1 assigns. For purposes of this Section 4, the term Defendant shall also be deemed to include
2 Defendant's direct and indirect suppliers of Covered Products, but only with respect to those
3 Covered Products that such direct or indirect supplier manufactures for Defendant. In addition, for
4 purposes of this Section 4, the term Defendant also includes, with respect to Defendant's Covered
5 Products only, Defendant's chain of distribution, including, but not limited to, customers, wholesale
6 or retail sellers or distributors and any other person in the course of doing business.

7 4.2 As to all matters addressed in the Notice Letters and Complaint, this Consent
8 Judgment constitutes a final and binding resolution and release of liability between Plaintiff acting
9 on behalf of itself and in the public interest pursuant to Health and Safety Code Section 25249.7(d)
10 and Defendant or its parents, subsidiaries or affiliates, and all of their customers, distributors,
11 wholesalers, retailers, and the successors and assigns of any of them, of any violation of
12 Proposition 65 with respect to exposures to the Proposition 65 Chemicals associated with the use or
13 handling of Covered Products.

14 4.3 This Consent Judgment also constitutes a final and binding resolution and release of
15 liability between Plaintiff and Defendant with respect to any other statutory or common law claim
16 that could have been asserted against Defendant or its parents, subsidiaries or affiliates, and all of
17 their customers, distributors, wholesalers, retailers, and the successors and assigns of any of them,
18 based on its or their exposure of persons to chemicals contained in or otherwise associated with the
19 use of Covered Products manufactured, sold or distributed by, for or on behalf of Defendant and/or
20 its alleged failure to provide a clear and reasonable warning of such exposure to such individuals.

21 4.4 As to all matters addressed in the Notice Letters and Complaint, any claims,
22 violations (except violations of this Consent Judgment), actions, damages, costs, penalties, or causes
23 of action which may arise or have arisen after the original date of entry of this Consent Judgment,
24 compliance by Defendant with the terms of this Consent Judgment shall be deemed to constitute its
25 full and complete compliance with Proposition 65 and shall bar such claims or the re-litigation of
26 issues underlying such claims under the doctrines of res judicata and collateral estoppel.

27 4.5 As to the alleged exposures to Covered Products, compliance with the terms of this
28 Consent Judgment resolves any issue, now and in the future, concerning compliance by Defendant or

1 its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers,
2 and the successors and assigns of any of them with the requirements of Proposition 65 with respect
3 to Covered Products and any alleged resulting exposure. Nothing in this Consent Judgment shall be
4 deemed to release, from past liability under Proposition 65, any entity which incorporates
5 Components obtained from Defendant into a Covered Product.

6 4.6 Defendant waives all rights to institute any form of legal action against Plaintiff, its
7 officers, directors, attorneys, consultants and representatives for all actions undertaken or statements
8 made in the course of this Action as of the Effective Date of this Consent Judgment.

9 4.7 MEJF, by and on behalf of itself and its respective agents, successors and assigns,
10 waives any and all rights to institute any form of legal action, and releases all claims against
11 Defendant, its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers,
12 retailers, and the successors and assigns of any of them, who may use, maintain, distribute or sell the
13 Covered Products, whether under Proposition 65 or otherwise, arising out of or resulting from, or
14 related directly or indirectly to, in whole or in part, the Covered Products, including by not limited to
15 an exposure to, or failure to warn with respect to, the Covered Products (referred collectively in the
16 paragraph as the "Claims"). In furtherance of the foregoing, MEJF hereby waives any and all rights
17 and benefits which it now has, or in the future may have, conferred upon it with respect to the
18 Claims by virtue of the provisions of Section 1542 of the California Civil Code, which provides as
19 follows:

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

23 MEJF understands and acknowledges that the significance and consequence of this waiver of
24 California Civil Code Section 1542 is that even if MEJF suffers future damages arising out of or
25 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, including
26 but not limited to any exposure to, or failure to warn with respect to exposure, the Covered Products,
27 MEJF will not be able to make any Claim for those damages against Defendant or its parents,
28

1 subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers, and the
2 successors and assigns of any of them. Furthermore, MEJF acknowledges that it intends these
3 consequences for any such Claims as may exist as of the date of this release but which MEJF does
4 not know exist, and which, if known would materially affect their decision to enter into this Consent
5 Judgment, regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
6 negligence, or any other cause.

8 **5. ENFORCEMENT OF JUDGMENT**

9 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
10 hereto by means of noticed motion or order to show cause before the Superior Court of San
11 Francisco County.

12 **6. MODIFICATION OF JUDGMENT**

13 This Consent Judgment may be modified only upon written agreement of the Parties and
14 upon entry of a modified amended Consent Judgment by the Court, or upon motion of any Party as
15 provided by law and upon entry of a modified amended Consent Judgment by the Court; any such
16 stipulation shall be served on the California Attorney General no less than 15 days prior to its filing
17 with the Court and any such motion shall be served on the California Attorney General when it is
18 filed with the Court.

19 **7. INJUNCTIVE RELIEF**

20 On and after July 1, 2007, if Defendant sells any Covered Products for resale or use in
21 California these Covered Products will meet the following criteria:

- 22 (a) the Surface Contact Layers of PVC Components shall have no lead as an
23 intentionally added constituent; and
24 (b) the Surface Contact Layer of PVC Components shall have lead content by weight
25 as follows:
26 (i) for PVC Components on Bicycles having wheels that measure over 20 inches
27 in diameter, and for all other PVC Components, no more than 0.03% (300
28 parts per million);

1 (ii) for PVC Components on Bicycles having wheels that measure 20 inches or
2 less in diameter, no more than 0.003% (30 parts per million).

3 7.2 Defendant may comply with the criteria set forth in Paragraph 7.1 above
4 (“Reformulation Levels”) by relying on information obtained from its suppliers regarding the
5 content of the Surface Contact Layer of the PVC Components and Painted Components, provided
6 such reliance is in good faith. Obtaining test results showing that the lead content does not exceed
7 the Reformulation Levels using a method of sufficient sensitivity to establish a limit of
8 quantification (as distinguished from detection) of less than the Reformulation Level required for
9 each Covered Product, shall be deemed to establish good faith reliance. Nothing in the preceding
10 two sentences shall preclude Defendant from establishing good faith reliance by an alternative
11 means

12 8. **APPLICATION OF JUDGMENT**

13 As to all matters addressed in the Notice Letters and the Complaint, the obligations of this
14 Consent Judgment shall apply to and be binding upon all plaintiffs acting in the public interest
15 pursuant to Health and Safety Code section 25249.7(d), and Defendant and its successors or assigns.

16 9. **AUTHORITY TO STIPULATE**

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

20 10. **NOTICES**

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

22 If to MEJF: William Verick, Esq.
23 Klamath Environmental Law Center
24 424 First Street
Eureka, CA 95501

25 If to Rocky Mountain: Daniel Maheux
26 Rocky Mountain Bicycles
1322 Cliveden Avenue
27 Annacis Park, Delta, BC
28 Canada V3M-6G4

1 **11. RETENTION OF JURISDICTION**

2 This Court shall retain jurisdiction of this matter to implement the terms of injunctive relief
3 provided for in this Consent Judgment and hear any motion or application properly made by a party
4 hereto.

5 **12. ENTIRE AGREEMENT**

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

12 **13. GOVERNING LAW**

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

15 **14. COURT APPROVAL**

16 If this Consent Judgment is not approved and entered by the Court, or if the entry of this
17 Consent Judgment is successfully challenged, this Consent Judgment shall be of no force or effect,
18 and cannot be used in any proceeding for any purpose.

19 **15. COUNTERPARTS**

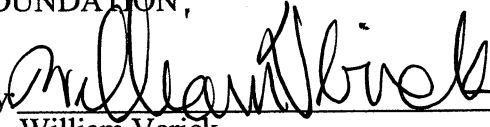
20 This Consent Judgment may be executed in any number of counterparts, each of which shall
21 be deemed to be an original and all of which taken together shall be deemed to be one and the same
22 instrument.

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1 IT IS SO STIPULATED:

2 DATED: 3/14/07

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

3
4 By: 
5 William Verick
6 Attorney for Plaintiff

7 DATED: _____

8 ROCKY MOUNTAIN

9 By: 

10
11 IT IS SO ORDERED, ADJUDGED AND DECREED:

12 DATED: _____

13 _____
14 JUDGE OF THE SUPERIOR COURT

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