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19 FOUNDATION

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

22 MATEEL ENVIRONMENTAL
23 JUSTICE FOUNDATION,,
24 Plaintiff,
25
26 v.
27 JT SPORTS, LLC ET AL,
28 Defendants.

Case No. CGC-09-485693
**CONSENT JUDGMENT AS TO
DEFENDANT KINGMAN
INTERNATIONAL CORPORATION**

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

1 Superior Court, Case No. 485693, against Defendant Kingman International Corporation
2 (“Kingman” or “Defendant”). The Complaint alleges, among other things, that Defendant
3 violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,
4 Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In particular,
5 Mateel alleges that Kingman has knowingly and intentionally exposed persons to paintball
6 guns and accessories that utilize fittings made of brass containing lead and/or lead
7 compounds (hereinafter “leaded brass”), which are chemicals known to the State of
8 California to cause cancer and birth defects or other reproductive harm, without first
9 providing a clear and reasonable warning to such individuals.
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12 1.2 On December 18, 2008, a 60-Day Notice letter (“Notice Letter”) was sent
13 by Mateel to Kingman, the California Attorney General, all California District Attorneys,
14 and all City Attorneys of every California city with populations exceeding 750,000.
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16 1.3 Kingman is a business that employs ten or more persons and manufactures,
17 distributes, and/or markets paintball guns and accessories, within the State of California.
18 Some of those products are alleged to contain lead and/or lead compounds. Lead and lead
19 compounds are chemicals known to the State of California to cause cancer, and lead is a
20 chemical known to the State of California to cause reproductive toxicity pursuant to
21 Health and Safety Code Section 25249.9. Under specified circumstances, products
22 containing lead and/or lead compounds that are sold or distributed in the State of
23 California are subject to the Proposition 65 warning requirement set forth in Health and
24 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass fittings on
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1 paintball guns and their accessories manufactured, distributed, sold and/or marketed by
2 Kingman for use in California require a warning under Proposition 65.

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4 1.4 For purposes of this Consent Judgment, the term "Covered Products" shall
5 be defined as paintball guns and the accessories for such guns that utilize leaded-brass
6 fittings, to the extent such products are distributed and sold within the state of California,
7 and that are manufactured, distributed, marketed and/or sold by Kingman, regardless of
8 whether they bear Kingman labels.
9

10 1.5 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 Kingman as to the acts alleged in the Complaint, that venue is proper in
13 the 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.
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20 1.6 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 Kingman denies, nor may this
25 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
26 misconduct, culpability or liability on the part of Kingman or any other Defendant.
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1 **2. SETTLEMENT PAYMENT**

2 **2.1** In settlement of all of the claims referred to in this Consent Judgment
3 against the Settling Defendant, no later than one week prior to the noticed hearing to
4 approve this [Proposed] Consent Judgment, Kingman shall cause to be paid \$20,000 to the
5 Klamath Environmental Law Center ("KELC") to cover Mateel's attorneys' fees and
6 costs.
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8 **2.2** No later than one week prior to the noticed hearing to approve this
9 [Proposed] Consent Judgment, Kingman shall cause to be paid \$7,500 to the Ecological
10 Rights Foundation and \$7,500 to Californians for Alternatives to Toxics. Both are
11 California non-profit environmental organizations that advocate for workers' and
12 consumers' safety, and for awareness and reduction of toxic exposures.
13

14 **2.3** The payments made pursuant to paragraphs 2.1 and 2.2 above, shall be sent
15 care of the Klamath Environmental Law Center, 424 First Street, Eureka, CA 95501.
16 These checks shall be held, uncashed, until after the court approves and enters this
17 [Proposed] Consent Judgment and Mattel has provided Kingman notice of such approval.
18 In the event the court does not approve this [Proposed] Consent Judgment, then Mateel
19 shall return the uncashed checks to Kingman.
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22 **3. ENTRY OF CONSENT JUDGMENT**

23 **3.1** The parties hereby request that the Court promptly enter this Consent
24 Judgment. Upon entry of the Consent Judgment, Kingman and Mateel waive their
25 respective rights to a hearing or trial on the allegations of the Complaint.
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1 rights to institute any form of legal action, and releases all claims against Kingman and its
2 parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of
3 its customers, manufacturers, distributors, wholesalers, retailers or any other person in the
4 course of doing business, and the successors and assigns of any of them, who may
5 manufacture, use, maintain, distribute or sell the Covered Products, whether under
6 Proposition 65 or otherwise, arising out of or resulting from, or related directly or
7 indirectly to, in whole or in part, the Covered Products and claims identified in Mateel's
8 Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself hereby
9 waives any and all rights and benefits which it now has, or in the future may have,
10 conferred upon it with respect to the Covered Products by virtue of the provisions of
11 Section 1542 of the California Civil Code, which provides as follows:
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15 "A GENERAL RELEASE DOES NOT EXTEND TO
16 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
17 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
18 EXECUTING THE RELEASE, WHICH IF KNOWN BY
19 HIM MUST HAVE MATERIALLY AFFECTED HIS
20 SETTLEMENT WITH THE DEBTOR."

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

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

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8 **5. ENFORCEMENT OF JUDGMENT**

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10 5.1 The terms of this Consent Judgment shall be enforced exclusively by the
11 parties hereto. The parties may, by noticed motion or order to show cause before the
12 Superior Court of San Francisco County, giving the notice required by law, enforce the
13 terms and conditions contained herein.

14
15 **6. MODIFICATION OF JUDGMENT**

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

20
21 **7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

22 7.1 Covered Products shall be deemed to comply with Proposition 65 and be
23 exempt from any Proposition 65 warning requirements if the brass fittings that are part of
24 the Covered Products meet the following criteria: (a) the brass alloy from which the
25 brass fittings are made shall have no lead as an intentionally added constituent; and (b) the
26 brass alloy from which the brass fittings are made shall have a lead content by weight of
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1 no more than 0.03% (300 parts per million, or "300 ppm"). Kingman may comply with
2 the above requirements by relying on information obtained from its suppliers regarding
3 the content of the brass alloy from which the brass fittings are made, provided such
4 reliance is in good faith. Obtaining test results showing that the lead content is no more
5 than 0.03%, using a method of sufficient sensitivity to establish a limit of quantification
6 (as distinguished from detection) of less than 300 ppm shall be deemed to establish good
7 faith reliance.
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10 **7.2** Covered Products that do not meet the warning exemption standard set forth
11 in Section 7.1 of the Consent Judgment shall be accompanied by a warning as described in
12 paragraph 7.3 below. The warning requirements set forth in paragraph 7.3 shall apply
13 only to: (1) Covered Products that Kingman ships for distribution after 270 days after
14 entry of this Consent Judgment ("the Effective Date"); and (2) Covered Products
15 manufactured, distributed, marketed, sold or shipped for sale or use inside the State of
16 California after the Effective Date.
17

18 **7.3** Kingman shall provide Proposition 65 warnings as follows:
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20 (a) Defendant Kingman shall provide either of the following warning
21 statements:

22 **WARNING:** This product contains lead, a chemical known to the State of
23 California to cause cancer and birth defects or other reproductive harm. Do
24 not place your hands in your mouth after handling the product. *Wash your*
25 *hands after touching this product.*
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27 or
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WARNING: This product contains one or more chemicals known to the State of California to cause cancer and 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.

Kingman 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. The warning shall be at least the same size as the largest of any other safety warnings, if any, on the product container. 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 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, Kingman shall have no further warning obligations pursuant to this Consent Judgment. In the event that Kingman ceases to implement or modifies the warnings required under this Consent Judgment (because of a change on the law or otherwise), Kingman shall provide written notice to Mateel (through KELC) of its intent to do so, and of the

1 basis for its intent, no less than thirty (30) days in advance. Mateel shall
2 notify Kingman in writing of any objection within thirty (30) days of its
3 receipt of such notice, or such objection by Mateel shall be waived.
4

5 **8. AUTHORITY TO STIPULATE**

6 Each signatory to this Consent Judgment certifies that he or she is fully
7 authorized by the party he or she represents to enter into this Consent Judgment and to
8 execute it on behalf of the party represented and legally to bind that party.
9

10 **9. RETENTION OF JURISDICTION**

11 This Court shall retain jurisdiction of this matter to implement the Consent
12 Judgment.
13

14 **10. ENTIRE AGREEMENT**

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

23 The validity, construction and performance of this Consent Judgment shall
24 be governed by the laws of the State of California, without reference to any conflicts of
25 law provisions of California law.
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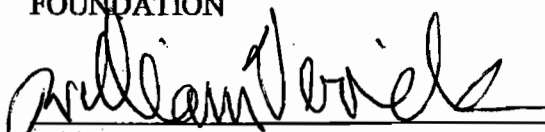
12. COURT APPROVAL

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: March __, 2010

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

DATED: March 31, 2010

KINGMAN CORPORATION



By: ARTHUR CHANG
Its: CEO KINGMAN GROUP

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT

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9 Attorneys for Plaintiff
10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 MATEEL ENVIRONMENTAL JUSTICE
14 FOUNDATION,

CASE NO. 485693

15 Plaintiff,

[PROPOSED] ORDER APPROVING
CONSENT JUDGMENT AS TO
KINGMAN INTERNATIONAL CORP.

16 vs.

17 JT SPORTS, LLC, et al.,

Date: May 25, 2010

Time: 9:30 a.m.

18 Defendants.

Dept. No.: 301

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21 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
22 noticed motion on May 25, 2010. The court finds that:

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

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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: _____

Judge of the Superior Court