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19 FOUNDATION

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

24 MATEEL ENVIRONMENTAL
25 JUSTICE FOUNDATION,,

26 Plaintiff,

27 v.

28 KEE ACTION SPORTS LLC,

Defendant.

Case No. CGC-10-502144

**CONSENT JUDGMENT AS TO
DEFENDANT KEE ACTION SPORTS
LLC**

1. **INTRODUCTION**

1.1 On August 3, 2010, 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. CGC-10-502144, against Defendant Kee Action Sports LLC (“Kee” or “Defendant”). The Complaint alleges, among other things, that Defendant

1 violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,
2 Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”). In particular,
3 Mateel alleges that Kee has knowingly and intentionally exposed persons to paintball guns
4 and accessories that utilize fittings made of brass containing lead and/or lead compounds
5 (hereinafter “leaded brass”), which are chemicals known to the State of California to
6 cause cancer and birth defects or other reproductive harm, without first providing a clear
7 and reasonable warning to such individuals.

8 **1.2** On February 16, 2010, Mateel sent a 60-Day Notice of Violation (“Notice”)
9 to Kee, the California Attorney General, all California District Attorneys, and all City
10 Attorneys of every California cities that have populations exceeding 750,000.

11 **1.3** Kee is a business that employs ten or more persons and manufactures,
12 distributes, and/or markets paintball guns and accessories, within the State of California.
13 Some of those products are alleged to contain lead and/or lead compounds. Lead and lead
14 compounds are chemicals known to the State of California to cause cancer, and lead is a
15 chemical known to the State of California to cause reproductive toxicity pursuant to
16 Health and Safety Code Section 25249.9. Under specified circumstances, products
17 containing lead and/or lead compounds that are sold or distributed in the State of
18 California are subject to the Proposition 65 warning requirement set forth in Health and
19 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass fittings on
20 paintball guns and their accessories manufactured, distributed, sold and/or marketed by
21 Kee for use in California require a warning under Proposition 65.

22 **1.4** For purposes of this Consent Judgment, the term “Covered Products” shall
23 be defined as BB guns, pellet guns and paintball guns and the accessories for such guns
24 that utilize leaded-brass fittings, to the extent such products are distributed and sold within
25 the state of California, and that are manufactured, distributed, marketed and/or sold by
26 Kee, regardless of whether they bear Kee labels.

27 **1.5** For purposes of this Consent Judgment, the parties stipulate that this Court
28 has jurisdiction over the allegations of violations contained in the Complaint and personal

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

7 **1.6** This Consent Judgment resolves claims that are denied and disputed. The
8 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
9 all claims between the parties for the purpose of avoiding prolonged litigation. This
10 Consent Judgment shall not constitute an admission with respect to any material allegation
11 of the Complaint, each and every allegation of which Kee denies, nor may this Consent
12 Judgment or compliance with it be used as evidence of any wrongdoing, misconduct,
13 culpability or liability on the part of Kee or any other Defendant.

14 **2. SETTLEMENT PAYMENT**

15 **2.1** In settlement of all of the claims referred to in this Consent Judgment
16 against the Settling Defendant, within ten (10) business days of notice of entry of this
17 Consent Judgment, Kee shall pay \$15,000 to the Klamath Environmental Law Center
18 (“KELC”) to cover Mateel’s attorneys’ fees and costs.

19 **2.2** Additionally, within ten (10) business days of notice of entry of this Consent
20 Judgment, Kee shall pay \$5,000 to the Ecological Rights Foundation and \$5,000 to
21 Californians for Alternatives to Toxics. Both are California non-profit environmental
22 organizations that advocate for workers’ and consumers’ safety, and for awareness and
23 reduction of 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, Kee and Mateel waive their respective
27 rights to a hearing or trial on the allegations of the Complaint.

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

2 **4.1** As to lead exposures allegedly caused by Covered Products, this Consent
3 Judgment is a final and binding resolution between Mateel, acting on behalf of itself and
4 the public interest, and Kee, of: (i) any violation of Proposition 65 with respect to the
5 Covered Products, and (ii) any other statutory or common law claim, to the fullest extent
6 that any of the foregoing described in (i) or (ii) were or could have been asserted by any
7 person or entity against Kee based upon, arising out of or relating to Kee's compliance
8 with Proposition 65, or regulations promulgated thereunder, with respect to the Covered
9 Products, and any other claim based in whole or part on the facts alleged in the Complaint,
10 whether based on actions committed by Kee, or by any other entity within the chain of
11 distribution, including, but not limited to, manufacturers, wholesale or retail sellers or
12 distributors and any other person in the course of doing business. As to lead exposures
13 allegedly caused by Covered Products, compliance with the terms of this Consent
14 Judgment resolves any issue, now and in the future, concerning compliance by Kee and its
15 parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of
16 their manufacturers, customers, distributors, wholesalers, retailers or any other person in
17 the course of doing business, and the successors and assigns of any of these who may
18 manufacture, use, maintain, distribute, market or sell Covered Products, with the
19 requirements of Proposition 65.

20 **4.2** As to lead exposures allegedly caused by Covered Products, Mateel, acting
21 on behalf of itself and the public interest, and its agents, successors and assigns, waives all
22 rights to institute any form of legal action, and releases all claims against Kee and its
23 parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of
24 its customers, manufacturers, distributors, wholesalers, retailers or any other person in the
25 course of doing business, and the successors and assigns of any of them, who may
26 manufacture, use, maintain, distribute or sell the Covered Products, whether under
27 Proposition 65 or otherwise, arising out of or resulting from, or related directly or
28 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 Kee, its
15 parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of
16 its customers, manufacturers, distributors, wholesalers, retailers or any other person in the
17 course of doing business, and the successors and assigns of any of them, who may
18 manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel
19 acknowledges that it intends these consequences for any such claims which may exist as
20 of the date of this release but which Mateel does not know exist, and which, if known,
21 would materially affect its decision to enter into this Consent Judgment, regardless of
22 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or
23 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”). Kee 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 Kee 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 Kee shall provide Proposition 65 warnings as follows:

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

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

5 or

6 **WARNING:** This product contains one or more chemicals that are known
7 to the State of California to cause cancer and birth defects or other
8 reproductive harm. *Wash hands after handling.*

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

11 Kee shall provide such warning with the unit package of the
12 Covered Products. Such warning shall be prominently affixed to or printed
13 on each Covered Product’s label or package. The warning shall be at least
14 the same size as the largest of any other safety warnings, if any, on the
15 product container. If printed on the label itself, the warning shall be
16 contained in the same section that states other safety warnings, if any,
17 concerning the use of the product.

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

22 (c) If Proposition 65 warnings for lead or lead compounds should no
23 longer be required, Kee shall have no further warning obligations pursuant
24 to this Consent Judgment.

25 **8. AUTHORITY TO STIPULATE**

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

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9. RETENTION OF JURISDICTION

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

10. ENTIRE AGREEMENT

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

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.

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IT IS SO STIPULATED:

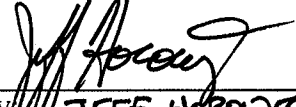
DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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

DATED:

KEE ACTION SPORTS, LLC

By 
Its. JEFF HOROWITZ
VICE PRESIDENT & GENERAL
COUNSEL

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT