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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**

13
14 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,
15
16 Plaintiff,
17
18 v.
19 24 HOUR FITNESS USA, INC., and
EQUINOX HOLDINGS, INC.,
20
21 Defendants.

CASE NO. CGC-15-546994
CONSENT JUDGMENT AS TO
EQUINOX HOLDINGS, INC.

21 **1. INTRODUCTION**

22 1.1 **The Parties.** This Consent Judgment is entered into by and between plaintiff
23 Mateel Environmental Justice Foundation acting on behalf of the public interest (“Mateel”), on
24 the one hand, and defendant EQUINOX HOLDINGS, INC., (“Equinox”), on the other hand, with
25 Mateel and Equinox collectively referred to as the “Parties” and each of them as a “Party.”
26 Mateel is a non-profit organization, based in Eureka, California, and incorporated under the laws
27 of the State of California. Equinox is incorporated under the laws of the State of New York.
28

1 1.2 **General Allegations.** Mateel alleges that Equinox is a person doing business
2 within the meaning of the Safe Drinking Water and Toxic Enforcement Act of 1986, Cal. Health
3 & Safety Code §§ 25249.5 et seq. (“Proposition 65”); Equinox operates fitness facilities in the
4 State of California, some of which include swimming pools, spas and other wet areas (the “Pool
5 Areas”); and that Equinox uses water treated with chlorine in these Pool Areas. Mateel further
6 alleges that, as a result of chlorination of the water in the Pool Areas, chloroform and
7 bromodichloromethane were created in those areas and that, for a period of time, the patrons and
8 workers of Equinox were exposed to chloroform and/or bromodichloromethane without a clear
9 and reasonable Proposition 65 warning being posted in the Pool Area. Mateel alleges that
10 chloroform and/or bromodichloromethane are chemicals listed by the State of California as
11 known to cause cancer, and birth defects or other reproductive harm. Equinox denies that it
12 violated Proposition 65, including as a result of the alternative risk level for sound considerations
13 of public health pursuant to Title 27 of the California Code of Regulations, Section 25703,
14 subsection (b) when chlorine disinfection is in compliance with all applicable state and federal
15 safety standards necessary to comply with sanitation requirements and that neither chloroform nor
16 bromodichloromethane are considered as chemicals known to the State of California to cause
17 reproductive toxicity.

18 1.3 **Notices of Violation/Complaint.** On or about August 14, 2014, Mateel served
19 Equinox and various public enforcement agencies with a document, pursuant to Cal. Health &
20 Safety Code § 25249.7(d), alleging that Equinox was and is in violation of Proposition 65 for
21 failing to warn consumers in California that use of Equinox’s Pool Areas of the alleged exposure
22 to chloroform and bromodichloromethane (the “Notice”). No public enforcer diligently
23 prosecuted the claims threatened in the Notice within sixty days plus service time. Therefore,
24 Mateel initiated this action by filing a complaint (the “Complaint”).

25 1.4 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
26 stipulate that this Court has jurisdiction over Equinox as to the allegations contained in the
27 Complaint, that venue is proper in the County of San Francisco, and that this Court has
28 jurisdiction to approve, enter, and enforce this Consent Judgment as a full and final binding

1 resolution of all claims which were or could have been asserted in the Complaint and all claims
2 which were or could have been raised based on, arising from or related to the facts or conduct
3 alleged in the Notice or Complaint.

4 1.5 **No Admission.** Mateel and Equinox enter into this Consent Judgment as a full
5 and final settlement of all claims which were or could have been asserted in the Complaint arising
6 out of the facts or conduct alleged therein and/or in the Notice. Equinox denies the material
7 allegations contained in the Notice and Complaint and maintains that it has not violated
8 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Equinox
9 of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance
10 with this Consent Judgment constitute or be construed as an admission of any fact, finding,
11 conclusion of law, issue of law, or violation of law. However, this section shall not diminish or
12 otherwise affect the obligations, responsibilities, and duties of Equinox under this Consent
13 Judgment. Except as provided in Section 6 below, including but not limited to the Releases in
14 that section, and as provided by law, nothing in this Consent Judgment shall prejudice, waive or
15 impair any right, remedy, argument or defense the Parties may have in any other pending or
16 future legal proceedings. This Consent Judgment is the product of negotiation and compromise
17 and is accepted by the Parties solely for purposes of settling, compromising, and resolving issues
18 disputed in the Complaint. This Consent Judgment shall not be used for any other purpose or in
19 any other manner.

20 **2. DEFINITIONS**

21 2.1 “Complaint” shall have the meaning given in Section 1.3.

22 2.2 “Covered Exposure(s)” means exposures to chloroform and/or
23 bromodichloromethane occurring in or from the Pool Areas operated by Equinox in fitness
24 facilities located in California.

25 2.3 “Effective Date” means the date this Consent Judgment is entered as a Judgment
26 of the Court.

27 2.4 “Listed Chemicals” means chloroform and/or bromodichloromethane.

28 2.5 “Notice” shall have the meaning given in Section 1.3.

1 **3. INJUNCTIVE RELIEF: PROVIDE WARNINGS**

2 3.1 A warning as set forth in Section 3.2, shall be posted in each Equinox facility in
3 California that has a chlorinated swimming pool or spa on or after the Effective Date.

4 3.2.1 The warning shall use the following language:

5 PROPOSITION 65 WARNING

6 This area contains a chemical known to the State of California to
7 cause cancer, and birth defects or other reproductive harm

8
9 3.2.2 The warning shall be placed on a sign, no smaller than nine (9) inches (9") by nine
10 (9) inches (9"), using a font size of no smaller than one-half inch (1/2") tall letters, the word
11 WARNING shall be in all capital letters. The sign shall be placed within or at the entrance to the
12 Pool Areas, mounted at eye level or in an equally conspicuous location, as close to the Pool Area
13 as reasonably possible. If the Pool Area is located in a room separated from the remainder of the
14 fitness facility, the warning shall be placed either on the doorway leading to the Pool Area or in
15 the same room as the Pool Area. If there are multiple Pool Areas located in distinct areas or
16 rooms, then a warning sign shall be placed in each separate location.

17 3.2.3 The Parties recognize that these are not the exclusive methods of providing a
18 warning under Proposition 65 and its implementing regulations and that they may or may not be
19 appropriate in other circumstances.

20 3.3 If Proposition 65 warnings for chloroform and/or bromodichloromethane should
21 no longer be required, either by statutory or regulatory amendments or court order, Equinox shall
22 have no further warning obligations pursuant to this Consent Judgment. If the safe harbor
23 warnings language applicable to the Covered Exposures, as currently specified in Title 27 CCR
24 25601, should change in the future, Equinox may adjust the language to comply with an
25 alternative safe harbor language. In the event that Equinox ceases to implement or substantively
26 modifies the warnings required under this Consent Judgment, Equinox shall provide written
27 notice to Mateel (through counsel) of its intent to do so, and of the basis for its intent, no less than
28 thirty (30) days in advance.

1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** Equinox shall pay a civil penalty of two-thousand dollars and zero
3 cents (\$2,000.00) pursuant to Cal. Health and Safety Code § 25249.7(b), with 100% of these
4 funds to be forwarded by Mateel to OEHHA, as provided by Cal. Health & Safety Code
5 §§ 25249.12(c) and 25249.12(d).

6 **4.2 Attorney Fees and Costs.** Equinox agrees to pay and will not oppose an
7 application made by Mateel's counsel for an award of attorney fees, inclusive of all expenses and
8 costs incurred as a result of investigating, notifying Equinox, litigating, negotiating and obtaining
9 judicial approval of a settlement in the public interest, pursuant to Cal. Code of Civil Procedure
10 § 1021.5, in an amount of fifty-eight-thousand dollars and zero cents (\$50,000.00). Other than
11 the payment required hereunder, each side is to bear its own attorney's fees and costs (including
12 but not limited to expert and consultant fees, if any).

13 **4.3 Payments to 501(c)3 Public Benefit Entity In Lieu of Attorney Fees and Costs.**
14 Equinox agrees to pay and will not oppose an application by Mateel's counsel for approval of a
15 payment to Ecological Rights Foundation, a 501(c)3 Public Benefit Entity, in an amount of eight-
16 thousand dollars and zero cents (\$8,000.00), in lieu of seeking a larger portion of the attorney's
17 fees and costs incurred in bringing the action.

18 **4.4 Equinox pay the entire settlement amount within ten (10) business days following**
19 **the approval of this settlement by the Court. The payment for civil penalties shall be made by**
20 **check payable to the Office of Environmental Health Hazard Assessment. Payment for attorney's**
21 **fees and costs shall be made by check payable to Klamath Environmental Law Center and**
22 **payment in lieu of attorney's fees and costs shall be made by check payable to the Ecological**
23 **Rights Foundation. All payments required by this Consent Judgment shall be made through the**
24 **delivery of checks delivered to: William Verick, Klamath Environmental Law Center, 1125**
25 **Sixteenth Street, Suite 204, Arcata, CA 95521. On or before the date of the hearing of the**
26 **motion for approval, Mateel shall provide counsel for Equinox with a completed Internal**
27 **Revenue Service W-9 Form.**

28

1 **5. ENFORCEMENT OF JUDGMENT**

2 5.1 In the event that, at any time following ninety (90) days after the Effective Date,
3 Mateel and/or its attorneys, agents, assigns, or any other person acting in the public interest under
4 Cal. Health & Safety Code § 25249.7(d) identifies one or more Equinox locations in the State of
5 California for which the warnings for Covered Exposures required under Section 3 are not being
6 or were not given (hereinafter the "Alleged Default(s)"), Mateel or such person shall notify
7 Equinox in writing of such alleged default(s) (the "Probationary Notice of Default"). The
8 Probationary Notice of Default shall be sent by first class mail, with proof of service, to the
9 person(s) identified in Section 14 to receive notices for Equinox, and must be served within
10 fifteen (15) days of the date the Alleged Default(s) was or were observed. The Probationary
11 Notice of Default shall, at a minimum, set forth the date(s) and location(s) that the Alleged
12 Default(s) was observed, and shall include a description of the Alleged Default(s) with sufficient
13 detail to allow Equinox to determine the basis of the claim being asserted.

14 5.2 In the event Equinox corrects the Alleged Default(s) within thirty (30) days of
15 receiving the Probationary Notice of Default by sending evidence of the necessary warning in
16 writing to Mateel or the notifying person, the alleged default(s) shall be considered cured and
17 resolved and Mateel or the notifying person shall take no further enforcement action with respect
18 to such default(s).

19 5.3 In the event that Equinox wishes to contest the allegations contained in any
20 Probationary Notice of Default, it shall notify Mateel or the notifying person of such within thirty
21 (30) days of its receipt of the Notice of Default. Equinox may provide any documentary evidence
22 to Mateel or the notifying person in support of its position. In the event that, upon a good faith
23 review of the evidence, Mateel or the notifying person agrees with Equinox's position, it shall
24 take no further action. In the event that Mateel or the notifying person disagrees with Equinox's
25 position, it shall, within thirty (30) days, notify Equinox of such and provide Equinox, in writing,
26 with the reasons for its disagreement. Thereafter, the parties shall meet and confer to attempt to
27 resolve their dispute on mutually acceptable terms; if no such resolution results (a) Mateel may by
28 motion or order to show cause before the Superior Court of San Francisco, seek to enforce the

1 terms and conditions contained in this Consent Judgment, or (b) Mateel or the notifying person
2 may initiate an enforcement action for new violations pursuant to Cal. Health & Safety Code
3 § 25249.7(d).

4 5.5 The terms and conditions of Sections 3.1 through 3.3 and 5.1 through 5.6 herein
5 shall remain in effect for five (5) years after the Effective Date. Such terms shall expire five (5)
6 years after the Effective Date, unless Equinox, at its sole option extends the period of time for
7 additional five (5) year periods, provided Equinox gives notice to Mateel as required by Section
8 14 at least thirty (30) days prior to the end of each such period.

9 5.6 The terms of this Consent Judgment are enforceable by and among the parties
10 hereto or, with respect to the injunctive relief provided for herein, by the California Attorney
11 General. Enforcement of the injunctive relief provided for in Section 3 shall be exclusively
12 pursuant to the terms of this Section 5.

13 **6. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

14 6.1 This Consent Judgment is a full, final, and binding resolution between Mateel
15 acting on behalf of itself and in the public interest, and Equinox Holdings, Inc. and its respective
16 parent companies, officers, directors, shareholders, divisions, subdivisions, subsidiaries, partners,
17 sister companies, affiliates, employees, attorneys, agents, and their respective successors and
18 assigns (“Defendant Releasees”), of all claims and any form of legal action, direct or indirect,
19 against Defendant Releasees for alleged violation of Proposition 65 that have been or could have
20 been asserted pursuant to the Notice or Complaint, regarding any alleged exposure to the Listed
21 Chemicals identified in the Notice or Complaint occurring before the Effective Date (hereinafter,
22 the “Released Claims”). Mateel, acting in the public interest, releases, waives and forever
23 discharges Defendant Releasees from the Released Claims. Compliance with the terms of this
24 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered
25 Exposure.

26 6.2 In addition to the foregoing, Mateel, on behalf of itself, its past and current agents,
27 representatives, attorneys, and successors and assigns, and *not* in its representative capacity,
28 hereby releases, waives and forever discharges Defendant Releasees from any and all manner of

1 actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements,
2 promises, liabilities, damages, charges, losses, costs, expenses, and attorney's fees, of any nature
3 whatsoever, known or unknown, direct or indirect, in law or equity, fixed or contingent, now or in
4 the future, with respect to any alleged exposure to Listed Chemicals in any Covered Exposures
5 before the Effective Date. Mateel, on behalf of itself or in the public interest, its past and current
6 agents, representatives, attorneys, and successors and assigns, also shall not institute or participate
7 in, directly or indirectly, any form of legal action against Defendant Releasees with regard to the
8 claims released and waived in Section 6.1 and this Section 6.2, unless such action is pursuant to
9 Section 5.3 of this Consent Judgment. With respect to the foregoing waivers and releases in this
10 Section 6.2, Mateel hereby specifically waives any and all rights and benefits which it now has, or
11 in the future may have, conferred by virtue of the provisions of Cal. Civil Code § 1542, which
12 provides as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
14 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
15 EXIST IN HIS OR HER FAVOR AT THE TIME OF
16 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
17 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
18 SETTLEMENT WITH THE DEBTOR.

19 6.3 Equinox hereby releases, waives and forever discharges Mateel, its attorneys and
20 other representatives from any and all manner of actions, causes of action, claims, demands,
21 rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges,
22 losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law
23 or equity, fixed or contingent, now or in the future, with respect to any and all actions taken or
24 statements made by Mateel and its attorneys and other representatives in the course of
25 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
26 and/or with respect to Covered Exposure.

27 7. INTEGRATION

28 7.1 This Consent Judgment contains the sole and entire agreement of the Parties and
any and all prior negotiations and understandings related hereto shall be deemed to have been
merged within it. No representations or terms of agreement other than those contained herein

1 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

2 **8. GOVERNING LAW**

3 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of
4 California and apply within the State of California.

5 **9. COMPLIANCE WITH CAL. HEALTH & SAFETY CODE § 25249.7(f);**
6 **COURT APPROVAL**

7 9.1 Mateel shall comply with the requirements set forth in Cal. Health & Safety Code
8 § 25249.7(f) and promptly bring a Motion for Approval and Entry of this Consent Judgment.
9 Equinox shall support approval of such Motion.

10 9.2 This Consent Judgment shall not be effective until it is approved and entered by
11 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court.
12 If the Court does not approve the Consent Judgment, the Parties shall meet and confer as to
13 whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a
14 course of action to take, this action shall proceed on its normal course on the trial court's
15 calendar.

16 9.3 Both Parties shall support entry of this Consent Judgment and shall waive any
17 right to appeal if entered without modification. If the Court approves and enters this Consent
18 Judgment, but such order is reversed or vacated by an appellate court, the Parties shall meet and
19 confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly
20 agree on a course of action to take, this action shall proceed on its normal course on the trial
21 court's calendar.

22 **10. RETENTION OF JURISDICTION**

23 10.1 This Court shall retain jurisdiction of this matter to implement, modify and enforce
24 this Consent Judgment.

25 **11. MODIFICATION; CONSTRUCTION; SEVERABILITY**

26 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
27 and the approval of the Court, or upon the granting of a motion brought to the Court by either
28 Party.

1 11.2 The terms and conditions of this Consent Judgment have been reviewed by the
2 Parties' respective counsel, and each Party has had the opportunity to fully discuss the terms and
3 conditions with its counsel. In any subsequent interpretation or construction of this Consent
4 Judgment, the terms and conditions shall not be construed against any Party based on any role it
5 or its counsel may have played in drafting this Consent Judgment.

6 **12. NOTICES**

7 12.1 Unless specified herein, all correspondence and notices required by this Consent
8 Judgment shall be in writing and personally delivered or sent by: (i) first-class, registered or
9 certified mail, return receipt requested; or (ii) overnight courier, to the following addresses:

10 For Equinox:

11 Kevin S. Morris, Esq.
12 Senior Vice President & General Counsel
13 Equinox Holdings, Inc.
14 895 Broadway
15 New York, NY 10003

16 With a copy to:

17 Peter Duchesneau, Esq.
18 Manatt, Pehps & Phillips, LLP.
19 11355 Olympic Blvd.
20 Los Angeles, CA 90064

21 For Mateel Environmental Justice Foundation:

22 William Verick, Esq.
23 Klamath Environmental Law Center
24 1125 Sixteenth Street
25 Arcata, CA 95521

26 Any Party, from time to time, may specify in writing to the other Party a change of
27 address to which all notices and other communications shall be sent.

28 **13. COUNTERPARTS, ELECTRONIC SIGNATURES**

 15.1 This Consent Judgment may be executed in counterparts and by electronic,
facsimile or portable document format (.pdf) signature, each of which shall be deemed an
original, and all of which, when taken together, shall constitute one and the same document.

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APPROVED AS TO FORM:

| | |
|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| Date: <u>Feb 4</u> , 2015 | Date: <u>February 3, 2015/16</u> |
| By: <u>William Verick</u> | By: <u>[Signature]</u> |
| On Behalf of Mateel Environmental Justice Foundation William Verick Klamath Environmental Law Center | On Behalf of Equinox Peter Duchesneau Manatt, Phelps & Phillips, LLP |

IT IS HEREBY SO STIPULATED:

| | |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| Date: <u>Feb 4</u> , 2015 | Date: <u>February</u> , 2016 |
| By: <u>William Verick</u> Mateel Environmental Justice Foundation | By: <u>Ke-mom, SVP + General Counsel</u> Equinox Holdings, Inc. <u>Counsel</u> |

IT IS SO ORDERED:

Date: _____

By: _____
The Honorable

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