

1 WILLIAM VERICK, SBN 140972  
KLAMATH ENVIRONMENTAL LAW CENTER  
2 FREDRIC EVENSON, SBN 198059  
1126 –16<sup>th</sup> Street, Suite 204  
3 Arcata, CA 95521  
Telephone: (707) 268-8900  
4 Facsimile: (707) 268-8901  
E-mail: wverick@igc.org

5 DAVID WILLIAMS, SBN 144479  
6 BRIAN ACREE, SBN 202505  
1990 N. California Blvd., 8th Fl.  
7 Walnut Creek, CA 94596  
Telephone: (510) 847 2356  
8 E-mail: dhwill7@gmail.com

9  
10 Attorneys for Plaintiff  
MATEEL ENVIRONMENTAL JUSTICE  
11 FOUNDATION

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF LOS ANGELES, CENTRAL DISTRICT  
15 UNLIMITED JURISDICTION

16 MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION,

17 Plaintiff,

18 v.

19 GNS DEVELOPMENT CORPORATION,  
20 MULLIGAN LTD, A CALIFORNIA LIMITED  
PARTNERSHIP.

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

Case No. BC 614636

**CONSENT JUDGMENT AS TO ALL  
DEFENDANTS**

## 1.0 INTRODUCTION

1.1 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel” or “MEJF”) acting on behalf of itself and the public interest, previously filed a complaint (“Complaint”) in this action for civil penalties and injunctive relief in Los Angeles Superior Court, against Defendant GNS DEVELOPMENT CORPORATION (“GNS” or “Settling Defendant”) and Defendant MULLIGAN GROUP, INC., (misidentified as MULLIGAN, LTD.) (“MULLIGAN” or “Settling Defendant”). The Complaint alleges, among her things, that each Settling Defendant operates amusement parks in California, and at least one amusement park in Los Angeles County, that incorporate go kart ride attractions. Mateel has alleged that exhaust from the go karts exposes patrons to engine exhaust (condensates/extracts), carbon monoxide, benzene, toluene, benzo(a)pyrene, formaldehyde, acetaldehyde, 1,3-butadiene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(j)fluoranthene, chrysene, and indeno [1,2,3-cd] pyrene (collectively hereinafter “listed chemicals”) in violation of provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq. (“Proposition 65”). In particular, Mateel alleges that each Settling Defendant knowingly and intentionally exposed its patrons to listed chemicals by operating go kart attractions while knowing that exhaust from the go karts contained listed chemicals and that each Settling Defendant intended its patrons to be in places where each Settling Defendant knew the patron would breathe exhaust gasses from the go karts. The above referenced “listed chemicals”, including carbon monoxide, are chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

1.2 On July 23, 2015, and pursuant to Health & Safety Code section 25249.7(d), Mateel sent a Notice of Violation letter concerning the allegations set forth in Paragraph 1.1 to each Settling Defendant, the California Attorney General, and the District Attorney for Los Angeles County.

1.3 On March 24, 2016, more than 60 days since Mateel sent its July 23, 2015 Notice Letters, and without an authorized public prosecutor having filed a Proposition 65 enforcement action against each Settling Defendant for the claims alleged therein, Mateel filed a Complaint in which each Settling Defendant was named as a party defendant. On April 4, 2016, Mateel filed a

1 First Amended Complaint. In the First Amended Complaint, Mateel alleges that each Settling  
2 Defendant violated Cal. Health & Safety Code Section 25249.6 by knowingly and intentionally  
3 exposing people to the above-referenced listed chemicals, without first providing a clear and  
4 reasonable warning to such individuals. It has currently been more than 60 days since Mateel sent  
5 its July 23, 2015 Notice of Violation to each Settling Defendant and no authorized public prosecutor  
6 has filed a Proposition 65 enforcement action against each Setting Defendant for the claims alleged  
7 in Mateel's July 23, 2015 Notice of Violation.

8 1.4 Mateel alleges that each Settling Defendant is a business that employs more than ten  
9 people, that each operates an amusement park that incorporates a go kart attraction, and that exhaust  
10 gasses from the go karts in the amusement park attraction contain Listed Chemicals and patrons that  
11 intend to be in proximity to the go kart attraction inhale Listed Chemicals emitted from the go karts.  
12 Mateel alleges that the exposures to Listed Chemicals that result from Settling Defendants' operation  
13 of go kart attraction are subject to the warning requirement of Health and Safety Code Section  
14 25249.6.

15 1.5 For purposes of settlement and the entry of this Consent Judgment only, the parties  
16 stipulate that this Court has jurisdiction over the allegations of violations contained in the First  
17 Amended Complaint and personal jurisdiction over Settling Defendants as to the acts alleged in the  
18 First Amended Complaint and the Notices of Violation, that venue is proper in the County of Los  
19 Angeles and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and  
20 resolution of the allegations contained in the First Amended Complaint and of all claims that were or  
21 could have been raised by any person or entity based in whole or in part, directly or indirectly, on the  
22 facts alleged in, arising from, or related to the First Amended Complaint and/or the Notices of  
23 Violation.

24 1.6 This Consent Judgment resolves claims that are denied and disputed. The parties  
25 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
26 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall  
27 not constitute an admission with respect to any material allegation of the First Amended Complaint,  
28 each and every allegation of which each Settling Defendant denies, nor may this Consent Judgment

1 or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on  
2 the part of each Settling Defendant.

3 1.7 This Consent Judgment shall be effective on entry by the Court, the “Effective Date.”

## 4 **2.0 SETTLEMENT PAYMENTS**

5 2.1 In settlement of all of the claims referred to in this Consent Judgment, each Settling  
6 Defendant shall pay an aggregate of \$12,500.00 in total monetary relief, inclusive of Paragraph 2.2,  
7 below. Of the foregoing amount, each Settling Defendant shall pay a total of \$2,500.00 in civil  
8 penalties. Of the \$2,500 in civil penalties, Settling Defendants shall pay \$1,875 to the Office of  
9 Environmental Health Hazard Assessment (“OEHHA”) and \$625 to the Mateel Environmental  
10 Justice Foundation.

11 2.2 The Balance of the settlement amount paid by each Settling Defendant, 10,000.00,  
12 shall be paid by each Settling Defendant to the Klamath Environmental Law Center (“KELC”) as  
13 reimbursement for attorney’s fees and costs (inclusive of investigation fees, expert and testing costs)  
14 incurred by KELC on behalf of Plaintiff in investigating and prosecuting this matter and in  
15 negotiating this Consent Judgment on behalf of itself and in the public interest relating to all  
16 amusement parks operated by each Settling Defendant in California. The payments described in  
17 Paragraph 2.1 above and this Paragraph 2.2 shall be delivered within 5 court days after the Effective  
18 Date to William Verick, Klamath Environmental Law Center, 1125 – 16<sup>th</sup> Street, Suite 204, Arcata,  
19 CA 95521.

20 2.3 Except as specifically provided in this Consent Judgment, each side shall bear its own  
21 costs and attorney’s fees.

## 22 **3.0 ENTRY OF CONSENT JUDGMENT**

23 3.1 The parties hereby request that the Court promptly enter this Consent Judgment  
24 which shall constitute a full and final adjudication of all claims asserted or that could have been  
25 asserted in Plaintiff’s Complaint and/or the Notices of Violation. Upon entry of the Consent  
26 Judgment, the parties waive their respective rights to a hearing or trial on the allegations of the  
27 Complaint.

## 28 **4.0 MATTERS COVERED BY THIS CONSENT JUDGMENT**

1           4.1     As to exposures to the listed chemicals referenced in paragraph 1.1 above and in the  
2 Notice Letters and Complaint in this action, and which are caused by operation of go kart attractions  
3 at Settling Defendant's amusement parks, this Consent Judgment constitutes a full release of liability  
4 on behalf of the public interest to each Settling Defendant as well as their past, present and future  
5 corporate parents, subsidiaries, affiliates, related partnerships and limited liability companies,  
6 predecessors, successors, assigns, manufacturers, distributors, wholesalers, retailers and customers,  
7 general partners, limited partners, managers, members, shareholders, officers, directors, agents,  
8 employees, representatives, attorneys, and any other person in the course of doing business involving  
9 go kart attractions and/or any of their component fixtures or equipment, and the successors and  
10 assigns of any of them, who may manufacture, use, maintain, distribute or sell the components,  
11 fixtures or equipment used by each Settling Defendant's go kart attractions (collectively, "Released  
12 Entities"), from all claims for violations of Proposition 65 (including, but not limited to, any claims  
13 regarding exposure to, and/or failure to warn with respect to go kart attractions) up through the  
14 Effective Date of this Consent Judgment, including those based upon exposure to the above  
15 referenced listed chemicals as set forth in Mateel's July 23, 2015, Notice of Violation letter.  
16 Compliance with the terms of this Consent Judgment by each Settling Defendant following its entry  
17 by the Court shall be deemed to constitute compliance with Proposition 65 as to the listed chemicals  
18 referenced in paragraph 1.1 that are generated by operation of go kart attractions at Settling  
19 Defendant's amusement parks, provided, however, that the authority and discretion of the Office of  
20 the California Attorney General shall not be restricted in the event it chooses to undertake  
21 enforcement actions in the future.

22           4.2     As to alleged listed chemical exposures associated with go kart attractions, Mateelon  
23 behalf of itself (but not on behalf of the public interest), and Mateel's privies, agents, attorneys,  
24 representatives, successors and assigns ("Mateel"), waives all rights to institute or participate in,  
25 directly, or indirectly, any form of legal action, and releases all claims as between Mateel and the  
26 Released Entities, including, without limitation, all actions, and causes of action, in law or in equity,  
27 suits, liabilities, demands, obligations, agreements, promises, royalties, accountings, damages, costs,  
28 fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and

1 attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
2 (collectively "claims"), against the Released Entities and their parents, subsidiaries or affiliates,  
3 related partnerships and limited liability companies, general partners, limited partners, members,  
4 managers, predecessors, successors, assigns, officers, directors, shareholders, attorneys,  
5 representatives, agents, employees, and all customers, manufacturers, distributors, wholesalers,  
6 retailers, or any other person in the course of doing business involving go kart attractions and/or any  
7 of their component fixtures or equipment, and the successors and assigns of any of them, who may  
8 manufacture, use, maintain, distribute or sell the components, fixtures or equipment used by each  
9 Settling Defendant's go kart attractions, including, but not limited to, any claims regarding exposure  
10 to, and/or failure to warn with respect to go kart attractions. In furtherance of the foregoing, Mateel  
11 hereby waives any and all rights and benefits which it now has, or in the future may have respecting  
12 Settling Defendant's go kart attraction, conferred upon it with respect to claims involving Settling  
13 Defendant's go kart attractions by virtue of the provisions of Section 1542 of the California Civil  
14 Code, which provides as follows:

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

18 4.3 Mateel understands and acknowledges that the significance and consequence of this  
19 waiver of California Civil Code Section 1542 is that even if Mateel suffers future damages or other  
20 consequences arising out of or resulting from, or related directly or indirectly to, in whole or in part,  
21 each Settling Defendant's go kart attractions, including but not limited to any exposure to, or failure  
22 to warn with respect to exposure to Listed Chemicals from go kart exhaust, Mateel will not be able  
23 to make any claim for those damages or consequences against the Released Entities, their parents,  
24 subsidiaries or affiliates, predecessors, officers, directors, shareholders, representatives, attorneys,  
25 agents, employees, and all customers, manufacturers, distributors, wholesalers, retailers or any other  
26 person in the course of doing business involving each Settling Defendant's go kart attractions, and  
27 the successors and assigns of any of them, who may construct, operate, use or maintain each Settling  
28 Defendant's go kart attraction and/or any component, fixture or equipment thereof. Furthermore,

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

## 6 **5.0 ENFORCEMENT OF JUDGMENT**

7 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
8 including on behalf of the Released Entities. The parties may, by noticed motion before the Superior  
9 Court of Los Angeles County, giving the notice required by law, enforce the terms and conditions of  
10 this Consent Judgment. The parties agree that prior to any such enforcement proceeding, they will  
11 notify each other of any perceived violation of this Consent Judgment. The parties further agree to  
12 meet and confer in good faith in an effort for 30 days before such notice is given to resolve the  
13 alleged violation.

## 14 **6.0 MODIFICATION OF JUDGMENT**

15 6.1 Except as provided for in Paragraph 7 .3( c), this Consent Judgment may be modified  
16 only upon written agreement of the parties and upon entry of a modified Consent Judgment by the  
17 Court, or upon motion of any party as provided by law and upon entry of a modified Consent  
18 Judgment by the Court. The California Attorney General shall be entitled to at least 15 days' notice  
19 of any proposed modification before it is presented to the Court for approval.

20 6.2 Notwithstanding any other term or provision of this Consent Judgment, each Settling  
21 Defendant may modify the warning message and its method of transmission as specified in  
22 Paragraph 7 if that Settling Defendant obtains the written consent of the California Attorney  
23 General. In the event a Settling Defendant seeks such written consent from the California Attorney  
24 General, that Settling Defendant shall provide Mateel with 30 days notice before doing so. Mateel  
25 may comment on any request a Settling Defendant makes to the California Attorney General  
26 pursuant to this sub-paragraph.

## 27 **7.0 INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNING**

28 7.1 At a minimum, each Settling Defendant shall post and keep posted a sign, no smaller

than 10" x 10" in a conspicuous place on or next to the entrance to each go kart track at a Settling Defendant amusement park. The type font shall be no smaller than 50 point for the word "warning", and 36 size for the remainder, and contain the following content:

**"WARNING:**

**This area contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.**

**Proposition 65, California Health & Safety Code Section 25249.6 et seq."**

7.2 The word "WARNING" shall be capitalized and in bold. The reference to Proposition 65 can be omitted at Settling Defendant's discretion.

7.3 In the event either Settling Defendant replaces the gasoline powered go karts used in a go kart attraction, with electric powered no-emission go karts, then that Settling Defendant may discontinue providing the warnings specified in subparagraph 7.1.

**8.0 AUTHORITY TO STIPULATE**

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

**9.0 RETENTION OF JURISDICTION**

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

**10.0 ENTIRE AGREEMENT**

10.1 This Consent Judgment contains the sole and entire agreement and understanding of the parties with respect to each Settling Defendant's go kart attractions, and any and all prior discussions, negotiations, commitments and understandings to them. No representations, oral or otherwise, express or implied, other than those contained herein regarding each Settling Defendant's go kart attractions have been made by any party. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties with respect to each Settling Defendant's go kart attractions.

**11.0 GOVERNING LAW**

11.1 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.

## **12.0 NOTICES**

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

### **To Mateel:**

William Verick, Esq.  
Klamath Environmental Law Center  
1125 – 16<sup>th</sup> Street, Suite 204  
Arcata, CA 95521

### **To Defendant GNS DEVELOPMENT:**

Michael L. Amaro  
Amaro Baldwin, LLP  
180 E. Ocean Blvd., Suite 850  
Long Beach, CA 90802

### **To Defendant MULLIGAN, LTD.**

Mark B. Frazier  
Rutan & Tucker, LLP  
611 Anton Boulevard, 14th Floor  
Costa Mesa, CA 92626

## **13.0 COURT APPROVAL**

13.1 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.

///

///

///

1 IT IS SO STIPULATED:

2 Dated:

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

3  
4 By

  
William Verick


5 CEO, Mateel Environmental Justice Foundation,  
6 Klamath Environmental Law Center

7  
8 Dated:

8/29/16

GNS DEVELOPMENT CORPORATION

9  
10 By

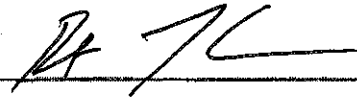


11  
12 Dated:

10/13/16

MULLIGAN, LTD. Group Inc. <sup>lt</sup>

13  
14 By



15  
16  
17 IT IS ORDERED, ADJUDGED AND DECREED:

18  
19 DATED:

20 JUDGE OF THE SUPERIOR COURT