

ENDORSED  
FILED  
San Francisco County Superior Court

APR 02 2008

GORDON PARK-LI, Clerk  
BY: \_\_\_\_\_ Deputy Clerk

1 **KLAMATH ENVIRONMENTAL LAW  
CENTER**

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9 Attorneys for Plaintiff Mateel Environmental  
Justice Foundation

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

14 **MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION,**

15 **Plaintiff,**

16 **v.**

17 **COST PLUS, INC., FEDERATED  
18 DEPARTMENT STORES, INC.; MACY'S  
DEPARTMENT STORES, INC.,**

19 **Settling Defendants.**

) **Case No. CGC 07-461598**

) **CONSENT JUDGMENT**  
) **~~PROPOSED~~**

21 **1. INTRODUCTION**

22 1.1 On March 22, 2007, Plaintiff MATEEL ENVIRONMENTAL JUSTICE  
23 FOUNDATION ("Plaintiff or MEJF") acting on behalf of itself and the general public, filed a  
24 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court,  
25 Case No. CGC-07-461598, against Defendants MACY'S, INC. (formerly known as  
26 FEDERATED DEPARTMENT STORES, INC.) and MACY'S DEPARTMENT STORES, INC.  
27 ("Settling Defendants"). The Complaint alleges, among other things, that Settling Defendants  
28 violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and

1 Safety Code Sections 25249.5, et seq. (Proposition 65), by failing to give clear and reasonable  
2 warnings to those residents of California who handle and use brass napkin rings that contain lead  
3 that handling and use of these products causes those residents to be exposed to lead and/or lead  
4 compounds. Lead is known to the State of California to cause cancer and/or birth defects or other  
5 reproductive harm. The Complaint was based upon a 60-Day Notice letter, dated July 27, 2006,  
6 sent by MEJF to Settling Defendants, the California Attorney General, all District Attorneys, and  
7 all City Attorneys with populations exceeding 750,000.

8 1.2 Settling Defendants are businesses that employ more than ten persons, and sell  
9 brass napkin rings that allegedly contains lead and/or lead compounds. Pursuant to Health and  
10 Safety Code Section 25249.8, lead and lead compounds are chemicals known to the State of  
11 California to cause cancer and reproductive toxicity. Plaintiff MEJF alleges that brass napkin  
12 rings with lead-containing brass that are sold by Settling Defendants for use in California require  
13 a warning under Proposition 65, pursuant to Health and Safety Code Section 25249.6. Settling  
14 Defendants deny that a warning is required. For purposes of this Consent Judgment, the parties  
15 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
16 Complaint and personal jurisdiction over Settling Defendants as to the acts alleged in the  
17 Complaint, that venue is proper in the County of San Francisco, and that this Court has  
18 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations  
19 contained in the Complaint and of all claims which were or could have been raised by any person  
20 or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising  
21 therefrom or related to.

22 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties  
23 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
24 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment  
25 shall not constitute an admission with respect to any material allegation of the Complaint, each  
26 and every allegation of which Settling Defendants denies, nor may this Consent Judgment or  
27 compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on  
28 the part of Settling Defendants.

1           1.4    For purposes of this Consent Judgment, the term "Covered Products" means  
2 napkin rings that are manufactured in whole or part from brass and sold under Settling  
3 Defendants' private label.

4           1.5    The term "Effective Date" means 90 days after entry of this Consent Judgment.

5    **2.    SETTLEMENT PAYMENT**

6           2.1    In settlement of all of the claims that are alleged, or could have been alleged, in the  
7 Complaint concerning Covered Products, Settling Defendants shall pay \$20,000 to the Klamath  
8 Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally, Settling  
9 Defendants shall pay \$7,500 to the Ecological Rights Foundation and \$7,500 to Californians for  
10 Alternatives to Toxics for use toward reducing exposures to toxic chemicals and other pollutants,  
11 and toward increasing consumer, worker and community awareness of health hazards posed by  
12 lead and other toxic chemicals. The parties agree and acknowledge that the charitable  
13 contributions made pursuant to this section shall not be construed as a credit against the personal  
14 claims of absent third parties for restitution against the Settling Defendants. The above described  
15 payments shall be forwarded by Settling Defendants so that they are received at least 5 days prior  
16 to the hearing date scheduled for approval of this Consent Judgment. If the Consent Judgment is  
17 not approved with 120 days of the date scheduled for approval, the above described payments  
18 shall be returned and the provisions of this Consent judgment shall become null and void.

19           2.2    Settling Defendants shall not be required to pay a civil penalty pursuant to Health  
20 and Safety Code Section 25249.7(b).

21    **3.    ENTRY OF CONSENT JUDGMENT**

22           3.1    The parties hereby request that the Court promptly enter this Consent Judgment.  
23 Upon entry of the Consent Judgment, Settling Defendants and MEJF waive their respective rights  
24 to a hearing or trial on the allegations of the Complaint.

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

26           4.1    This Consent Judgment is a final and binding resolution between MEJF, acting on  
27 behalf of itself and (as to those matters raised in the 60-Day Notice Letter) the general public, and  
28 Settling Defendants of: (i) any violation of Proposition 65 (including but not limited to the claims

1 made in the Complaint); and (ii) any other statutory or common law claim to the fullest extent  
2 that any of the foregoing described in (i) or (ii) were or could have been asserted by any person or  
3 entity against Settling Defendants or their parents, subsidiaries or affiliates, and all of their  
4 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of  
5 doing business, and the successors and assigns of any of them, who may use, maintain, distribute  
6 or sell Covered Products ("Released Entities"), based on any alleged exposure of persons to lead  
7 or lead compounds from Covered Products or any alleged failure to provide a clear and  
8 reasonable warning of exposure to such individuals; and (iii) as to alleged exposures to lead or  
9 lead compounds from Covered Products, any other claim based in whole or in part on the facts  
10 alleged in the Complaint, whether based on actions committed by the Released Entities or others.  
11 As to alleged exposures to lead or lead compounds from Covered Products, compliance with the  
12 terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance  
13 by Settling Defendants and the Released Entities, with the requirements of Proposition 65 with  
14 respect to Covered Products, and any alleged resulting exposure.

15           4.2    As to alleged exposures to lead or lead compounds from Covered Products, MEJF,  
16 by and on behalf of itself and its respective agents, successors and assigns, waives any and all  
17 rights to institute any form of legal action, and releases all claims against Settling Defendants and  
18 the Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their  
19 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of  
20 doing business, and the successors and assigns of any of them, who may use, maintain, distribute  
21 or sell the Covered Products, whether, under Proposition 65 or otherwise, arising out of or  
22 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,  
23 including but not limited to any exposure to, or failure to warn with respect to, the Covered  
24 Products (referred to collectively in this paragraph as the "Claims"). In furtherance of the  
25 foregoing, as to alleged exposures to Covered Products, MEJF hereby waives any and all rights  
26 and benefits which it now has, or in the future may have, conferred upon it with respect to the  
27 Claims by virtue of the provisions of section 1542 of the California Civil Code, which provides as  
28 follows:

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

6 4.3 MEJF understands and acknowledges that the significance and consequence of this  
7 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising  
8 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered  
9 Products, including but not limited to any exposure to, or failure to warn with respect to exposure  
10 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for  
11 those damages against Settling Defendants or the Released Entities. Furthermore, MEJF  
12 acknowledges that it intends these consequences for any such Claims as may exist as of the date  
13 of this release but which MEJF does not know exist, and which, if known, would materially affect  
14 their decision to enter into this Consent Judgment, regardless of whether their lack of knowledge  
15 is the result of ignorance, oversight, error, negligence, or any other cause.

## 14 5. ENFORCEMENT OF JUDGMENT

15 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
16 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
17 San Francisco County, giving the notice required by law, enforce the terms and conditions  
18 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment  
19 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the  
20 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to  
21 comply in an open and good faith manner.

22 5.2 In any proceeding brought by either party to enforce this Consent Judgment, such  
23 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
24 violation of Proposition 65 or this Consent Judgment.

## 25 6. MODIFICATION OF JUDGMENT

26 6.1 This Consent Judgment may be modified only upon written agreement of the  
27 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
28

1 any party as provided by law and upon entry of a modified Consent Judgment by the Court.  
2 Before seeking any modification to this Consent Judgment, the parties shall meet and confer in  
3 good faith to attempt to resolve any differences.

4 6.2 Settling Defendants may seek to modify this Consent Judgment to establish a  
5 reformulation standard for lead content in napkin rings that are manufactured in whole or part  
6 from brass ("Brass Napkin Rings") under which no warning is required under paragraph 7 of this  
7 Consent Judgment as follows:

8 6.2.1 If the Attorney General of the State of California or Plaintiff permit any  
9 reformulation standard for Brass Napkin Rings by way of settlement or compromise with any  
10 other person in the course of doing business, or any other entity, or if a reformulation standard for  
11 Brass Napkin Rings is incorporated by way of final judgment as to any other person in the course  
12 of doing business, or any other entity, then Settling Defendants are entitled to seek a modification  
13 to this Consent Judgment on the same terms as provided in those settlements, compromises or  
14 judgments.

15 6.2.2 Settling Defendants shall be entitled to a modification to this Consent  
16 Judgment to establish a reformulation standard for lead content in Brass Napkin Rings consistent  
17 with any "safe use determination" regarding lead content in brass napkin rings issued by the  
18 California Environmental Protection Agency Office of Environmental Health Hazard  
19 Assessment, pursuant to 22 Cal. Code Regs. § 12204.

## 20 7. INJUNCTIVE RELIEF

21 7.1 The requirements of this paragraph 7 shall apply only to Covered Products that are  
22 offered for sale in California by Settling Defendants after the Effective Date.

23 7.2 As to any Covered Product that contains a component made from brass where such  
24 brass comes into contact with the user, a warning that contains one of the following warning  
25 statements shall be provided:

26 **"WARNING:** This product contains chemicals, including lead, known to the State  
27 of California to cause birth defects and other reproductive harm. *Wash hands*  
28 *after handling*" or

1           **“WARNING: Handling the brass parts of this product will expose you to lead, a**  
2           **chemical known to the State of California to cause birth defects and other**  
3           **reproductive harm. *Wash hands after handling.*”**

4           The word “WARNING” shall be in bold text, and the phrase “Wash hands after handling”  
5           shall be in bold italic text.

6                       7.2.1 The warning statements required in paragraph 7.2 shall be affixed to or  
7           printed on the Covered Product itself or to the Covered Product’s packaging or labeling. The  
8           warning shall be prominently affixed to or printed on the Covered Product or packaging or  
9           labeling, and displayed with such conspicuousness, as compared with other words, statements,  
10          designs, or devices on the Covered Product, or its packaging or labeling, as to render it likely to  
11          be read and understood by an ordinary individual under customary conditions of purchase or use.  
12          For purposes of this paragraph, a warning may be contained in the same section of the packaging  
13          or labeling that contains other safety warnings, if any, concerning the use of the Covered Product,  
14          or near its displayed price and/or UPC code. The type size of the warning must be legible, but  
15          need not be any larger than any other warning provided for the Covered Product, and its relative  
16          size may take into account the nature, immediacy, and acuteness of the risks for which other  
17          warnings are provided.

## 18           **8.       RETENTION OF JURISDICTION**

19                       8.1       This Court shall retain jurisdiction of this matter to implement and enforce the  
20           terms this Consent Judgment.

## 21           **9.       AUTHORITY TO STIPULATE**

22                       9.1       Each signatory to this Consent Judgment certifies that he or she is fully authorized  
23           by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
24           the party represented and legally to bind that party.

## 25           **10.     DUTIES LIMITED TO CALIFORNIA**

26                       10.1     This Consent Judgment shall have no effect on Covered Products sold by Settling  
27           Defendants outside the State of California.

## 28           **11.     SERVICE ON THE ATTORNEY GENERAL**

1           11.1 KELC shall serve a copy of this Consent Judgment, signed by all parties, on the  
2 California Attorney General on behalf of the parties so that the Attorney General may review this  
3 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty-five (45)  
4 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
5 and in the absence of any written objection by the Attorney General to the terms of this Consent  
6 Judgment, the parties may then submit it to the Court for approval.

7 **12. ENTIRE AGREEMENT**

8           12.1 This Consent Judgment contains the sole and entire agreement and understanding  
9 of the parties with respect to the entire subject matter hereof and any and all prior discussions,  
10 negotiations, commitments and understandings related hereto. No representations, oral or  
11 otherwise, express or implied, other than those contained herein have been made by any party  
12 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
13 deemed to exist or to bind any of the parties.

14 **13. GOVERNING LAW**

15           13.1 The validity, construction and performance of this Consent Judgment shall be  
16 governed by the laws of the State of California, without reference to any conflicts of law  
17 provisions of California law.

18 **14. EXECUTION AND COUNTERPARTS**

19           14.1 This Consent Judgment may be executed in counterparts and by means of  
20 facsimile, which taken together shall be deemed to constitute one document.

21 **15. COURT APPROVAL**

22           15.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of  
23 no force or effect, and cannot be used in any proceeding for any purpose.

24 **16. NOTICES**

25           16.1 Any notices under this Consent Judgment shall be by personal delivery of First  
26 Class Mail.

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

If to Settling Defendants: Christine Brandt  
Macy's, Inc.  
Law Department Western Region  
P.O. Box 7888 - Internal Box 47  
San Francisco, CA 94120  
Tel: (415) 954-6078/Fax: (415) 393-3034  
christine.brandt@macys.com

With a copy to:  
  
Jeffrey B. Margulies  
FULBRIGHT & JAWORSKI L.L.P.  
555 South Flower Street, 41st Floor  
Los Angeles, California 90071  
Tel: (213) 892-9286/Fax: (213) 892-9494  
jmargulies@fulbright.com

IT IS SO STIPULATED:

DATED: 2/13/08

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

BY: William Verick  
WILLIAM VERICK

DATED: \_\_\_\_\_

MACY'S, INC.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

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If to MEJF:

William Verick, Esq.  
Klamath Environmental Law Center  
424 First Street  
Eureka, CA 95501

If to Settling Defendants:

Christine Brandt  
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Law Department Western Region  
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555 South Flower Street, 41st Floor  
Los Angeles, California 90071  
Tel: (213) 892-9286/Fax: (213) 892-9494  
jmargulies@fulbright.com

IT IS SO STIPULATED:

DATED: 2/13/08

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

BY: William Verick  
WILLIAM VERICK

DATED: \_\_\_\_\_

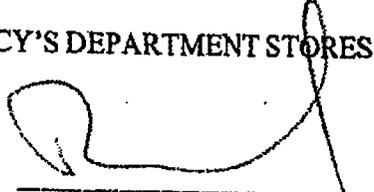
MACY'S, INC.

BY: [Signature]  
ITS: SR. VICE PRESIDENT, GENERAL COUNSEL & SECRETARY

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DATED: \_\_\_\_\_

MACY'S DEPARTMENT STORES, INC.

BY:  \_\_\_\_\_

ITS: SR. VICE PRESIDENT, GENERAL  
COUNSEL & SECRETARY

IT IS SO ORDERED, ADJUDGED AND DECREED:

APR 02 2008

DATED: \_\_\_\_\_

PATRICK J. MAHONEY

JUDGE OF THE SUPERIOR COURT