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Attorneys for Plaintiff Mateel Environmental
Justice Foundation

ENDORSED
FILED
San Francisco County Superior Court

OCT 09 2008

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

Case No. No. CGC-07-461732

Plaintiff,

~~PROPOSED~~ CONSENT JUDGMENT AS
TO DEFENDANT STAUB S.A.

vs.

STAUB, S.A.; WILLIAMS-SONOMA,
INC.; TARGET CORPORATION,

Defendants.

1 **1. INTRODUCTION**

2 1.1 On March 27, 2007, the MATEEL ENVIRONMENTAL JUSTICE
3 FOUNDATION ("Plaintiff" or "MEJF") acting on behalf of itself and the general public, filed a
4 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court,
5 Case No. CGC-07-461732, against defendant STAUB S.A. ("Defendant"). The Complaint
6 alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and
7 Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, et seq. (Proposition
8 65) by failing to give clear and reasonable warnings to those residents of California who handle
9 and use cookware with brass handles that contain lead that handling and use of these products
10 causes those residents to be exposed to lead and/or lead compounds. The Complaint was based
11 upon a 60-Day Notice letter, dated July 27, 2006, sent by MEJF to Defendant, the California
12 Attorney General, all District Attorneys, and all City Attorneys with populations exceeding
13 750,000 ("Notice Letter").

14 1.2 Defendant is a business that employs more than ten persons, and manufactures,
15 markets or sells cookware with brass handles that allegedly contain lead and/or lead compounds.
16 Pursuant to Health and Safety Code Section 25249.8, lead and lead compounds are known to the
17 State of California to cause cancer and reproductive toxicity. Plaintiff MEJF alleges that
18 cookware with lead-containing brass handles that is marketed or sold by Defendant for use in
19 California requires a warning under Proposition 65, pursuant to Health and Safety Code Section
20 25249.6. Defendant denies that a warning is required. For purposes of this Consent Judgment, the
21 parties stipulate that this Court has jurisdiction over the allegations of violations contained in the
22 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
23 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
24 Consent Judgment as a full settlement and resolution of the allegations contained in the
25 Complaint and of all claims which were or could have been raised by any person or entity based
26 in whole or in part, directly or indirectly, on the facts alleged therein or arising there from or
27 related to.

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1 1.3 This Consent Judgment resolves claims that are denied and disputed. The parties
2 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
3 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
4 not constitute an admission with respect to any material allegation of the Complaint, each and every
5 allegation of which Defendant denies, nor may this Consent Judgment or compliance with it be used
6 as evidence of any wrongdoing, misconduct, culpability or liability on the part of Defendant.

7 1.4. For purposes of this Consent Judgment, the term "Covered Products" means
8 cookware with brass handles manufactured, marketed or offered for sale by Defendant.

9 1.5 The term "Effective Date" means 90 days after entry of this Consent Judgment.

10 **2. SETTLEMENT PAYMENT**

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

23 2.2 Defendant shall not be required to pay a civil penalty pursuant to Health and
24 Safety Code Section 25249.7(b).

25 **3. ENTRY OF CONSENT JUDGMENT**

26 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.
27 Upon entry of the Consent Judgment, Defendant and MEJF waive their respective rights to a
28 hearing or trial on the allegations of the Complaint.

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

2 4.1 This Consent Judgment is a final and binding resolution, as to Covered Products,
3 between MEJF, acting on behalf of itself and (as to those matters raised in the Notice Letter) the
4 general public, and Defendant of: (i) any violation of Proposition 65 (including but not limited to
5 the claims made in the Complaint); and (ii) any other statutory or common law claim to the fullest
6 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any
7 person or entity against Defendant or its parents, subsidiaries or affiliates, and all of their
8 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of
9 doing business, and the successors and assigns of any of them, who may use, maintain, distribute
10 or sell Covered Products ("Released Entities"), based on its or their exposure of persons to lead or
11 lead compounds from Covered Products or their failure to provide a clear and reasonable warning
12 of exposure to such individuals; and (iii) as to alleged exposures to lead or lead compounds from
13 Covered Products, any other claim based in whole or in part on the facts alleged in the Complaint,
14 whether based on actions committed by the Released Entities or others. As to alleged exposures
15 to lead or lead compounds from Covered Products, compliance with the terms of this Consent
16 Judgment resolves any issue, now and in the future, concerning compliance by Defendant and the
17 Released Entities, with the requirements of Proposition 65 with respect to Covered Products, and
18 any alleged resulting exposure. Notwithstanding any other provision in Section 4, no releases on
19 behalf of the general public shall be construed to extend to claims concerning chemicals listed
20 under Proposition 65 other than lead and/or lead compounds or to claims not arising out of
21 allegations in the Notice Letter.

22 4.2 As to alleged exposures to lead or lead compounds from Covered Products,
23 MEJF, by and on behalf of itself and its respective agents, successors and assigns, waives any and
24 all rights to institute any form of legal action, and releases all claims against Defendant and the
25 Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their
26 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of doing
27 business, and the successors and assigns of any of them, who may use, maintain, distribute or sell the
28 Covered Products, whether, under Proposition 65 or otherwise, arising out of or resulting from, or

1 related directly or indirectly to, in whole or in part, the Covered Products, including but not
2 limited to any exposure to, or failure to warn with respect to, the Covered Products that was or
3 could have been alleged by Plaintiff against any of the Released Entities based on the facts
4 alleged in the Complaint, or facts similar to those alleged (referred to collectively in this
5 paragraph as the "Claims"). In furtherance of the foregoing, as to alleged exposures to lead and
6 lead compounds from Covered Products, MEJF hereby waives any and all rights and benefits
7 which it now has, or in the future may have, conferred upon it with respect to the Claims by virtue
8 of the provisions of section 1542 of the California Civil Code, which provides as follows:

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

13 4.3 MEJF understands and acknowledges that the significance and consequence of
14 this waiver of California Civil Code section 1542 is that even if MEJF suffers future damages
15 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
16 Covered Products, including but not limited to any exposure to, or failure to warn with respect to
17 exposure to, lead or lead compounds from Covered Products, MEJF will not be able to make any
18 claim for those damages against Defendant or the Released Entities; provided however, Plaintiff
19 cannot and expressly does not release any claims for personal injury that could be brought by any
20 other individual or organization. Furthermore, MEJF acknowledges that it intends these
21 consequences for any such Claims as may exist as of the date of this release but which MEJF
22 does not know exist, and which, if known, would materially affect their decision to enter into this
23 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
24 oversight, error, negligence, or any other cause. Notwithstanding the above, Williams-Sonoma
25 shall not be deemed a Released Entity, nor shall it benefit from the releases of liability granted in
26 Sections 4.1 through 4.3.

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1 **5. ENFORCEMENT OF JUDGMENT**

2 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
3 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
4 San Francisco County, giving the notice required by law, enforce the terms and conditions
5 contained herein.

6 **6. MODIFICATION OF JUDGMENT**

7 6.1 This Consent Judgment may be modified only upon written agreement of the
8 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
9 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

10 6.2 If, with respect to brass containing lead, the Attorney General of the State of
11 California or Plaintiff permit any other reformulation standard by way of settlement or
12 compromise with any other person in the course of doing business, or any other entity, or if
13 another reformulation standard for brass is incorporated by way of final judgment as to any other
14 person in the course of doing business, or any other entity, then Defendant is entitled to seek a
15 modification to this Consent Judgment on the same terms as provided in those settlements,
16 compromises or judgments.

17 **7. REFORMULATION STANDARD**

18 7.1 On and after the Effective Date, the brass alloys used in manufacturing all Covered
19 Products sold by Defendant for resale or use in California shall meet the following criteria:

20 7.2 (a) The brass used to manufacture the Covered Products shall have no lead as an
21 intentionally added constituent and; (b) A representative sample of the brass alloys used to
22 manufacture the Covered Products shall have been tested for lead, and must have shown lead
23 content by weight of less than 0.03% (300 parts per million "300 ppm"), using a test method of
24 sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less
25 than 300 ppm.

26 7.3 In the event that MEJF settles another actual or potential claim concerning the
27 alleged failure of a business to provide adequate Proposition 65 warnings concerning its
28 manufacture, distribution or sale of Covered Products in California, and agrees to a standard for

1 reformulation that allows for lead content by weight of greater than 300 ppm in the brass alloys,
2 Defendant's compliance with the less stringent standard will be deemed to meet the requirements
3 of this Section 7.

4 **8. RETENTION OF JURISDICTION**

5 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
6 terms this Consent Judgment.

7 **9. AUTHORITY TO STIPULATE**

8 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
9 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
10 the party represented and legally to bind that party.

11 **10. DUTIES LIMITED TO CALIFORNIA**

12 10.1 This Consent Judgment shall have no effect on Covered Products sold by
13 Defendant outside the State of California.

14 **11. SERVICE ON THE ATTORNEY GENERAL**

15 11.1 KELC shall serve a copy of this Consent Judgment, signed by all parties, on the
16 California Attorney General on behalf of the parties so that the Attorney General may review this
17 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
18 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
19 and in the absence of any written objection by the Attorney General to the terms of this Consent
20 Judgment, the parties may then submit it to the Court for approval.

21 **12. ENTIRE AGREEMENT**

22 12.1 This Consent Judgment contains the sole and entire agreement and understanding
23 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
24 negotiations, commitments and understandings related hereto. No representations, oral or
25 otherwise, express or implied, other than those contained herein have been made by any party
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
27 to exist or to bind any of the parties.

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1 **13. GOVERNING LAW**

2 13.1 The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.

5 **14. EXECUTION AND COUNTERPARTS**

6 14.1 This Consent Judgment maybe executed in counterparts and by means of
7 facsimile, which taken together shall be deemed to constitute one document.

8 **15. COURT APPROVAL**

9 15.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be
10 of no force or effect, and cannot be used in any proceeding for any purpose.

11 **16. NOTICES**

12 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
13 Class Mail.

14 If to MEJF: William Verick, Esq.
15 Klamath Environmental Law Center
16 424 First Street
Eureka, CA 95501

17 If to Staub S.A.: Catherine Bourdais
18 Administration & Accounting Manager
19 Staub USA
115 Pine Street, Suite 350
Long Beach, CA 90802

20 With copy to: James R. Arnold
21 THE ARNOLD LAW PRACTICE
22 225 Bush Street, 16th Floor
San Francisco, CA 94101

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IT IS SO STIPULATED:

Dated: 8/20/08

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

By: *William Verick*
WILLIAM VERICK

Dated: _____

STAUB S.A.

By: _____

Its: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:



DATED: OCT 09 2008

PATRICK J. MAHONEY
JUDGE OF THE SUPERIOR COURT

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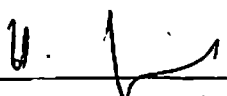
Dated: _____

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

By: 
WILLIAM VERICK

Dated: July 9, 2008

STAUB S.A.

By: 
Its: HUGUEHE GERARD
General Manager
STAUB GROUP

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT