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12 Justice Foundation

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

16 MATEEL ENVIRONMENTAL JUSTICE)
17 FOUNDATION,)
18)
19) Plaintiff,)
20)
21) v.)
22)
23) STAUB S.A.; WILLIAMS-SONOMA, INC.;)
24) TARGET CORPORATION,)
25)
26) Defendants.)
27)
28)

Case No. CGC 07-461732

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
WILLIAMS -SONOMA, INC.**

**ENDORSED
FILED**
Superior Court of California
County of San Francisco

OCT 15 2008

GORDON PARK-LI, Clerk
BY: ROCHELLE F. VELUZ
Deputy Clerk

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 in San Francisco Superior Court, Case No. CGC-
5 07-461732, against defendant WILLIAMS-SONOMA, INC. ("Williams-Sonoma"). The complaint
6 alleges, among other things, that Williams-Sonoma violated provisions of the Safe Drinking Water
7 and 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 and
9 use cookware with brass handles that contain lead ("Covered Cookware Products") that handling
10 and use of these products causes those residents to be exposed to lead and/or lead compounds. The
11 complaint was based upon a 60-day notice letter, dated July 27, 2006, sent by MEJF to Williams-
12 Sonoma, the California Attorney General, all District Attorneys, and all City Attorneys with
13 populations exceeding 750,000.

14 1.2 On March 22, 2007, MEJF, acting on behalf of itself and the general public,
15 issued a 60-day notice letter to Williams-Sonoma, the California Attorney General, all District
16 Attorneys, and all City Attorneys with populations exceeding 750,000, alleging that Williams-
17 Sonoma failed to provide clear and reasonable warnings under Proposition 65 that handling and use
18 of peppermills with brass containing lead ("Covered Peppermills") cause exposures to lead and lead
19 compounds. No public enforcer elected to sue within 60 days on the basis of the allegations in this
20 notice letter.

21 1.3 For purposes of this Consent Judgment, the term "Notice Letters" refers
22 collectively to MEJF's 60-day notice letter to Williams-Sonoma regarding Covered Cookware
23 Products and MEJF's 60-day notice letter to Williams-Sonoma regarding Covered Peppermills.

24 1.4 Upon entry of this Consent Judgment, the March 27, 2007 complaint shall be
25 deemed to be amended to assert a cause of action under Proposition 65 against Williams-Sonoma
26 for alleged violations of Proposition 65 with respect to Covered Peppermills, based on those
27 allegations asserted in MEJF's March 22, 2007 60-day notice letter regarding Covered Peppermills,
28 and the complaint as amended shall be referred to herein as the "Complaint."

1 1.5 For purposes of this Consent Judgment, the term "Covered Products" means
2 (1) Covered Cookware Products offered for sale by Williams-Sonoma, including, but not limited to
3 those manufactured by Mauviel, Ruffoni, and Staub S.A., and (2) Covered Peppermills offered for
4 sale by Williams-Sonoma.

5 1.6 Williams-Sonoma is a business that employs more than ten persons, and markets
6 or sells Covered Products that contain lead and/or lead compounds. Pursuant to Health and Safety
7 Code Section 25249.8, lead is known to the State of California to cause cancer and birth defects and
8 other reproductive harm, and lead compounds are known to the State of California to cause cancer.
9 Plaintiff MEJF alleges that Covered Products that are marketed or sold by Williams-Sonoma for use
10 in California require warnings under Proposition 65, pursuant to Health and Safety Code Section
11 25249.6. Williams-Sonoma denies that warnings are required. For purposes of this Consent
12 Judgment, the Parties stipulate that this Court has jurisdiction over the allegations of violations
13 contained in the Complaint and personal jurisdiction over Williams-Sonoma as to the acts alleged in
14 the Complaint, that venue is proper in the County of San Francisco, and that this Court has
15 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations
16 contained in the Complaint and of all claims which were or could have been raised by any person or
17 entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising
18 therefrom or related to.

19 1.7 This Consent Judgment resolves claims that are denied and disputed. The Parties
20 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
21 between the Parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall
22 not constitute an admission with respect to any material allegation of the Complaint, each and every
23 allegation of which Williams-Sonoma denies, nor may this Consent Judgment or compliance with it
24 be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Williams-
25 Sonoma.

26 1.8 The term "Effective Date" means 90 days after entry of this Consent Judgment.

27 1.9 MEJF and Williams-Sonoma are, for purposes of this Consent Judgment,
28 collectively referred to as the "Parties," with each of them a "Party."

1 **2. SETTLEMENT PAYMENT**

2 2.1 In settlement of all of Plaintiff's claims referred to in this Consent Judgment,
3 Williams-Sonoma shall pay a total of \$35,000 (Thirty-Five Thousand Dollars). Of this total
4 amount, Williams-Sonoma shall pay \$25,000 (Twenty-Five Thousand Dollars) to the Klamath
5 Environmental Law Center ("KELC") to cover Plaintiff's attorneys' fees. Additionally, of the total
6 amount, and as a payment in lieu of civil penalties, Williams-Sonoma shall pay \$5,000 (Five
7 Thousand Dollars) to the Ecological Rights Foundation, and \$5,000 (Five Thousand Dollars) to
8 Californians for Alternatives to Toxics, for use toward reducing exposures to toxic chemicals and
9 other pollutants, and toward increasing consumer, worker and community awareness of health
10 hazards posed by lead and other toxic chemicals. The Parties agree and acknowledge that the
11 charitable contributions made pursuant to this section shall not be construed as a credit against the
12 personal claims of absent third parties for restitution against Williams-Sonoma. The above
13 described payments shall be forwarded by Williams-Sonoma so that they are received at least 5
14 days prior to the hearing date scheduled for approval of this Consent Judgment. If the Consent
15 Judgment is not approved within 120 days of the date scheduled for approval, the above described
16 payments shall be returned and the provisions of this Consent Judgment shall become null and void.

17 2.2 Williams-Sonoma shall not be required to pay a civil penalty pursuant to Health
18 and Safety Code Section 25249.7(b).

19 **3. ENTRY OF CONSENT JUDGMENT**

20 3.1 The Parties hereby request that the Court promptly enter this Consent Judgment.
21 Upon entry of the Consent Judgment, Williams-Sonoma and MEJF waive their respective rights to a
22 hearing or trial on the allegations of the Complaint.

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

24 4.1 This Consent Judgment is a final and binding resolution, as to Covered Products,
25 between MEJF, acting on behalf of itself and (as to those matters raised in the Notice Letters) the
26 general public, and Williams-Sonoma of: (i) any violation of Proposition 65 (including but not
27 limited to the claims made in the Complaint); and (ii) any other statutory or common law claim to
28 the fullest extent that any of the foregoing described in (i) or (ii) were or could have been asserted

1 by any person or entity against Williams-Sonoma or its parents, subsidiaries or affiliates, and all of
2 their suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of
3 doing business, and the successors and assigns of any of them, who may use, maintain, distribute or
4 sell Covered Products ("Released Entities"), based on its or their exposure of persons to lead or lead
5 compounds from Covered Products or their failure to provide a clear and reasonable warning of
6 exposure to such individuals; and (iii) as to alleged exposures to lead or lead compounds from
7 Covered Products, any other claim based in whole or in part on the facts alleged in the Complaint,
8 whether based on actions committed by the Released Entities or others. As to alleged exposures to
9 lead or lead compounds from Covered Products, compliance with the terms of this Consent
10 Judgment resolves any issue, now and in the future, concerning compliance by Williams-Sonoma
11 and the Released Entities, with the requirements of Proposition 65 with respect to Covered
12 Products, and any alleged resulting exposure. Notwithstanding any other provision in Section 4, no
13 releases on behalf of the general public shall be construed to extend to claims concerning chemicals
14 listed under Proposition 65 other than lead and/or lead compounds or to claims not arising out of
15 allegations in the Notice Letters.

16 4.2 As to alleged exposures to lead or lead compounds from Covered Products,
17 MEJF, by and on behalf of itself and its respective agents, successors and assigns, waives any and
18 all rights to institute any form of legal action, and releases all claims against Williams-Sonoma and
19 the Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their
20 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of doing
21 business, and the successors and assigns of any of them, who may use, maintain, distribute or sell
22 the Covered Products, whether, under Proposition 65 or otherwise, arising out of or resulting from,
23 or related directly or indirectly to, in whole or in part, the Covered Products, including but not
24 limited to any exposure to, or failure to warn with respect to, the Covered Products that was or
25 could have been alleged by Plaintiff against any of the Released Entities based on the facts alleged
26 in the Complaint, or facts similar to those alleged (referred to collectively in this paragraph as the
27 "Claims"). In furtherance of the foregoing, as to alleged exposures to lead and lead compounds
28 from Covered Products, MEJF hereby waives any and all rights and benefits which it now has, or in

1 the future may have, conferred upon it with respect to the Claims by virtue of the provisions of
2 section 1542 of the California Civil Code, which provides as follows:

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

9 4.3 MEJF understands and acknowledges that the significance and consequence of
10 this waiver of California Civil Code section 1542 is that even if MEJF suffers future damages
11 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered
12 Products, including but not limited to any exposure to, or failure to warn with respect to exposure
13 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for
14 those damages against Williams-Sonoma or the Released Entities; provided however, Plaintiff
15 cannot and expressly does not release any claims for personal injury that could be brought by any
16 other individual or organization. Furthermore, MEJF acknowledges that it intends these
17 consequences for any such Claims as may exist as of the date of this release but which MEJF does
18 not know exist, and which, if known, would materially affect their decision to enter into this
19 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
20 oversight, error, negligence, or any other cause. Notwithstanding the above, Staub S.A. shall not be
21 deemed a Released Entity, nor shall it benefit from the releases of liability granted in Sections 4.1
22 through 4.3.

23 5. ENFORCEMENT OF JUDGMENT

24 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
25 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of San
26 Francisco County, giving the notice required by law, enforce the terms and conditions contained
27 herein; provided however, that a Party may enforce any of the terms and conditions of this Consent
28 Judgment only after that Party first provides 30 days' notice to the Party allegedly failing to comply
with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure
to comply in an open and good faith manner.

1 5.2 In any proceeding brought by either Party to enforce this Consent Judgment, such
2 Party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
3 violation of Proposition 65 or this Consent Judgment.

4 **6. MODIFICATION OF JUDGMENT**

5 6.1 This Consent Judgment may be modified only upon written agreement of the
6 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
7 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

8 6.2 If, with respect to brass containing lead, the Attorney General of the State of
9 California or Plaintiff permit any other reformulation standard by way of settlement or compromise
10 with any other person in the course of doing business, or any other entity, or if another
11 reformulation standard for brass is incorporated by way of final judgment as to any other person in
12 the course of doing business, or any other entity, then Williams-Sonoma is entitled to seek a
13 modification to this Consent Judgment on the same terms as provided in those settlements,
14 compromises or judgments.

15 **7. CLEAR AND REASONABLE WARNINGS**

16 7.1 The requirements of this Section 7 shall apply only to Covered Products that are
17 offered for sale in California by Williams-Sonoma after the Effective Date. Williams-Sonoma shall
18 provide a warning for all Covered Products that do not meet the reformulation standard set forth in
19 Section 8 below, and that are offered for sale in California. At the sole option of Williams-Sonoma,
20 warnings may be provided through one or more of the following methods: (a) shelf warnings
21 pursuant to Paragraph 7.3; (b) product labeling pursuant to Paragraph 7.4; or (c) package inserts
22 pursuant to Paragraph 7.5.

23 7.2 For the warnings set out in Paragraphs 7.3 through 7.5, the warning shall state:

24 7.2.1 “WARNING: This product contains chemicals, including lead,
25 known to the State of California to cause birth defects and other reproductive harm. *Wash hands*
26 *after handling*” or
27
28

1 7.2.2 “WARNING: Handling the brass parts of this product will expose
2 you to lead, a 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
5 handling” shall be in bold italic text.

6 7.3 Shelf Warning: Williams-Sonoma may provide a warning by placing a notice on
7 the shelf or shelves in its stores in California where the Covered Products are sold. Each sign shall
8 be no smaller than 4 inches x 6 inches, and the form and type shall be substantially similar to that
9 which is attached hereto as Exhibit A (hereinafter, the “Warning Sign”). Williams-Sonoma may, at
10 its option, identify on the Warning Sign, by brand or model, the particular Covered Products for
11 which such warning is being given, and/or other products for which such warning is NOT being
12 given.

13 7.4 Product Labeling: A warning may be placed on the packaging or labeling of, or
14 directly on, the Covered Products, by Williams-Sonoma (or someone on Williams-Sonoma’s behalf,
15 including but not limited to its agents, or the suppliers, manufacturers, importers, or distributors of
16 the Covered Products). Such warning shall be placed with such conspicuousness as compared with
17 other words, statements and designs as to render it likely to be read and understood by an ordinary
18 individual under customary conditions of use or purchase.

19 7.5 Package Insert: A warning may be provided with the Covered Product when it is
20 shipped to a California resident by (a) inserting a card or slip of paper measuring at least 4 inches x
21 6 inches in the shipping package, or (b) including the warning on the packing slip or customer
22 invoice identifying the Covered Product. Such warning shall be placed with such conspicuousness
23 as compared with other words, statements and designs as to render it likely to be read and
24 understood by an ordinary individual under customary conditions of use or purchase.

25 7.6 In determining whether a Covered Product meets the reformulation standard of
26 Section 8, Williams-Sonoma may rely on written confirmation obtained from its suppliers of the
27 Covered Products, so long as such reliance is in good faith. Demonstration of good faith reliance
28

1 may include, but is not limited to, e-mails or other written correspondence from suppliers attesting
2 to compliance with the provisions of Section 8.

3 **8. REFORMULATION STANDARD**

4 8.1 The warning requirements of Section 7 shall not apply to Covered Products that
5 meet the following criteria:

6 8.2 The brass used to manufacture the Covered Products shall have no lead as an
7 intentionally added constituent; and

8 8.3 A representative sample of the brass alloys used to manufacture the Covered
9 Products shall have been tested for lead, and must have shown lead content by weight of less than
10 0.03% (300 parts per million or "300 ppm"), using a test method of sufficient sensitivity to establish
11 a limit of quantification (as distinguished from detection) of less than 300 ppm.

12 8.4 In the event that MEJF settles another actual or potential claim concerning the
13 alleged failure of a business to provide adequate Proposition 65 warnings concerning its
14 manufacture, distribution or sale of either Covered Cookware Products, Covered Peppermills, or
15 both in California, and agrees to a standard for reformulation that allows for lead content by weight
16 of greater than 300 ppm in the brass alloys of Covered Cookware Products or Covered Peppermills,
17 or both, Williams-Sonoma's compliance with the less stringent standard will be deemed to meet the
18 requirements of this Section 8 with respect to either Covered Cookware Products or Covered
19 Peppermills, or both, as appropriate.

20 **9. RETENTION OF JURISDICTION**

21 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
22 terms this Consent Judgment.

23 **10. AUTHORITY TO STIPULATE**

24 10.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of
26 the Party represented and legally to bind that Party.

27 **11. DUTIES LIMITED TO CALIFORNIA**

28

1 11.1 This Consent Judgment shall have no effect on Covered Products sold by
2 Williams-Sonoma outside the State of California.

3 **12. SERVICE ON THE ATTORNEY GENERAL**

4 12.1 KELC shall serve a copy of this Consent Judgment, signed by all Parties, on the
5 California Attorney General on behalf of the Parties so that the Attorney General may review this
6 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)
7 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
8 and in the absence of any written objection by the Attorney General to the terms of this Consent
9 Judgment, the Parties may then submit it to the Court for approval.

10 **13. ENTIRE AGREEMENT**

11 13.1 This Consent Judgment contains the sole and entire agreement and understanding
12 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
13 negotiations, commitments and understandings related hereto. No representations, oral or
14 otherwise, express or implied, other than those contained herein have been made by any Party
15 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
16 to exist or to bind any of the Parties.

17 **14. GOVERNING LAW**

18 14.1 The validity, construction and performance of this Consent Judgment shall be
19 governed by the laws of the State of California, without reference to any conflicts of law provisions
20 of California law.

21 **15. EXECUTION AND COUNTERPARTS**

22 15.1 This Consent Judgment maybe executed in counterparts and by means of
23 facsimile, which taken together shall be deemed to constitute one document.

24 **16. COURT APPROVAL**

25 16.1 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be
26 of no force or effect, and cannot be used in any proceeding for any purpose.

27 **17. NOTICES**

28 17.1 Any notices under this Consent Judgment shall be made by First Class Mail.

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If to MEJF:

William Verick, Esq.
Klamath Environmental Law Center
424 First Street
Eureka, CA 95501
Tel: (707) 268-8900/Fax: (707) 268-8901
wverick@igc.org

If to Williams- Sonoma, Inc.: Trenton H. Norris
ARNOLD & PORTER LLP
90 New Montgomery Street, Suite 600
San Francisco, CA 94105
Tel: (415) 356-3000/Fax: (415) 356-3099
trent.norris@aporter.com

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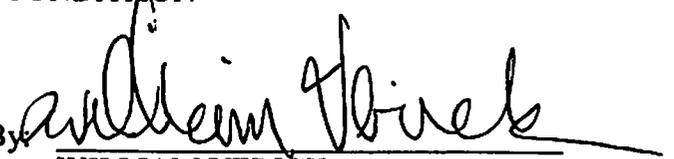
With a copy to:

Kathleen McCarthy
Vice President, Associate General Counsel
Williams-Sonoma, Inc.
3250 Van Ness Avenue
San Francisco, CA 94109
Tel: (415) 616-7865/Fax: (415) 439-1014
kmccarthy@wsgc.com

IT IS SO STIPULATED:

Dated: 8/28/08

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

By: 
WILLIAM VERICK

Dated: _____

WILLIAMS-SONOMA, INC.

By: _____

Its: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

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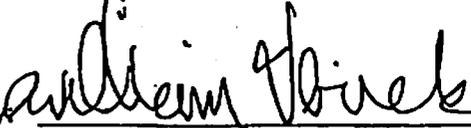
With a copy to:

Kathleen McCarthy
Vice President, Associate General Counsel
Williams-Sonoma, Inc.
3250 Van Ness Avenue
San Francisco, CA 94109
Tel: (415) 616-7865/Fax: (415) 439-1014
kmccarthy@wsgc.com

IT IS SO STIPULATED:

Dated: 8-28-08

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

By: 
WILLIAM VERICK

Dated: 12 AUGUST 2008

WILLIAMS-SONOMA, INC.

By: 
Its: G. A. U. GREG NASH

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: OCT 15 2008

PATRICK J. MAHONEY
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

Shelf Warning – Options A and B

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

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