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16 MATEEL ENVIRONMENTAL JUSTICE
17 FOUNDATION

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF SAN FRANCISCO

20 MATEEL ENVIRONMENTAL
21 JUSTICE FOUNDATION,,

22 Plaintiff,

23 v.

24 THE FAUCET QUEENS; ACE
25 HARDWARE CORPORATION, 99
26 CENTS ONLY STORES, TARGET
27 CORPORATION; TRG
28 ACCESSORIES LLC; TRUE VALUE
COMPANY; AMERCO, INC.; U-
HAUL COMPANY OF CALIFORNIA,
INC.; WALGREEN CO.; WINNER
INTERNATIONAL LLC; and DOES 1
through 100 inclusive,

Defendants.

Case No. CGC 08-471406

**CONSENT JUDGMENT AS TO
DEFENDANT WALGREEN CO.**

ENDORSED
FILED
San Francisco County Superior Court

APR 08 2009

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

1. **INTRODUCTION**

1.1 On January 25, 2008, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a

1 Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco County
2 Superior Court, Case No.CGC-08-471406, against Defendants Walgreen Co.; The Faucet
3 Queens; Ace Hardware Corporation, 99 Cents Only Stores, Target Corporation; TRG
4 Accessories LLC; True Value Company; Amerco, Inc.; U-Haul Company Of California,
5 Inc.; Winner International Llc. and DOES 1 through 100 (collectively, "Defendants").
6 The Complaint alleges, among other things, that Defendants violated provisions of the
7 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
8 Sections 25249.5, *et seq.* ("Proposition 65"). In particular, Mateel alleges that Walgreen
9 Co. has knowingly and intentionally exposed persons to padlocks made of brass
10 containing lead and/or lead compounds (hereinafter "leaded brass"), which are chemicals
11 known to the State of California to cause cancer and birth defects or other reproductive
12 harm, without first providing a clear and reasonable warning to such individuals.

13 1.2 On May 24, 2007, a 60-Day Notice letter ("Notice Letter") was sent by
14 Mateel to Walgreen Co., the California Attorney General, all California District
15 Attorneys, and all City Attorneys of every California city with populations exceeding
16 750,000.

17 1.3 Walgreen Co. is a business that employs ten or more persons and
18 manufactures, distributes, and/or markets locks, including padlocks, within the State of
19 California. Some of those products are alleged to contain lead and/or lead compounds.
20 Lead and lead compounds are chemicals known to the State of California to cause cancer,
21 and lead is a chemical known to the State of California to cause reproductive toxicity
22 pursuant to Health and Safety Code Section 25249.9. Under specified circumstances,
23 products containing lead and/or lead compounds that are sold or distributed in the State of
24 California are subject to the Proposition 65 warning requirement set forth in Health and
25 Safety Code Section 25249.6. Plaintiff Mateel alleges that leaded brass padlocks
26 manufactured, distributed, sold and/or marketed by Walgreen Co. for use in California
27 require a warning under Proposition 65.

28

1 1.4 For purposes of this Consent Judgment, the term "Covered Products" shall
2 be defined as locks containing lead and/or lead compounds, such as leaded brass padlocks,
3 to the extent such products are distributed and sold within the state of California, that are
4 manufactured, distributed, marketed and/or sold by Walgreen Co., regardless of whether
5 they bear Walgreen Co. labels.

6 1.5 For purposes of this Consent Judgment, the parties stipulate that this Court
7 has jurisdiction over the allegations of violations contained in the Complaint and personal
8 jurisdiction over Walgreen Co. as to the acts alleged in the Complaint, that venue is
9 proper in the County of San Francisco and that this Court has jurisdiction to enter this
10 Consent Judgment as a full settlement and resolution of the allegations contained in the
11 Complaint and of all claims that were or could have been raised by any person or entity
12 based in whole or in part, directly or indirectly, on the facts alleged therein or arising
13 therefrom or related thereto.

14 1.6 This Consent Judgment resolves claims that are denied and disputed. The
15 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
16 all claims between the parties for the purpose of avoiding prolonged litigation. This
17 Consent Judgment shall not constitute an admission with respect to any material allegation
18 of the Complaint, each and every allegation of which Walgreen Co. denies, nor may this
19 Consent Judgment or compliance with it be used as evidence of any wrongdoing,
20 misconduct, culpability or liability on the part of Walgreen Co. or any other Defendant.

21 2. **SETTLEMENT PAYMENT**

22 2.1 In settlement of all of the claims referred to in this Consent Judgment
23 against Walgreen Co., Walgreen Co. shall pay, 5 days or more prior to the hearing date
24 scheduled for the motion to approve this consent judgment, an amount in monetary relief
25 totaling \$30,000 (thirty thousand dollars), which shall be made payable as follows: (i)
26 \$20,000 (twenty thousand dollars) which shall be made payable to the Klamath
27 Environmental Law Center ("KELC") for attorneys fees and costs incurred by KELC on
28 behalf of Plaintiff in investigating this matter and negotiating this Consent Judgment on

1 behalf of itself and the general public, (ii) \$10,000 (ten thousand dollars) which shall be
2 made payable to the Ballona Ecosystem Education Project. The payments described
3 above shall be delivered to William Verick, 424 First Street, Eureka, CA 95501. If
4 payment has not been received as provided in this paragraph, Plaintiff may withdraw any
5 motion to approve and enter the agreement and the agreement shall become null and void.
6 If this Consent Judgment has not been approved and entered by the Court within 120 days
7 of the execution of the agreement by the parties, the payments described above shall be
8 promptly returned to the Walgreen Co., and the terms of this agreement shall be null and
9 void.

10 2.2 MEJF and KELC represent and warrant that each of the organization
11 identified in Paragraph 2.1(a)(ii) above is a tax exempt, section 501(c)(3) non-profit
12 organization and that funds distributed to these organizations pursuant to this Consent
13 Judgment may only be spent to reduce harm from toxic chemicals, or to increase
14 consumer, worker and community awareness of health hazards posed by lead and other
15 toxic chemicals. Except as specifically provided in this Consent Judgment, each side shall
16 bear its own costs and attorney's fees.

17 3. **ENTRY OF CONSENT JUDGMENT**

18 3.1 The parties hereby request that the Court promptly enter this Consent
19 Judgment. Upon entry of the Consent Judgment, Walgreen Co. and Mateel waive their
20 respective rights to a hearing or trial on the allegations of the Complaint.

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

22 4.1 This Consent Judgment is a final and binding resolution between Mateel,
23 acting on behalf of itself and the general public, and Walgreen Co., of: (i) any violation of
24 Proposition 65 with respect to the Covered Products, and (ii) any other statutory or
25 common law claim, to the fullest extent that any of the foregoing described in (i) or (ii)
26 were or could have been asserted by any person or entity against Walgreen Co. based
27 upon, arising out of or relating to Walgreen Co.'s compliance with Proposition 65, or
28 regulations promulgated thereunder, with respect to the Covered Products, and any other

1 claim based in whole or part on the facts alleged in the Complaint, whether based on
2 actions committed by Walgreen Co., or by any other Defendant or entity within the chain
3 of distribution, including, but not limited to, manufacturers, wholesale or retail sellers or
4 distributors and any other person in the course of doing business. As to alleged exposures
5 to Covered Products, compliance with the terms of this Consent Judgment resolves any
6 issue, now and in the future, concerning compliance by Walgreen Co. and its parents,
7 subsidiaries or affiliates, predecessors, officers, directors, employees, and all of their
8 manufacturers, customers, distributors, wholesalers, retailers or any other person in the
9 course of doing business, and the successors and assigns of any of these who may
10 manufacture, use, maintain, distribute, market or sell Covered Products, with the
11 requirements of Proposition 65.

12 4.2 As to alleged exposures to Covered Products, Mateel, acting on behalf of
13 itself and the general public, and its agents, successors and assigns, waives all rights to
14 institute any form of legal action, and releases all claims against Walgreen Co. and its
15 parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and all of
16 its customers, manufacturers, distributors, wholesalers, retailers or any other person in the
17 course of doing business, and the successors and assigns of any of them, who may
18 manufacture, use, maintain, distribute or sell the Covered Products, whether under
19 Proposition 65 or otherwise, arising out of or resulting from, or related directly or
20 indirectly to, in whole or in part, the Covered Products and claims identified in Mateel's
21 Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself and the
22 general public, hereby waives any and all rights and benefits which it now has, or in the
23 future may have, conferred upon it with respect to the Covered Products by virtue of the
24 provisions of Section 1542 of the California Civil Code, which provides as follows:

25 "A GENERAL RELEASE DOES NOT EXTEND TO
26 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
27 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
28 EXECUTING THE RELEASE, WHICH IF KNOWN BY

1 HIM MUST HAVE MATERIALLY AFFECTED HIS
2 SETTLEMENT WITH THE DEBTOR.”

3 Mateel understands and acknowledges that the significance and consequence of this
4 waiver of California Civil Code Section 1542 is that even if Mateel or any member of the
5 general public suffers future damages arising out of or resulting from, or related directly
6 or indirectly to, in whole or in part, the Covered Products, it will not be able to make any
7 claim for those damages against Walgreen Co., its parents, subsidiaries or affiliates,
8 predecessors, officers, directors, employees, and all of its customers, manufacturers,
9 distributors, wholesalers, retailers or any other person in the course of doing business, and
10 the successors and assigns of any of them, who may manufacture, use, maintain, distribute
11 or sell the Covered Products. Furthermore, Mateel acknowledges that it intends these
12 consequences for any such claims which may exist as of the date of this release but which
13 Mateel does not know exist, and which, if known, would materially affect its decision to
14 enter into this Consent Judgment, regardless of whether its lack of knowledge is the result
15 of ignorance, oversight, error, negligence, or any other cause.

16 **5. ENFORCEMENT OF JUDGMENT**

17 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
18 parties hereto. The parties may, by noticed motion or order to show cause before the
19 Superior Court of San Francisco County, giving the notice required by law, enforce the
20 terms and conditions contained herein.

21 **6. MODIFICATION OF JUDGMENT**

22 Except as provided for in Paragraph 7.2(c), this Consent Judgment may be
23 modified only upon written agreement of the parties and upon entry of a modified Consent
24 Judgment by the Court thereon, or upon motion of any party as provided by law and upon
25 entry of a modified Consent Judgment by the Court.

26 **7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

27 **7.1** As to any Covered Products for which the normally intended function and
28 manner of use of the product involves the gripping or holding of the product by gripping

1 or holding a component made from leaded brass where such brass comes into contact with
2 the user, a warning as described in paragraph 7.2 below shall be provided. The warning
3 requirements set forth in paragraph 7.2 shall apply only to: (1) Covered Products that
4 Walgreen Co. ships for distribution after 90 days after entry of this Consent Judgment
5 (“the Effective Date”); and (2) products manufactured, distributed, marketed, sold or
6 shipped for sale or use inside the State of California.

7 7.2 Walgreen Co. shall provide Proposition 65 warnings as follows:

8 (a) Defendant Walgreen Co. shall provide either of the following
9 warning statements:

10 **WARNING:** This product contains lead, a chemical known to the State of
11 California to cause cancer and birth defects or other reproductive harm. Do
12 not place your hands in your mouth after handling the product. Do not
13 place the product in your mouth. **Wash your hands after touching this**
14 **product.**

15 or

16 **WARNING:** This product contains one or more chemicals known to the
17 State of California to cause cancer and birth defects or other reproductive
18 harm. **Wash hands after handling.**

19 The word “WARNING” shall be in bold. The words “Wash hands
20 after handling” shall be in bold.

21 Walgreen Co. shall provide such warning with the unit package of
22 the Covered Products. Such warning shall be prominently affixed to or
23 printed on each Covered Product’s label or package. The warning shall be
24 at least the same size as the largest of any other safety warnings, if any, on
25 the product container. If printed on the label itself, the warning shall be
26 contained in the same section that states other safety warnings, if any,
27 concerning the use of the product.

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(b) The requirements for product labeling, set forth in subparagraph (a) above are imposed pursuant to the terms of this Consent Judgment. The parties recognize that product labeling is not the exclusive method of providing a warning under Proposition 65 and its implementing regulations.

(c) If Proposition 65 warnings for lead or lead compounds should no longer be required, Walgreen Co. shall have no further warning obligations pursuant to this Consent Judgment. In the event that Walgreen Co. ceases to implement or modifies the warnings required under this Consent Judgment (because of a change in the law or otherwise), Walgreen Co. shall provide written notice to Mateel (through KELC) of its intent to do so, and of the basis for its intent, no less than thirty (30) days in advance. Mateel shall notify Walgreen Co. in writing of any objection within thirty (30) days of its receipt of such notice, or such objection by Mateel shall be waived.

8. AUTHORITY TO STIPULATE

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 to bind that party.

9. RETENTION OF JURISDICTION

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

10. ENTIRE AGREEMENT

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

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11. GOVERNING LAW

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. COURT APPROVAL

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.

IT IS SO STIPULATED:

DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

William Verick
CEO Mateel Environmental Justice
Foundation,
Klamath Environmental Law Center

DATED: Feb 6, 2009

WALGREEN CO.

By: Nicole Robbins
Its: Attorney

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

JUDGE OF THE SUPERIOR COURT

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IT IS SO STIPULATED:

DATED:

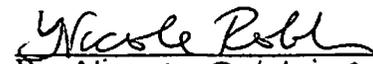
MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



William Verick
CEO Mateel Environmental Justice
Foundation,
Klamath Environmental Law Center

DATED: Feb 6. 2009

WALGREEN CO.



By: Nicole Robbins
Its: Attorney

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED:

APR 08 2009

CHARLOTTE WALTER WOOLARD

JUDGE OF THE SUPERIOR COURT