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MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,,

Plaintiff,

v.

THE FAUCET QUEENS, INC.; ACE
HARDWARE CORPORATION, 99
CENTS ONLY STORES, TARGET
CORPORATION; TRG
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 THE FAUCET QUEENS,
INC.

ENDORSED
FILED
San Francisco County Superior Court

APR 07 2009

GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

I. 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 The Faucet Queens, Inc.;
3 Ace Hardware Corporation, Walgreen Co.; 99 Cents Only Stores, Target Corporation;
4 TRG Accessories LLC; True Value Company; Amerco, Inc.; U-Haul Company Of
5 California, Inc.; Winner International LLC. and DOES 1 through 100 (collectively,
6 "Defendants"). The Complaint alleges, among other things, that Defendants violated
7 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
8 Safety Code Sections 25249.5, *et seq.* ("Proposition 65"). In particular, Mateel alleges
9 that The Faucet Queens, Inc. has knowingly and intentionally exposed persons to padlocks
10 made of brass containing lead and/or lead compounds (hereinafter "leaded brass"), which
11 are chemicals known to the State of California to cause cancer and birth defects or other
12 reproductive harm, without first providing a clear and reasonable warning to such
13 individuals.

14 1.2 On May 24, 2007, a 60-Day Notice letter ("Notice Letter") was sent by
15 Mateel to The Faucet Queens, Inc., the California Attorney General, all California District
16 Attorneys, and all City Attorneys of every California city with populations exceeding
17 750,000.

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

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, including but not limited to
3 leaded brass padlocks, to the extent such products are distributed and sold within the state
4 of California, that are manufactured, distributed, marketed and/or sold by The Faucet
5 Queens, Inc., regardless of whether they bear The Faucet Queens, Inc. 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 The Faucet Queens, Inc. as to the acts alleged in the Complaint, that
9 venue is proper in the County of San Francisco and that this Court has jurisdiction to enter
10 this Consent Judgment as a full settlement and resolution of the allegations contained in
11 the Complaint and of all claims that were or could have been raised by any person or
12 entity based in whole or in part, directly or indirectly, on the facts alleged therein or
13 arising 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 The Faucet Queens, Inc. denies, nor
19 may this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
20 misconduct, culpability or liability on the part of The Faucet Queens, Inc. or any other
21 Defendant.

22 **2. SETTLEMENT PAYMENT**

23 2.1 In settlement of all of the claims referred to in this Consent Judgment
24 against The Faucet Queens, Inc., The Faucet Queens, Inc. shall pay, 5 days or more prior
25 to the hearing date scheduled for the motion to approve this consent judgment, an amount
26 in monetary relief totaling \$27,500 (twenty seven thousand five hundred dollars), which
27 shall be made payable as follows: (i) \$20,000 (twenty thousand dollars) which shall be
28 made payable to the Klamath Environmental Law Center ("KELC") for attorneys fees and

1 costs incurred by KELC on behalf of Plaintiff in investigating this matter and negotiating
2 this Consent Judgment on behalf of itself and the general public, (ii) \$7,500 (seven
3 thousand five hundred dollars) which shall be made payable to the Ecological Rights
4 Foundation. The payments described above shall be delivered to William Verick, 424
5 First Street, Eureka, CA 95501. If payment has not been received as provided in this
6 paragraph, Plaintiff may withdraw any motion to approve and enter the agreement and the
7 agreement shall become null and void. If this Consent Judgment has not been approved
8 and entered by the Court within 120 days of the execution of the agreement by the parties,
9 the payments described above shall be promptly returned to the The Faucet Queens, Inc.,
10 and the terms of this agreement shall be null and void.

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

18 3. ENTRY OF CONSENT JUDGMENT

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

22 4. MATTERS COVERED BY THIS CONSENT JUDGMENT

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

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

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

26 “A GENERAL RELEASE DOES NOT EXTEND TO
27 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
28 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF

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EXECUTING THE RELEASE, WHICH IF KNOWN BY
HIM MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.”

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

5. ENFORCEMENT OF JUDGMENT

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

6. MODIFICATION OF JUDGMENT

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

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

2 7.1 As to any Covered Products for which the normally intended function and
3 manner of use of the product involves the gripping or holding of the product by gripping
4 or holding a component made from leaded brass where such brass comes into contact with
5 the user, a warning as described in paragraph 7.2 below shall be provided. The warning
6 requirements set forth in paragraph 7.2 shall apply only to Covered Products: (1) that The
7 Faucet Queens, Inc. ships for distribution after 90 days after entry of this Consent
8 Judgment (“the Effective Date”); and (2) which are products manufactured, distributed,
9 marketed, sold or shipped for sale or use inside the State of California.

10 7.2 The Faucet Queens, Inc. shall, to the extent required in accordance with
11 paragraph 7.1, provide Proposition 65 warnings as follows:

12 (a) Defendant The Faucet Queens, Inc. shall provide either of the
13 following warning statements:

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

19 or

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

23 The word “WARNING” shall be in bold. The words “Wash hands
24 after handling” shall be in bold and italicized.

25 The Faucet Queens, Inc. shall provide such warning with the unit
26 package of the Covered Products. Such warning shall be prominently
27 affixed to or printed on each Covered Product’s label or package. The
28 warning shall be at least the same size as the largest of any other safety

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warnings, if any, on the product container. If printed on the label itself, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the product.

(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, The Faucet Queens, Inc. shall have no further warning obligations pursuant to this Consent Judgment. In the event that The Faucet Queens, Inc. ceases to implement or modifies the warnings required under this Consent Judgment (because of a change in the law or otherwise), The Faucet Queens, Inc. 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 The Faucet Queens, Inc. 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

1 representations, oral or otherwise, express or implied, other than those contained herein
2 have been made by any party hereto. No other agreements not specifically referred to
3 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

4 **11. GOVERNING LAW**

5 The validity, construction and performance of this Consent Judgment shall
6 be governed by the laws of the State of California, without reference to any conflicts of
7 law provisions of California law.

8 **12. COURT APPROVAL**

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

11 **IT IS SO STIPULATED:**

12 DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

15 _____
16 William Verick
17 CEO Mateel Environmental Justice
Foundation,
Klamath Environmental Law Center

18 DATED: 12/16/07

THE FAUCET QUEENS, INC.

19 
20 By: WILLIAM M SCHMIOT
21 Its: PRESIDENT

22 IT IS SO ORDERED, ADJUDGED AND DECREED:

23 DATED:

24 _____
25 JUDGE OF THE SUPERIOR COURT
26
27
28

1 representations, oral or otherwise, express or implied, other than those contained herein
2 have been made by any party hereto. No other agreements not specifically referred to
3 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

4 **11. GOVERNING LAW**

5 The validity, construction and performance of this Consent Judgment shall
6 be governed by the laws of the State of California, without reference to any conflicts of
7 law provisions of California law.

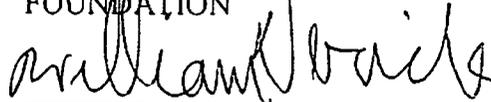
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10 or effect, and cannot be used in any proceeding for any purpose.

11 **IT IS SO STIPULATED:**

12 DATED:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

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18 DATED: 12/16/09

THE FAUCET QUEENS, INC.



By: WILLIAM SCHMIOT
Its: PRESIDENT

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22 IT IS SO ORDERED, ADJUDGED AND DECREED:

23 DATED: APR 07 2009

CHARLOTTE WALTER WOOLARD
JUDGE OF THE SUPERIOR COURT