

COPY

1 WILLIAM VERICK, SBN 140972
2 KLAMATH ENVIRONMENTAL LAW CENTER
3 FREDRIC EVENSON, SBN 198059
4 LAW OFFICE OF FREDRIC EVENSON
5 424 First Street
Eureka, California 95501
Telephone: (707) 268-8900
Fax: (707) 268-8901
E-mail: wverick@igc.org

ENDORSED
FILED
San Francisco County Superior Court

MAY 21 2008

GORDON PARK-LI, Clerk

6 DAVID WILLIAMS, SBN 144479 BRIAN ACREE, SBN^{BY:} _____ Deputy Clerk
7 202505 370 Grand Avenue, Suite 5
8 Oakland, CA 94610
9 Telephone: (510) 271-0826
10 Fax: (510) 271-0829
11 E-mail: dhwill7@gmail.com
12 Attorneys for Plaintiff
13 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 Unlimited Jurisdiction

14 MATEEL ENVIRONMENTAL JUSTICE,
15 FOUNDATION,

No. 468856

16 PLAINTIFF,

17 V.

~~PROPOSED~~ CONSENT JUDGMENT
AS TO ILLY CAFFE NORTH AMERICA

18 BRIEL-INDUSTRIA DE
19 ELECTRODOMESTICOS SA; ELEKTRA SRL;
20 GAGGIA SPA; GENSACO, INC.; HOME
21 DEPOT USA INC.; ILLY CAFFE NORTH
AMERICA INC.; ILLY CAFFE SPA; LA
PAVONI SPA; NUOVA SIMONELLI SPA;
STARBUCKS CORPORATION; SUR LA
TABLE, INC.

22 DEFENDANTS.
23 _____ /

24 1. INTRODUCTION

25 1.1. On or about June 27, 2007, plaintiff MATEEL ENVIRONMENTAL JUSTICE
26 FOUNDATION ("Mateel"), provided a 60-day notice of violation ("Notice") to the California
27 Attorney General, the District Attorneys of every county in California, the City Attorneys of
28 every California city with a population greater than 750,000, and ILLY CAFFE NORTH

1 AMERICA, INC. (“illy caffe” or “Defendant”), alleging that Defendant, through sales in
2 California of espresso machines (“Covered Products”), was violating Health & Safety Code
3 section 25249.6.

4 1.2. On or about November 5, 2007, Plaintiff Mateel, acting in the public interest
5 pursuant to Health and Safety Code section 25249.7(d), filed a Complaint for Civil Penalties and
6 Injunctive Relief in San Francisco Superior Court, Case No. CGC-07-468856 (“Complaint”)
7 against Defendant based on the allegations contained in the Notice.

8 1.3. For purposes of this Consent Judgment, the parties stipulate that this Court has
9 jurisdiction over the allegations of violations contained in the Complaint and personal
10 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
11 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a
12 full and final settlement and resolution of the allegations contained in the Complaint and of all
13 claims which were or could have been raised based on the facts alleged therein or arising
14 therefrom.

15 1.4. Mateel and Defendant enter into this Consent Judgment pursuant to a full and
16 final settlement of disputed claims between the parties for the purpose of avoiding prolonged
17 litigation. This Consent Judgment shall not constitute an admission with respect to any allegation
18 made in the Notice or the Complaint, each and every allegation of which Defendant 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 Defendant.

21 2. INJUNCTIVE RELIEF-REFORMULATION

22 2.0. Injunctive Relief

23 2.1. Within ninety (90) days of the days of the date of entry of this Consent Judgment
24 (“Effective Date”), Defendant may not ship for sale in California any Covered Products unless
25 Defendant either 1.) provides warnings in the manner specified in paragraph 2.2 below; or 2.) the
26 Covered Products shipped for sale in California meet the Reformulation Standard set forth in
27 paragraphs 2.3 through 2.6 below.

28 2.2. Warnings. Defendant may provide a warning affixed to the packaging or labeling

1 of each unit of the Covered Product. The warning shall state:

2 **WARNING:** Consuming beverages that have been prepared in this
3 espresso machine will expose you to lead, a chemical known to the State
4 of California to cause birth defects and other reproductive harm.

5 The text of this warning must be in 12 point type or larger. The word "WARNING" must be
6 capitalized and be in bold. The warning must either be on the front or top of the packaging of the
7 Covered Product. If after the Effective Date, Defendant ships Covered Products to a retailer or
8 distributor outside of California that neither provide the warnings specified in this paragraph nor
9 meet the Reformulation Standard specified in paragraphs 2.3 through 2.6 below ("Non-
10 Conforming Covered Products"), and if the retailer or distributor then offers those Non-
11 Conforming Covered Products for sale in California, then as to those Non-Conforming Covered
12 Products, neither the retailer or distributor, nor any of their customers, are released pursuant to
13 Sections 6 and 7 below.

14 2.3. Reformulation Standard. After the Effective Date, Defendant may ship models of
15 Covered Products for sale in California that do not bear the warning specified in paragraph 2.2
16 above, provided the model of Covered Product has been tested pursuant to the protocol described
17 in paragraph 2.4 and has been determined not to leach more than five (5) micrograms of lead per
18 liter ("5 µg/L") into the water used to test the machines.

19 2.4. Defendant shall engage in the following program of testing espresso machines
20 ("Testing Program"), to determine whether warnings are required:

- 21 a) For all tests of all espresso machines, the Exposure Water to be used shall
22 be de-ionized water.
- 23 b) For those machines that are intended to be plumbed to an external water
24 source: pressurize the Exposure Water storage vessel to 50 ± 5.0 pounds
25 per square inch ("psi") (350 ± 35 kPa) using nitrogen gas. Collect a 125
26 mL control sample from the distribution system. Then connect the
27 beverage unit to the Exposure Water storage vessel using only stainless
28 steel valves and fittings and polytetrafluoroethylene (PTFE) tubing.
- c) While operating the beverage unit in accordance with manufacturer's

1 instructions, purge the unit with a volume of Exposure Water equal to
2 between 1.0 and 1.5 times the total volumetric capacity of the unit, or the
3 volume of purge water recommended in the operator's instructions for the
4 machine, whichever amount is less. If there are multiple beverage outlets
5 (e.g. dispensing spouts) ensure that approximately equal volumes of
6 Exposure Water are purged from each outlet. Discard the purged water.

- 7 d) With the Exposure Water in contact with all surfaces having contact with
8 beverages under normal idle operating conditions, maintain static
9 conditions for 24 ± 1 hour. Operate the equipment (including any heating
10 operations) as intended without dispensing any water. No ingredients or
11 product are to be added during the exposure period.
- 12 e) After step "d", and while operating the espresso machine in accordance
13 with the manufacturer's instructions, draw a 250 mL sample of Exposure
14 Water from the dispensing spout or spouts of the machine. If there are
15 multiple beverage outlets (e.g. dispensing spouts) ensure that
16 approximately equal volumes of water are drawn from each outlet. Sample
17 should be dispensed into a clean PTFE or polyethylene container with an
18 air-tight lid containing HNO₃ as a preservative.
- 19 f) Repeat steps "d" and "e" two additional times such that there is a
20 composite volume comprised of 3 samples taken at 24 hour intervals.
- 21 g) Analyze each Exposure Water sample and the control sample for the
22 concentration of lead using equipment and a method of analysis which
23 establish a detection limit of five (5) micrograms of lead per liter ("5
24 µg/L") or lower for each espresso machine tested.
- 25 h) Calculate the average lead concentrations of the three samples that were
26 analyzed pursuant to step "g" to determine the test results for the beverage
27 unit in question.
- 28

- 1 i) All espresso machines tested shall be randomly selected using any
2 generally accepted random sampling method such as International
3 Standards Organization 2589-1 (1989), any random method generally
4 accepted by the National Institute for Standards and Technology, or any
5 authoritative text on statistical sampling.
- 6 j) The lot, batch, or other group from which any model of espresso machines
7 tested are drawn must be representative of the entire population of articles
8 of the model of espresso machine in question manufactured in the calendar
9 year or since the date of the last test. In order to accomplish this,
10 Defendant must show that its manufacturing process for the particular
11 model of espresso machine in the Testing Program did not change during
12 the calendar year or since the last test. A manufacturing process will be
13 deemed to have occurred if there is a material change in: the type of
14 components that make up any alloys used in the plumbing of the model of
15 espresso machine, the suppliers of the components that make up the
16 components of the alloys, or any other factor that substantially affects lead
17 leaching test results on a model of espresso machine.
- 18 k) The number of espresso machines tested shall be at least six beverage
19 units for each model of espresso machine, and the mean of at least six
20 tested beverage units shall be calculated.
- 21 l) After the Effective Date, unless Defendant provides the warning specified
22 in paragraph 2.2 above, Defendant may not ship for sale in California any
23 model of espresso machine unless the mean of at least six tested beverage
24 units calculated according to subparagraph k), above, is $< 5 \mu\text{g/L}$.

25 2.5. As part of the Testing Program, Defendant shall maintain the following records,
26 or require by contract that any laboratory conducting testing shall maintain the following records
27 and will provide them to Plaintiff upon request:
28

1 A. Records kept in the normal course of business showing the maintenance and
2 calibration of equipment used to conduct the Testing Program;

3 B. Individual test results of all tests conducted as part of the Testing Program,
4 provided that Defendant shall not be required to maintain the above records for any test for more
5 than two years after that test was conducted.

6 2.6. Any records required to be maintained in by Paragraph 2.5 shall be made
7 available to the Plaintiff or the Attorney General for inspection within the State of California
8 upon 60 days written notice. Such records shall not be made available to the public unless
9 required by the California Public Records Act or other laws, except as part of presenting such
10 records to a court as part of any proceeding.

11 3. MONETARY RELIEF

12 3.1. Within ten (10) days after entry of this Consent Judgment by the Court, illy caffe
13 shall pay ten thousand dollars (\$10,000) each to the Ecological Rights Foundation and to
14 Californians for Alternatives to Toxics. Both groups are California non-profit organizations that
15 advocate for workers' and consumers' safety and for awareness and reduction of toxic exposures.
16 In addition, Defendant shall pay a civil penalty of \$15,000. This civil penalty shall be paid as
17 follows: Defendant shall make one check in the amount of \$11,250 payable to the "Office of the
18 California Attorney General." Defendant shall make another check in the amount of \$3,750
19 payable to the Mateel Environmental Justice Foundation ("Mateel"), which shall represent
20 Mateel's share of civil penalties as provided in Cal Health & Safety Code § 25192(a)(2). The
21 foregoing settlement payments shall be mailed to the attention of William Verick, Klamath
22 Environmental Law Center, 424 First Street, Eureka, California 95501, who shall provide them
23 to the respective organizations within fifteen (15) days of receipt.

24 4. ATTORNEYS' FEES

25 4.1. Within ten (10) days after entry of this Consent Judgment, illy caffe shall pay
26 forty thousand dollars (\$40,000) to the Klamath Environmental Law Center to cover Plaintiff's
27 attorneys' fees and costs. This payment shall be mailed to the attention of William Verick,
28 Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

1 4.2. Except as specifically provided in this Consent Judgment, Plaintiff and Defendant
2 shall bear their own costs and attorneys' fees.

3 5. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

4 5.1. The terms of this Consent Judgment are enforceable by and among the parties
5 hereto, by Defendant illy caffe with respect to the releases offered in this Consent Judgment, or,
6 with respect to the injunctive relief provided for herein, by the California Attorney General.

7 6. MATTERS COVERED BY THIS CONSENT JUDGMENT

8 6.1. This Consent Judgment is a full, final and binding resolution between the Plaintiff
9 acting on behalf of itself and, (as to those matters referenced in the Notice Letters) in the public
10 interest pursuant to Health and Safety Code section 25249.7(d), and Defendant illy caffe
11 concerning any violation of Proposition 65 regarding any claims made or which could have been
12 made in the Notice and/or the Complaint, or any other statutory or common law claim that could
13 have been asserted against Defendant, and/or its affiliates, parent or subsidiary corporations,
14 divisions, successors, officers, directors, assigns, distributors, retailers, and/or customers for
15 failure to provide clear, reasonable, and lawful warnings of exposure to lead contained in or
16 otherwise associated with Covered Products manufactured, sold or distributed by, for, or on
17 behalf of, illy caffe or its affiliates. Compliance by illy caffe with the terms of this Consent
18 Judgment resolves any issue, now and in the future, concerning compliance by Defendant illy
19 caffe and/or its affiliates, parent or subsidiary corporations, divisions, successors, officers,
20 directors, assigns, distributors, retailers, and/or customers with the requirements of Proposition
21 65 with respect to lead contained in or otherwise associated with Covered Products.

22 6.2. As to any claims, violations (except violations of this Consent Judgment), actions,
23 damages, costs, penalties or causes of action which may arise or have arisen after the original
24 date of entry of this consent judgment, compliance by illy caffe with the terms of this consent
25 judgment shall be deemed to be full and complete compliance with Proposition 65 as to claims
26 regarding exposure to lead in Covered Products.

27 6.3. In furtherance of the foregoing, Plaintiff hereby waives any and all rights and
28 benefits which it now has, or in the future may have, conferred upon it with respect to the

1 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which
2 provides as follows:

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

8 Plaintiff understands and acknowledges that the significance and consequence of this waiver of
9 California Civil Code Section 1542 is that even if Plaintiff suffers future damages arising out of
10 or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
11 Plaintiff will not be able to make any claim for those damages against Defendant illy caffe, or its
12 parents, subsidiaries or affiliates, or any of its customers, distributors, wholesalers, retailers or
13 any other person in the course of doing business who may manufacture, use, maintain, distribute,
14 market or sell the Covered Products. Furthermore, Plaintiff acknowledges that it intends these
15 consequences for any such claims which may exist as of the date of this release but which
16 Plaintiff does not know exist, and which, if known, would materially affect its decision to enter
17 into this Consent Judgment, regardless of whether its lack of knowledge is the result of
18 ignorance, oversight, error, negligence, or any other cause.

19 7. APPLICATION OF JUDGMENT

20 7.1. The obligations of this Consent Judgment shall apply to and be binding upon any
21 and all Plaintiffs, acting in the public interest pursuant to Health and Safety Code section
22 25249.7(d) and the successors or assigns of any of them.

23 8. MODIFICATION OF JUDGMENT

24 8.1. This Consent Judgment may be modified only upon written agreement of the
25 parties and illy caffe and upon entry of a modified Consent Judgment by the Court thereon, or
26 upon motion of any party as provided by law and upon entry of a modified Consent Judgment by
27 the Court.

1 9. NOTICE

2 9.1. When any Party is entitled to receive any notice or report under this Consent
3 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to:

- 4 a) For Mateel: William Verick, Esq., Klamath Environmental Law Center,
5 424 First Street, Eureka, California 95501; and
6 b) For: illy caffe: Carlo Badioli, 800 Westchester Avenue, Suite S440, Rye
7 Brook, NY 10573

8 9.2. Any Party may modify the person and address to whom notice is to be sent by
9 sending each other Party notice in accordance with this Paragraph.

10 10. AUTHORITY TO STIPULATE

11 10.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
12 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
13 of the party represented and legally to bind that party.

14 11. RETENTION OF JURISDICTION

15 11.1. This Court shall retain jurisdiction over the matters covered herein and the
16 enforcement and/or application of this Consent Judgment.

17 12. ENTIRE AGREEMENT

18 12.1. This Consent Judgment contains the sole and entire, agreement and understanding
19 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,
20 negotiations, commitments and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any party
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
23 deemed to exist or to bind any of the parties.

24 13. GOVERNING LAW

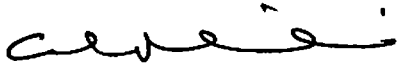
25 13.1. The validity, construction and performance of this Consent Judgment shall be
26 governed by the laws of the State of California.

1 14. COURT APPROVAL

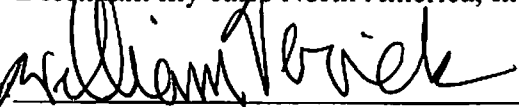
2 14.1. If this Consent Judgment is not approved by the Court, it shall be of no force or
3 effect, and cannot be used in any proceeding for any purpose.

4 IT IS SO STIPULATED:

5 DATED: 3/24/08

By: 
Carlo Badioli
Defendant illy caffè North America, Inc.

7 DATED:

8 By: 
William Verick
9 Mateel Environmental Justice Foundation

10 IT IS SO ORDERED, ADJUDGED AND DECREED:

11
12 Dated: MAY 21 2008

HAROLD KAHN

JUDGE OF THE SUPERIOR COURT

1 WILLIAM VERICK, CSB #140972
2 FREDRIC EVENSON, CSB #198059
3 KLAMATH ENVIRONMENTAL LAW CENTER
4 424 First Street
5 Eurcka, CA 95501
6 Telephone: (707) 268-8900
7 Fax: (707) 268-8901
8 E-mail: wverick@igc.org

9 DAVID H. WILLIAMS, CSB #144479
10 BRIAN ACREE, CSB #202505
11 370 Grand Avenue, Suite 5
12 Oakland, CA 94610
13 Telephone: (510) 271-0826
14 Fax: (510) 271-0829
15 E-mail: dhwill7@gmail.com

16 Attorneys for Plaintiff
17 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO

20 MATEEL ENVIRONMENTAL JUSTICE
21 FOUNDATION,

22 Plaintiff,

23 vs.

24 BRIEL-INDUSTRIA de
25 ELECTRODOMESTOCOS SA; et al,

26 Defendants.

CASE NO. 468856

~~PROPOSED~~ ORDER APPROVING
CONSENT JUDGMENT AS TO ILLY
CAFFE NORTH AMERICA, INC.

Date: May 21, 2008
Time: 9:30 a.m.
Dept. No.: 302

27 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
28 noticed motion on May 21, 2008. The court finds that:

1. The warnings and reformulation the Consent Judgment requires comply with the
requirements of Proposition 65.

ENDORSED
FILED
San Francisco County Superior Court

MAY 21 2008

GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

1 2. The payments in lieu of civil penalties specified in the Consent Judgment are
2 reasonable and conform to the criteria of Health & Safety Code § 25249.7(b)(2).

3 3. The attorneys fees awarded under the Consent Judgment are reasonable as are the
4 rates awarded the attorneys.

5 Based on these findings, the settlement and the Consent Judgment are approved.

6 IT IS SO ORDERED.

7 Dated: MAY 21 2008

HAROLD KASHN

Judge of the Superior Court