

1 WILLIAM VERICK, SBN 140972
2 FREDRIC EVENSON, SBN 198059
3 KLAMATH ENVIRONMENTAL LAW CENTER
4 424 First Street
5 Eureka, CA 95501
6 Telephone: (707) 268-8900
7 Facsimile: (707) 268-8901
8 Email: wverick@igc.org
9 Email: ecorights@earthlink.net

6 DAVID WILLIAMS, SBN 144479
7 BRIAN ACREE, SBN 202505
8 370 Grand Avenue, Suite 5
9 Oakland, CA 94610
10 Telephone: (510) 271-0826
11 Facsimile: (510) 271-0829
12 Email: davidhwilliams@earthlink.net
13 Email: brianacree@earthlink.net

11 Attorneys for Plaintiff, MATEEL
12 ENVIRONMENTAL JUSTICE FOUNDATION

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE CITY AND COUNTY OF SAN FRANCISCO**

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,

17 Plaintiff,

18 vs.

19 HOME ESSENTIALS & BEYOND,
20 INC., et al.,

21 Defendants.

Case No. CGC 07-469271

**CONSENT JUDGMENT AS TO
DEFENDANTS HOME ESSENTIALS &
BEYOND, INC., and BED BATH &
BEYOND INC.**

ENDORSED
FILED
San Francisco County Superior Court

JAN 13 2009

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

1 **1. INTRODUCTION**

2 1.1 On or about November 16, 2007, the Mateel Environmental Justice
3 Foundation (“Mateel”) and its attorneys, the Klamath Environmental Law Center
4 (“KELC”), acting on behalf of themselves and the general public, filed a complaint for
5 civil penalties and injunctive relief in the Superior Court for the City and County of San
6 Francisco in the action entitled *Mateel Environmental Justice Foundation v. Home*
7 *Essentials & Beyond, Inc.*, Case No. CGC 07-469271 against, among others, Home
8 Essentials & Beyond, Inc., (“Home Essentials”) and Bed Bath and Beyond Inc. (“Bed
9 Bath”) (collectively Home Essentials and Bed Bath are referred to as “Settling
10 Defendants”). The complaint in the action alleges, among other things, that Settling
11 Defendants violated provisions of the Safe Drinking Water and Toxic Enforcement Act of
12 1986, Health and Safety Code Section 25249.5, et seq. (“Proposition 65”). In particular,
13 Mateel alleges that Settling Defendants knowingly and intentionally exposed persons to
14 products which use beverage dispensing jars or vessels that incorporate leaded brass
15 spigots through which the beverages are dispensed (“Covered Products”) which contain
16 lead and/or lead compounds, which are chemicals known to the State of California to
17 cause cancer and birth defects or other reproductive harm, without first providing clear
18 and reasonable warnings to such individuals. This action was filed more than 60 days
19 after Mateel had sent a 60-Day Notice Letter to Settling Defendants, the California
20 Attorney General, all California District Attorneys, and all City Attorneys of each
21 California city with a population exceeding 750,000, providing notice of these alleged
22 violations. A copy of that 60-Day Notice letter is attached to the complaint in this action.

23 1.2 Home Essentials is a business that employs ten or more persons and
24 manufactures, distributes, supplies and/or otherwise markets within the State of California
25 Covered Products, which are alleged to contain lead and/or lead compounds.
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1 **1.3** Bed Bath is a business that employs ten or more persons and distributes,
2 supplies and/or otherwise markets within the State of California Covered Products, which
3 are alleged to contain lead and/or lead compounds.

4 **1.4** Lead and lead compounds are chemicals known to the State of California to
5 cause cancer, and lead is a chemical known to the State of California to cause
6 reproductive toxicity pursuant to Health and Safety Code Section 25249.9. Under certain
7 circumstances, products containing lead and/or lead compounds that are sold or
8 distributed in the State of California are subject to Proposition 65's warning requirement.
9 Mateel alleges that the Covered Products manufactured, distributed, sold and/or marketed
10 by the Settling Defendant for use in California require Proposition 65 warnings.

11 **1.5** For purposes of this Consent Judgment, the Parties stipulate that this Court
12 has jurisdiction over the allegations of violations contained in the 60-Day Notice Letters
13 and the Complaints, as well as personal jurisdiction over the Settling Defendants as to the
14 acts alleged in the 60-Day Notice Letters and Complaints; that venue is proper in the City
15 and County of San Francisco and that this Court has jurisdiction to enter this Consent
16 Judgment as a full and final settlement and resolution of the allegations made against the
17 Settling Defendants contained in the 60-Day Notice Letters and Complaints and of all
18 claims that were or could have been raised against the Settling Defendants based on the
19 facts alleged therein or arising therefrom.

20 **1.6** This Consent Judgment resolves claims that are denied and disputed. The
21 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and
22 all claims between the Parties for the purpose of avoiding prolonged litigation. This
23 Consent Judgment shall not constitute an admission with respect to any allegation made in
24 the 60-Day Notice Letters or Complaints, each and every allegation of which the Settling
25 Defendants deny, nor may this Consent Judgment or compliance with it be used as an
26 admission or evidence of any fact, wrongdoing, misconduct, culpability or liability on the
27 part of any Settling Defendant.

1 **2. SETTLEMENT PAYMENT**

2 **2.1** Home Essentials shall pay \$5,000 in civil penalties, allocated as directed by
3 statute, as well as two offset payments, one of \$15,000 and one of \$10,000, both paid to
4 Center for Environmental Health for work informing California consumers about the
5 hazards of and exposures to toxic chemicals and for work to reduce exposures to and
6 pollution from toxic chemicals. Center for Environmental Health is a California non-
7 profit environmental organization that advocates for consumers' safety, and for awareness
8 and reduction of toxic exposures. The deadline for these payments shall be made as
9 follows: The first payment to Center for Environmental Health shall be made on or
10 before 90 days of the entry of this Consent Judgment. The second payment to Center for
11 Environmental Health shall be made on or before 180 days of the entry of this Consent
12 Judgment. The payment of civil penalties shall be made on or before 270 days of the
13 entry of this Consent Judgment.

14 **2.2** Home Essentials shall pay \$40,000 to KELC to cover a portion of Mateel's
15 attorneys' fees and costs. This payment shall be made on or before 10 days of the entry of
16 this Consent Judgment.

17 **2.3** All payments referenced in Sections 2.1 and 2.2 shall be made by check,
18 payable to the above specified recipient and sent so as to reasonably guarantee timely
19 delivery to William Verick, Klamath Environmental Justice Foundation, 424 First Street,
20 Eureka, CA 95501, to be distributed within a commercially reasonable time by Mr.
21 Verick to the ultimate recipients.

22 **2.4** The Parties acknowledge and agree that, except as provided in Section 2.2
23 of this Consent Judgment, each party shall bear its own costs, expenses, consultant and
24 expert fees, and attorneys' fees.

1 **3. ENTRY OF CONSENT JUDGMENT**

2 **3.1** The Parties hereby request that the Court promptly enter this Consent
3 Judgment. Upon entry of this Consent Judgment, the Parties waive their respective rights
4 to a hearing or trial on the allegations of the Complaint.

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

6 **4.1** This Consent Judgment is a final and binding resolution between Mateel,
7 acting on behalf of itself and, as to those matters raised in the 60-Day Notice Letters, the
8 general public, and the Settling Defendants of any alleged violation of Proposition 65 or
9 the regulations promulgated thereunder to the fullest extent that were asserted or could
10 have been asserted against the Settling Defendants based upon, arising out of or relating to
11 the Settling Defendants' compliance with Proposition 65 or regulations promulgated
12 thereunder with respect to the Covered Products sold at retail in California, whether based
13 on actions committed by the Settling Defendants or by any other entity involved in the
14 manufacture, distribution and/or retail sale of the Covered Products, including but not
15 limited to parents, subsidiaries or affiliates, predecessors, officers, directors, employees of
16 the Settling Defendants and all customers, vendors, suppliers, manufacturers, distributors,
17 wholesalers, retailers or any other person in the course of doing business that
18 manufactured, distributed or sold the Covered Products. As to alleged exposures from
19 Covered Products sold at retail by the Settling Defendants to chemicals listed in the 60-
20 Day Notice Letters pertaining to the Covered Products, compliance with the terms of this
21 Consent Judgment resolves any issue, now and in the future, concerning compliance with
22 Proposition 65 by the Settling Defendants and their parents, subsidiaries or affiliates,
23 predecessors, officers, directors, employees, and all customers, vendors, suppliers,
24 manufacturers distributors, wholesalers, retailers or any other person in the course of
25 doing business involving the Covered Products, and the successors and assigns of any of
26 these. Notwithstanding any other provision in this Consent Judgment, the release of
27 claims by the general public is limited to those claims made and chemicals identified in
28 the 60-Day Notice Letters. Also, notwithstanding any other provision in this Consent

1 Judgment, the release of claims shall not apply to any retail seller that in the future sells
2 Covered Products in California without a warning consistent with section 7.

3 4.2 As to alleged exposures to chemicals identified in the 60 Day Notice Letters
4 pertaining to the Covered Products sold by the Settling Defendants, Mateel, acting on
5 behalf of itself and, as to the matters in the 60-Day Notice Letters, on behalf of the general
6 public, and its agents, successors and assigns, waives all rights to institute any form of
7 legal action and releases all claims which were or could have been brought against the
8 Settling Defendants and their parents, subsidiaries or affiliates, predecessors, officers,
9 directors, employees, and all customers, vendors, suppliers, manufacturers, distributors,
10 wholesalers, retailers or any other person in the course of doing business involving the
11 Covered Products and the successors and assigns of any of them. This release of claims
12 by the general public is not understood to extend beyond the claims included in the 60-
13 Day Notice Letters. In furtherance of the foregoing, Mateel, acting on behalf of itself and
14 the general public, hereby waives any and all rights and benefits which it now has, or in
15 the future may have, conferred upon it with respect to the Covered Products by virtue of
16 the provisions of Section 1542 of the California Civil Code, which provides as follows:

17 “A GENERAL RELEASE DOES NOT EXTEND TO
18 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
19 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
20 EXECUTING THE RELEASE, WHICH IF KNOWN BY
 HIM MUST HAVE MATERIALLY AFFECTED HIS
 SETTLEMENT WITH THE DEBTOR.”

21 Mateel understands and acknowledges that the significance and consequence of this
22 waiver of California Civil Code Section 1542 is that even if Mateel or any member of the
23 general public has future claims arising out of or resulting from, or related directly or
24 indirectly to, in whole or in part, the Covered Products, it will not be able to pursue that
25 claim against the Settling Defendants, their parents, subsidiaries or affiliates,
26 predecessors, officers, directors, employees, and all customers, vendors, suppliers,
27 manufacturers distributors, wholesalers, retailers or any other person in the course of
28 business involving the Covered Products. Furthermore, Mateel acknowledges that it

1 intends these consequences for any such claims which may exist as of the date of this
2 release but which Mateel does not know exist, and which, if known, would materially
3 affect its decision to enter into this Consent Judgment, regardless of whether its lack of
4 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

5 **5. ENFORCEMENT OF JUDGMENT**

6 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the
7 Parties hereto.

8 **6. MODIFICATION OF JUDGMENT**

9 **6.1** This Consent Judgment may be modified only upon written agreement of
10 the Parties and upon entry of a modified Consent Judgment by the Court, or upon motion
11 of any party as provided by law and upon entry of a modified Consent Judgment by the
12 Court.

13 **7. INJUNCTIVE RELIEF**

14 **7.1** Settling Defendants agree that they have discontinued and will no longer
15 offer for sale into California any Covered Products that use leaded brass spigots, including
16 those specifically identified in the 60-Day Notice letter attached to the Complaint in this
17 action. Settling Defendants further represent that they are not aware of any other
18 beverage dispenser, which they continue to sell in California that also uses a brass spigot
19 for dispensing drinking liquids.

20 **7.2** Home Essentials further agrees that in the future if it sells any Covered
21 Products that use brass spigots outside of California, including to any distributor located
22 outside of California, it will inform the buyer of the exposure to lead caused by the
23 Covered Products and inform the buyer that if the Covered Product is sold in California,
24 the consumer must be provided with a warning that the product exposes the consumer to
25 lead, a chemical known by the State of California to cause birth defects or other
26 reproductive harm.

1 7.3 Settling Defendants agree to use the following efforts to contact and inform
2 Californians who have previously purchased Covered Products which used or included
3 brass spigots:

4 7.3.1. For those prior purchasers for which a Settling Defendant has direct
5 address information, one of the Settling Defendants shall send a letter, via U.S. mail, in
6 the form and content set forth in Exhibit A hereto, to the prior purchaser's last known
7 address. That letter will provide: (1) a Proposition 65 warning about the Covered Product
8 and exposure to lead resulting therefrom, (2) a reminder of the plastic spigot which was
9 provided as an alternative, (3) an opportunity to have a second lead free plastic
10 replacement spigot sent at no charge, and (4) an opportunity to return the Covered Product
11 for a merchandise credit.

12 7.3.2. For those prior purchasers for which Settling Defendant has possible,
13 indirect access to address information, such as purchasers who paid for the Covered
14 Beverage Jar Product by credit-card, Settling Defendants shall use all legal means
15 available to obtain the address information. If Settling Defendants are able to obtain the
16 address information for the prior purchaser, Settling Defendants shall provide the same
17 information and options for that consumer as described in 7.3.1, above.

18
19 **8. NOTICE**

20 8.1 When any party is entitled to receive any notice or report under this Consent
21 Judgment, the notice report shall be made in writing and sent via U.S. Mail or other
22 manner of overnight delivery to the following:

23 (a) for Mateel: William Verick, Klamath Environmental Justice Foundation,
24 424 First Street, Eureka, CA 95501;

25 (b) for Home Essentials & Beyond, Inc.: Izidore Godinger, Home Essentials
26 & Beyond, Inc. 3001 Woodbridge Avenue, Edison, NJ 08837; with a copy to Donald
27 Burris. Burris. Schoenberg & Walden, LLP, 12121 Wilshire Boulevard, Suite 800, Los
28 Angeles, CA 90025.

1 (c) for Bed Bath & Beyond, Inc.: Kenneth Bradley, Bed Bath &
2 Beyond Inc., 650 Liberty Avenue, Union, NJ 07083; with a copy to John Dittoe, Reed
3 Smith LLP, 1999 Harrison St., Ste 2400, Oakland, CA 94612-3572.

4 **9. AUTHORITY TO STIPULATE**

5 **9.1** Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the party he or she represents to enter into this Consent Judgment and to
7 execute it on behalf of the party represented and legally to bind that party.

8
9 **10. RETENTION OF JURISDICTION**

10 **10.1** This Court shall retain jurisdiction to implement the Consent Judgment.

11
12 **11. ENTIRE AGREEMENT**

13 **11.1** This Consent Judgment contains the sole and entire agreement and
14 understanding of the Parties with respect to the entire subject matter hereof, and any and
15 all prior discussions, negotiations, commitments and understandings related hereto. No
16 representations, oral or otherwise, express or implied, other than those contained herein
17 have been made by any party hereto. No other agreements not specifically referred to
18 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

19
20 **12. GOVERNING LAW**

21 **12.1** The validity, construction and performance of this Consent Judgment shall
22 be governed by the laws of the State of California, without reference to any conflicts of
23 law provisions of California law.

24
25 **13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)**

26 **13.1** Mateel agrees to comply with Health & Safety Code §25249.7(f)'s reporting
27 form and approval requirements and as implemented by various regulations.

1 **14. EXECUTION IN COUNTERPARTS**

2 14.1 This Consent Judgment may be executed in counterparts and/or by
3 facsimile, which taken together shall be deemed to constitute one original document.
4

5 **15. COURT APPROVAL**

6 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force
7 or effect, and cannot be used in any proceeding for any purpose.

8 **IT IS SO STIPULATED:**

9 Dated: *Dec. 5, 2008*

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

William Verick

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

14 Dated: December 3, 2008

HOME ESSENTIALS & BEYOND, INC.,

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By: Izidore Godinger
Its: President and CEO

18 Dated: December 3, 2008

BED, BATH & BEYOND INC.

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By: Kenneth Bradley
Its: Chief Litigation Counsel

22 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

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24 Dated:

JUDGE OF THE SUPERIOR COURT

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14. EXECUTION IN COUNTERPARTS

14.1 This Consent Judgment may be executed in counterparts and/or by facsimile, which taken together shall be deemed to constitute one original document.

15. COURT APPROVAL

15.1 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: December 3, 2008

HOME ESSENTIALS & BEYOND, INC.,

By: Izidore Gedinger
Its: President and CEO

Dated: December 3, 2008

BED, BATH & BEYOND INC.

By: Kenneth Bradley
Its: Chief Litigation Counsel

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: JUDGE OF THE SUPERIOR COURT

14. EXECUTION IN COUNTERPARTS

14.1 This Consent Judgment may be executed in counterparts and/or by
facsimile, which taken together shall be deemed to constitute one original document.

15. COURT APPROVAL

15.1 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

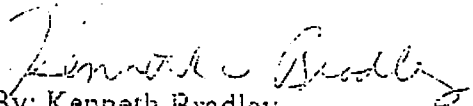
Dated: December 3, 2008

HOME ESSENTIALS & BEYOND, INC.

By: Izidore Godinger
Its: President and CEO

Dated: December 3, 2008

BED, BATH & BEYOND INC.


By: Kenneth Bradley
Its: Chief Litigation Counsel

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

JAN 13 2009

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT

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_____, 2009

Re: Your Possible Purchase of Lemonade Jar with a Brass Spigot –
California Proposition 65 (Health & Safety Code Section 25249.6)

Dear Customer:

Our records indicate that you may have purchased from one of our California stores a lemonade jar with brass and plastic spigots manufactured by Home Essentials & Beyond Inc. A picture of the Home Essentials Lemonade Jar with brass and plastic spigots is displayed below. We have learned that the brass spigot on the Home Essentials Lemonade Jar contains lead in its brass spigot, with lead being a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

It is also possible that the Home Essentials Lemonade Jar you purchased was sold with only plastic spigots, and did not include any brass spigots. You can tell by examining the spigots that we sold to you with your Jar. If this is the case, you need not take any action.

If you believe the Home Essentials Jar that you purchased from Bed Bath & Beyond did contain a brass spigot, please contact Home Essentials' customer service at (732-590-3600) and it will gladly send you, free of charge, a second plastic, lead-free replacement spigot. Alternatively, you can bring this letter and your Home Essentials Lemonade Jar to any of our California stores for a merchandise credit.

We regret any inconvenience this may have caused and look forward to serving you in the future.

Sincerely,

BED BATH & BEYOND INC.

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